IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CRI-2017-083-1624
[2018] NZHC 3117

THE QUEEN

v

STEWART MURRAY WILSON

Hearing:	29 November 2018
Appearances:	R M A McCoubrey and M J Mortimer for Crown A J McKenzie and L M Drummond for Defendant
Judgment:	29 November 2018

SENTENCING REMARKS OF LANG J

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[1] Mr Wilson, you appear for sentence today having been found guilty by a jury of sexual offending against three separate complainants. The offending in question occurred between 1972 and early 1980.

[2] The charges on which you were found guilty range from four counts of rape through to burglary and charges of indecent assault and threatening to kill. I will outline each of these as I describe the factual basis for your offending.

The facts

JC

[3] The first set of charges in time relates to a complainant known as JC. She was living in a flat in Majoribanks Street in Wellington in 1971. You later told police that you were also living in that street at about that time with your then partner. The complainant saw you and your then partner walking down the street. She noticed that your partner had black eyes. She had come from an abusive relationship herself and she felt sorry for your partner. She therefore struck up a form of relationship with her. On one occasion she said she went to your address while you were absent and assisted your partner to clean the kitchen walls.

[4] The complainant moved out of that address after a short time and rented an apartment some distance away. She told the jury that at about 9 pm one night she was in her apartment. Her two year old daughter was asleep in a bed in her bedroom. She then heard a banging on the door. When she asked who was at the door, you called out "It's Murray Wilson". She did not open the door. She was terrified and hid under the bed. Her evidence was that you then broke into her apartment by smashing a hole through the door. At trial photographs were shown of the door in the flat. The damage from the incident is still visible.

[5] She says she was lying under the bed as you remained in the room. When you left she telephoned the police. The police arrived and searched the grounds, but could find no trace of you. After the police had left, however, she felt an arm around her throat and you began immediately making threats to her. There followed a bizarre incident in which you told the complainant you had a desire to take a good-looking

woman out to dinner. You then made her get dressed and you walked her through the streets of Wellington to a hotel, where you forced her to eat a meal she did not want. She believes you must have slipped something into her drink whilst she was at the restaurant, because she remembers nothing about the walk back to her address. She does remember, however, what happened after you returned to her address. She says that you threatened her, that there was some physical violence, albeit limited. You then made her get onto the bed and she described a series of events in which you raped her on three separate occasions. On one occasion, you also rubbed ejaculate over her breasts.

[6] When the incident finished, which was after some hours, you then left. Before leaving, you told her that if she said anything about the incident she would be hunted down and killed. She was terrified of what you had told her and what you had done to her. You had also told her that she needed to leave the address immediately. She packed up her belongings and her daughter and left the address. She was forced to go back to her former partner with whom she had been in an abusive relationship. She did not tell anybody about the incident for some years. Eventually, she sought counselling in 1992 and disclosed what had happened. She then laid a formal complaint with the police in March 1996 after she had attended a trial in Wellington to which I will refer later in these remarks.

[7] These incidents led to the jury convicting you on charges of burglary,[1] three charges of rape,[2] one charge of indecent assault[3] and one charge of threatening to kill.[4]

GE

[8] The second complainant, who I will refer to as GE, spoke of an incident that occurred on 6 December 1976 in Auckland. She answered an advertisement in which a male person had sought the company of a female person. She answered the advertisement by telephoning the number given in the advertisement. She discovered that this was a work address at which you were then employed. You then asked if she

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1 Crimes Act 1961, s 231(1)(a).
2 Crimes Act, s 128.
3 Crimes Act, s 135.
4 Crimes Act, s 306(1)(a).

wanted to go out that night. She agreed, and you turned up at her house at about 6.30 pm. Also in the taxi with you when you arrived were a friend of yours and another female whom the complainant had asked to accompany her that evening.

[9] You then went to a hotel where you purchased beer. Instead of going out, however, the four of you went back to the flat at which you were then living. The complainant described how you then socialised and played darts. Beer was consumed. Eventually, however, the other two people left the address and the complainant was left alone with you. She said that she wanted to go home and you initially called her a taxi. When the taxi arrived, however, you went out and sent it away. You came back in and told her she would go home when you were ready for her to go home.

