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**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE**

**CRI-2019-004-8931
[2021] NZHC 3484**

THE QUEEN

v

MURRAY EDWARD THOMAS ROBERTSON

Hearing: 16 December 2021
Appearances: S Murphy for the Crown
L Freyer and C Oxnam for the Defendant
Sentencing: 16 December 2021

SENTENCE OF GAULT J

Solicitors / Counsel:
Ms S Murphy, Meredith Connell, Office of the Crown Solicitor, Auckland
Mrs L Freyer and Ms C Oxnam, Public Defence Service, Auckland

[1] Mr Robertson, you appear for sentence in this Court after pleading guilty in the District Court to four charges of sexual violation by unlawful sexual connection¹ and one charge of indecent assault.²

Facts of the offending

[2] I first set out the facts of your offending, which it is necessary to do in open Court.

[3] At approximately 4:00 pm on 20 September 2019, you were parked in the carpark of a New World supermarket in Mount Roskill. The victim, who was 17 years old, was also in the carpark. She had been asking people for spare change when you approached her. You had briefly met each other in passing some weeks before.

[4] She told you she could not enter the supermarket because she had been trespassed. You told her that you would go in and buy her some food. She gave you \$20 and you went into the supermarket while she waited outside. When you came out, you walked past her and told her to get into your car, which she did. You lit a joint and she smoked a small amount. She told you she had ordered pizza, so you drove her to the pizza shop.

[5] You offered her \$1,000 to spend the day with you. She told you she did not want to because she had a girlfriend. She asked for her \$20 back. You refused to return the money, telling her you would give it back after she picked up the pizza. She went to buy pizza but when she came back, you had left.

[6] She needed her money back in order to buy food for her and her partner. She asked members of the public where your vehicle had gone and was told it had gone to the nearby skate park. She walked there and saw your vehicle parked in the carpark at the War Memorial Park in Mt Roskill.

¹ Crimes Act 1961, ss 128(1)(b) and 128B (three charges representative). Maximum penalty 20 years' imprisonment.

² Crimes Act 1961, s 135. Maximum penalty 7 years' imprisonment.

[7] You drove past her slowly. She got into the passenger seat of your vehicle and asked for her money. She thought she heard the doors lock (in fact there were no door handles on the inside of the passenger and driver's doors). She told you to stop. You told her to calm down, she was not going anywhere, and she would spend the day with you. She told you she did not want to do that, to stop the car, and that you could keep the money.

[8] You told her you would buy her food at the New World, but you drove past the area without stopping. She began to panic and grabbed your head in an attempt to make you stop driving. You pushed her away. You said "I've been watching you" and "I know where you stay." She was scared because you were stronger than her and she thought the doors were locked. She felt weak and anxious but thought if she listened to you she might be all right.

[9] You drove towards the motorway and told her you needed to find a private place. You drove to a cul-de-sac in Mount Roskill and parked on the grass area. You told her you would return the money if she had a drink with you. She agreed to have a drink but you did not return the money. You rolled a joint and told her that if she had a "toke" you would give her money back. She attempted to have one smoke but eventually agreed to have more.

[10] You told her she was beautiful and repeated that you had been watching her for a while, and knew where she stayed. You tried to touch her thigh. She pushed away your hand, told you to stop, that the touching was not part of the deal, that she had spent quite a bit of time with you at that point, and asked for her money back. You told her to wait and not rush you. You then threatened to tell her girlfriend you had smoked together. She knew this would upset her girlfriend, so agreed to stay with you for 15 minutes, after which you were to return her to New World.

[11] You asked to see her breasts. She told you no. You asked to touch them, she again said no. You told her she would not get her money back. You then told her you only wanted to touch her for two minutes. She agreed you could touch her breasts over her clothes for two minutes. You told her it had to be under clothes and again

threatened to tell her girlfriend what had happened. She agreed to let you touch her breasts.

[12] You then asked if you could touch her bottom instead. She told you that you had to choose between her breasts and her bottom. You initially said that you wanted both but eventually chose her bottom. You both moved to the back seat. She considered running but was too afraid to do so.

[13] She turned over with her clothes on, but you told her she had to take her clothes off. She pulled her pants down, keeping her underwear on. You told her she had to remove her underwear and you wanted to play with her. She said no and reminded you that you had only wanted to touch her for two minutes. You again threatened to tell her partner what had happened.

