

IN THE SUPREME COURT OF NEW ZEALAND

**SC 49/2009
[2009] NZSC 82**

STEPHEN MICHAEL SHONE

v

THE QUEEN

Court: Blanchard, McGrath and Wilson JJ

Counsel: A M Simperingham for Applicant
H Wrigley for Crown

Judgment: 29 July 2009

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant seeks leave to appeal against the sentence imposed on him for repetitive sexual offending against five teenage girls, all of whom were his students. He pleaded guilty to eleven counts during his trial, after all but one of his victims had given evidence, and was found guilty of a further charge. The offending included oral sex with and sexual violation through digital penetration of a 13 year old victim.

[2] The applicant was sentenced by the trial Judge to a total of eight years six months imprisonment, comprising cumulative sentences of four years nine months and three years nine months respectively for the sexual violation of and indecent assault on the 13 year old victim. The sentences for the other offending were imposed concurrently. The Court of Appeal¹ allowed the applicant's appeal against sentence and substituted a total sentence of seven years six months imprisonment. It did so because, although the trial Judge had correctly identified the appropriate sentences for the different offences on a stand alone basis, the total sentence did not correctly reflect the totality of the offending. The reduction in sentence was achieved by substituting a sentence of three years nine months on the count of sexual violation of the 13 year old victim.

[3] The applicant contends that it was relevant to sentence that three of his victims consented to what he did. Because of their ages, that is not a mitigating factor. Nor is the fact that the mother of the 13 year old may have encouraged some of the offending, particularly when the alleged encouragement occurred after the offending began and was not said to be causative of the continuing offending.

[4] No error of principle is revealed, nor is there any appearance of a miscarriage of justice, in the sentence arrived at by the Court of Appeal. The application for leave to appeal is therefore dismissed.

Solicitors:
Woodward Chrisp, Gisborne for Applicant
Crown Law, Wellington

¹ [2009] NZCA 183.