[10] She then describes a harrowing incident that lasted for several hours. During this, she was told to go to the bedroom and take her clothes off. You then got into bed and attempted to rape her. Initially you were charged solely with rape. During the course of the trial, your counsel referred the complainant to a statement she had made to the police earlier in which she indicated that, although you were endeavouring to penetrate her, penetration may not have occurred. At the close of the Crown case I added an alternative charge of attempted rape, and the jury found you guilty on that charge. The jury therefore accepted that you tried to rape this complainant but that, for whatever reason, you had not achieved penetration.

[11] The complainant said that after this sexual activity occurred, you told her to drink a drink that you had prepared for her. Within minutes she began to feel dizzy and sleepy. She then went to sleep. She woke up in the morning to find you naked in bed beside her. You then made her breakfast, even though she did not want to eat it. She eventually left the house after agreeing that she would meet you back at the address that night for dinner.

[12] The complainant went immediately in a taxi to a police station, where she laid a complaint with the police. The police then took her home. This complaint was never acted upon until 1996, when the complainant went back to the police and asked what was happening with her complaint. As a result of this incident, you were convicted on one charge of attempted rape.

KG

[13] The final set of charges relates to an incident that occurred around Christmas in 1979. The complainant's mother had answered an advertisement. The advertisement was in similar terms to the other advertisement answered by the second complainant, GE. It seems that you arrived virtually immediately at her address with your suitcase and intending to stay. You then became part of this household for a number of weeks into early 1980.

[14] The complainant's mother said you had sexually offended against her. The jury acquitted you on those charges. I consider the jury may well have been left in a state of reasonable doubt as to the issue of consent, or whether you honestly and reasonably believed the complainant was consenting. However, you were found guilty on several charges relating to this complainant's nine year old daughter, KG. She described how virtually immediately after you arrived in the household you would take every opportunity when you were alone with her to touch her in her genital region. On one occasion whilst she was in her mother's bed with you, you rubbed your penis against her. She also describes an incident in which you raped her on her own bed. She describes another incident in which you touched her on the vagina whilst she was in the bath.

[15] These incidents led to you being convicted on a charge of rape and three charges of doing an indecent act on a girl under 12 years of age.[5]

Victim impact statements

[16] I have read victim impact statements from all three complainants. They make harrowing reading. What is crystal clear, Mr Wilson, is that your offending has had a very dramatic effect on their lives. All three of them have been haunted by what you did to them on the occasions when you invaded their space. Even though it is now many years since the offending it is quite clear that the offending still has devastating and ongoing effects on all three victims.

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5 Crimes Act, s 133(1)(a) (repealed from May 2005).

The 1996 sentence

[17] Sentencing you is not an easy exercise because of events that occurred in 1996. In that year you were tried before Heron J and a jury on a large number of charges relating to sexual and violent offending against numerous females. At the end of the trial you were convicted on many of the charges and you were ultimately sentenced by Heron J on 15 March 1996.[6]

[18] The Judge divided the charges into three categories for sentencing purposes. The first category related to offending that had occurred between 1972 and 1985. The Judge took a starting point of eight years imprisonment to reflect the culpability of that offending. The Judge then turned to the second category, which involved offending that occurred between 1986 and 1994. He took a starting point of ten years on those charges. He then added a three year uplift to reflect serious offending involving cruelty against your young daughter or stepdaughter. By this means the Judge finished with an end sentence of 21 years imprisonment. On my understanding, that was the longest finite sentence ever imposed in New Zealand up until that time. The Judge acknowledged that the sentence was historic in that way, but said it was necessary to mark outrage at your offending.[7]

[19] The sentence imposed on you in 1996 is relevant today because the charges on which you are now to be sentenced arise from incidents that occurred during the period for which you were sentenced in 1996. All of the charges occurred during the period between 1972 and 1980. This corresponds with the first category of charges before Heron J, for which he selected a sentence of eight years imprisonment. As counsel for the Crown acknowledges, I must sentence you on the basis of the sentence you would have received had Heron J been sentencing you on all charges, including the present charges, in 1996.