[14] You touched and squeezed her bottom. You tried to put your fingers inside her underwear and she told you to stop and put her pants back on. You told her you would tell her girlfriend what had happened. She turned back around and took off her underwear.

[15] You rubbed your hand on her genital area and touched her breasts. You then kissed and licked her legs, stomach, and breasts, and continued to touch her bottom. You touched and licked her thighs and bottom. She told you not to and that she had her period. You pushed down on her and continued to rub and lick her anus.

[16] You inserted your fingers into her vagina and attempted to insert your whole hand into her vagina. While you did this you were leaning hard on her stomach. She recalled you sweating noticeably. You rubbed cocoa cream on her legs, genitals, and bottom. She then felt something cold enter her vagina, which she thought might have been a spoon or a fork.

[17] You continued to lick her on her body and her bottom as well as her genitals. Throughout the incident, when she resisted, you told her to stay where she was, that she was beautiful, that her girlfriend would become angry if she found out but you would not tell her. After you inserted your fist into her vagina, she was in pain and

had reached her limit. She kicked your chest, causing you to fall back and become winded. She took the opportunity to run out of the vehicle, still naked from the waist down. You told her you would tell her girlfriend and to get back in the car. You initially moved to chase her, but stopped when her screams for help got the attention of residents in the street. You then drove off at speed.

Victim impact statement

[18] I have read a statement from the victim about the impact of your offending on her. She says she is so glad she did not need to go to Court and give evidence. She was scared, anxious and worried she might say the wrong thing and you would be set free to do this to someone else.

[19] She says your actions have affected her so much, she stopped wanting to eat and found it hard to sleep. She was scared to leave the house, she always wanted someone to be with her and she is lucky her mum helped her a lot. At one time she just didn't want to leave the house and go anywhere. She was washing her body much more than she needed to, she didn't realise it but her mum did. It got really bad for her, she tried to end things. She was getting paranoid, looking over her shoulder all the time. She had no trust for anyone and no confidence in herself, that's when her mum contacted mental health services and she got some help. She was just so lost.

[20] She was prescribed medication to help with her sleep and anxiety. This made her eat a lot more and she put on weight in a short time. She relied on her mum for lots of things. To this day, she still struggles with many things in her life, she still needs professional counselling, she feels like it should be ongoing. She knows what she has been through has not only impacted her but her whole family. Even though she has moved elsewhere, she still has weekly contact with her mum. All her younger brothers and sisters live with her mum so she knows it is very stressful for her mum to deal with her and what she has been through.

[21] I thank her for her statement, and acknowledge the awful impact that your offending has had on her, as well as her family. I know that nothing I say today can undo what has happened.

Approach to sentencing

[22] I turn to my approach to sentencing.³ I will first set a starting point which reflects the nature and circumstances of your offending. I will then consider your personal circumstances, to assess whether an adjustment to the starting point is required – up or down.

[23] In doing so, I have regard to the purposes and principles of sentencing set out in the Sentencing Act 2002.⁴ In the case of sexual offending, the most relevant purposes of sentencing include: to hold you accountable for harm done to the victim; promote a sense of responsibility for and acknowledgement of that harm; provide for the interests of the victim; denounce the conduct; deter you and others from committing similar offences; protect the community; and assist in your rehabilitation and reintegration. I also take into account the need for consistency between sentences for similar offending, and the need to impose the least restrictive sentence that is appropriate in the circumstances.

[24] I will also consider whether a finite sentence of imprisonment or a sentence of preventive detention should be imposed. But as this requires an assessment of the likelihood that you will commit another qualifying sexual offence if released from prison at the sentence expiry date, I will first address the appropriate finite sentence.

Starting point

[25] Your most serious offending is sexual violation by unlawful sexual connection. The Court of Appeal's guideline judgment sets out four bands for sexual violation where the lead offence is rape, penile penetration of the mouth or anus, or violation involving objects, and three bands where the lead offence is sexual violation by unlawful sexual connection otherwise.⁵ The different bands reflect the seriousness of the offending based on assessment of various aggravating factors.

³ *Moses v R* [2020] NZCA 296, [2020] 3 NZLR 583.

⁴ Sections 7-8.