[20] I have no doubt that, standing alone, the present offending would have attracted a very substantial sentence even by sentencing standards in 1996. In those days the

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6 *R v Wilson* HC Wellington, T104/95, 15 March 1996.
7 *R v Wilson*, above n 6, at 9.

maximum sentence on a charge of rape was 14 years imprisonment. The maximum sentence on that charge is now 20 years imprisonment.

[21] The offending against all three complainants has obvious aggravating factors. The first is that the offending against JC involved the forcible invasion of her home at night. This is reflected in the charge of burglary. It resulted in a prolonged episode in which you effectively kept JC prisoner as you walked her to and from the restaurant and then held her captive in her room. It also involved different kinds of non-consensual sexual activity over a considerable period. Finally, it resulted in the threats to kill that she clearly took seriously.

[22] In addition, it is obvious that the offending must have been premeditated. You must have discovered where she had moved to after leaving her flat in the street where you were living. The only realistic conclusion is that you must have laid in wait for her at some stage to see where she went and where she lived. You then arrived at that address during night-time hours and forced your way into it. I have no doubt that even by the sentencing standards in 1996, this offending would have attracted a starting point of at least seven years imprisonment.

[23] The offending in relation to the second complainant was also serious. It again involved the detention of the complainant against her will over a considerable period of time. On its own, I have no doubt that this offending would have attracted a sentence in the vicinity of three to four years imprisonment.

[24] The offending against the final complainant is also serious. It involved repeated offending against a nine year old girl in her own home. It also involved a gross breach of trust because you had been invited into that home to live as part of the family. The offending also took numerous forms. It has had devastating effects for the victim. Again, I consider that, standing alone, this offending would easily have warranted a starting point in 1996 of around seven years imprisonment.

[25] If you were to be sentenced on all three sets of charges in 1996, regard would need to be had to totality principles. Even so, I consider that a sentence of around ten to 12 years imprisonment would have been available.

[26] The issue for me, therefore, is to decide by how much, if at all, to increase the starting point of eight years imprisonment selected by Heron J in relation to offending that occurred between 1972 and 1985. That offending involved allegations of rape against three complainants. Two of these were adult and one was an adolescent girl. The rape of the adolescent girl was particularly serious because, as I understand the position, it occurred in front of her mother. The sentencing Judge said you committed this crime to demonstrate the control that you had over the mother.[8]

[27] Your counsel submits that Heron J would not have increased the sentence of eight years imprisonment at all to reflect the present charges. The Crown says the sentence would have been increased by two to three years, with three years being the Crown's favoured option.

[28] One factor the Crown has no doubt taken into account in suggesting the sentence of three years imprisonment is that, at the time of your trial in 1996, you were also awaiting trial on an indictment containing another series of similar charges.[9] These never proceeded to trial because, in 2000, the Attorney-General entered a stay of proceedings in relation to them. The reasons for the Attorney-General's decision are not entirely clear, but he must have considered that a further trial on the remaining charges was not warranted given the length of the sentence you were already required to serve.

[29] I consider the Judge would have adopted a higher starting point in relation to this category of charges if the present charges had been before him. Although it is difficult to quantify the extent to which the sentence would have been increased, I consider it would have been increased by around one-third. This would amount to an increase of two years eight months imprisonment.

[30] This would have brought the end sentence to one of 23 years eight months imprisonment. That would be a significant addition to what was already a very long sentence by sentencing standards at that time. Nevertheless, I take the view that such a sentence would not have been out of all proportion to the overall gravity of the

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8 *R v Wilson*, above n 6, at 3.

9 The charges against the three complainants were not contained in this indictment.

offending. For that reason I do not consider it needs to be adjusted to reflect totality principles. As a result, I propose to take a starting point of two years eight months imprisonment to reflect your culpability on the present charges.

[31] The only remaining issue is to determine whether I should increase or decrease the sentence I have selected to reflect aggravating and mitigating factors personal to you.

Aggravating factors

[32] You had some previous convictions in 1996. Heron J elected not to apply any uplift in relation to those and neither do I.

Mitigating factors

[33] Your counsel submits I should have regard to several mitigating factors if I was to impose an additional sentence of imprisonment. The first of these is your age. Next month you will be 72 years of age. You have spent the bulk of the last 25 or so years in custody. You have expressed concern to the writer of the pre-sentence report at the prospect of returning to prison. In some ways I find that surprising given the extent to which you have spent time in prison over the last 25 years. Nevertheless, I accept that returning to prison at your age will provide some additional difficulties to you. I am prepared to reduce the sentence by four months to reflect that fact.

[34] This morning your counsel handed me a letter in which you have said you are sorry for whatever you have done. You say, however, that you cannot remember any of the people who gave evidence at the trial. I do not take your letter to be an acknowledgement of responsibility for your offending. I consider that most of the regret you express in the letter is for the position that you now find yourself in, and also events you say occurred to you during your youth. I am not prepared to give an additional discount to reflect remorse.

[35] There is also the issue of delay. Clearly, there has been delay in having these charges heard in the sense that, other than the second complainant, these complainants did not come forward until many years after the event. I do not consider this warrants

any discount, however, because this did not affect you in any way. Until charges were laid there were no restrictions on your liberty and, indeed, you had no idea that the charges were to be laid.

[36] The end sentence of two years four months imprisonment means a sentence of home detention is not available. Before I turn to that issue, however, I want to make two further comments about sentencing issues.

[37] When you were sentenced in 1996, Heron J referred to the sentence of preventive detention that had by that stage been introduced. He acknowledged, however, that he could not impose such a sentence in relation to your offending because the legislation did not apply retrospectively to offending that had occurred prior to its introduction.[10] I am in the same position today.

[38] Secondly, the offending also occurred at a time prior to the introduction of legislation permitting the courts to impose a minimum term of imprisonment. I cannot give consideration to that issue either.

Home detention

[39] I wish to make it clear, Mr Wilson, that even if I had reached a sentence of two years imprisonment or less, I would not have imposed a sentence of home detention. There are several reasons for that.

[40] The discretion to impose a sentence of home detention is fettered by the principles and purposes of sentencing as set out in our Sentencing Act 2002. Your counsel relies on the sentencing principle that the Court should impose the least restrictive outcome possible.[11] He points out that a sentence of home detention would see you return to the address where you are required to live as a condition of the extended supervision order to which you are subject. This effectively requires you to live in a house on prison grounds. You may only leave that house under escort.

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10 *R v Wilson*, above n 6, at 6.
11 Sentencing Act 2002, s 8(g).

[41] I acknowledge also that a sentence of imprisonment is not necessary to reflect issues of deterrence or to protect the community. A sentence of two years four months imprisonment is hardly a deterrent to either you or others. It is only being imposed in the present case because of the 1996 sentence. In addition, the terms of the extended supervision order are sufficient to ensure that the community is adequately protected from the risk of future offending at your hands.

[42] The sentencing purposes that would influence me in my decision not to grant a sentence of home detention, even if it were available, are those relating to denunciation and the need to hold you accountable for your actions.[12] You have never acknowledged responsibility for any of your offending. This remains the case today. I do not consider the sentencing purposes to which I have referred would be adequately met by a sentence of home detention. Furthermore, your offending is simply too serious for that type of sentence to be considered.

Sentence

[43] Mr Wilson, on each of the charges of rape you are sentenced to two years four months imprisonment. On the charge of attempted rape, you are sentenced to one year two months imprisonment. On the burglary charge, you are sentenced to one year four months imprisonment. On the charge of threatening to kill, you are sentenced to six months imprisonment. On each of the remaining charges, you are sentenced to 12 months imprisonment. All of those sentences are concurrent. This means you will serve an effective sentence of two years four months imprisonment.

[44] Stand down.

Lang J

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[12] Sentencing Act 2002, ss 7(a) and 7(e).