⁵ *R v AM (CA27/2009)* [2010] NZCA 114, [2010] 2 NZLR 750.

[26] Ms Murphy, for the Crown, submits, and I agree, that the following aggravating factors were present in your offending:

- (a) Scale of the offending⁶ and degree of violation.⁷ You engaged in a number of different types of violation and an indecent assault over one and a half hours, including the degrading conduct of inserting an object into the victim's vagina and rubbing moisturiser on her body. You also attempted to insert your hand into her vagina. I consider this aggravating feature is present to a moderate degree.
- (b) Harm to the victim.⁸ I have already referred to the impact on the victim. She describes losing her appetite, washing frequently, struggling to sleep, and being scared to leave the house by herself. At one point she tried to end things. I consider this aggravating feature is present to a moderate to high degree.
- (c) Vulnerability of the victim.⁹ At 17 years old, she was very much younger than you. You approached her while she was asking for spare change. You manipulated her into getting into your vehicle where she was isolated and confined. You said you knew where she lived and would tell her partner if she did not comply. In this pressured situation, she attempted to "barter" with you by agreeing to less invasive acts in an attempt to minimise the offending. I consider this feature is present to a moderate degree.

⁶ *R v AM (CA27/2009)* [2010] NZCA 114, [2010] 2 NZLR 750 at [47].

⁷ At [52].

⁸ At [44].

⁹ At [42].

[27] Even though your offending included sexual violation with an object, counsel agree that your offending falls towards the lower end of unlawful sexual connection band two given overall similarities with other cases.¹⁰ Band two has a starting point range of four to 10 years' imprisonment, and is appropriate for cases of relatively moderate seriousness involving two or three aggravating factors that are present to a moderate degree. Counsel agree that a starting point of five-and-a-half to six years' imprisonment is appropriate for your offending.

[28] Having considered the guideline judgment, the existence and extent of the aggravating features of your offending and the other cases referred to, I consider the appropriate starting point is six years' imprisonment.

Personal aggravating and mitigating factors

[29] I now consider whether there are aggravating or mitigating features personal to you that justify an adjustment to the starting point.

[30] You have prior convictions relating to four sets of historical sexual offending. The first occurred in 1981 and involved a charge of indecent assault. I have not received a summary of facts for this offending; however, in sentencing you for later offending, the Judge commented that it "must have been a serious incident" based on the 10 month sentence that was imposed.¹¹

[31] The second set of offending occurred in 1983. You and your associates offered a 17 year old girl a lift while she waited for a bus. She declined. You took her

¹⁰ The Crown relies on *R v Kincaid* [1991] 2 NZLR 1 (CA) and *R v Stewart* CA515/05, 15 August 2006. In *Kincaid*, the 51 year old offender was the 15 year old victim's employer. He touched her breasts on one occasion and, on another, kissed her, touched her breasts and genitalia, digitally penetrated her, attempted to rape her, and threatened to fire her if she told anyone. The Court of Appeal in *R v AM* placed *Kincaid* towards the top of unlawful sexual connection band one or lower end of band two because of the age disparity, use of a threat, and repeated offending. In *Stewart*, two offenders invited the victim to their house. One of them started to touch her breasts and hit her on the head when she objected. The victim eventually went to sleep but woke to find one of the offenders touching her breasts. That offender bit and scratched her, threatened to kill her, and kicked her in the knee and ribs. She then pulled her pants down and penetrated her vagina with her fingers and then her fist. The other offender knelt beside them, urging the first offender on. The Court of Appeal in *R v AM* placed *Stewart* at the higher end of unlawful sexual connection band two as there were threats, some violence, especially in the form of the assault, and offenders acting in concert.

¹¹ *R v Anderson* 6 December 1983 (sentencing notes of Barker J) at 2.

backpack, put it in your vehicle, and told her she may as well come with you. You drove her and the others to a South Auckland address. When there, you pushed her onto a bed, removed her jeans and underwear, and raped her. You told her if she “stopped fighting you wouldn’t let the other boys have a go”. Three others came into the room. They removed her clothes, and one held her down while two others raped her. Throughout the afternoon she was subjected to further sexual violations by rape and oral connection. At one stage, you squirted moisturiser on the other men’s hands and they rubbed it on her stomach and thighs. You inserted the tube into her vagina, put your fingers inside her vagina, and said “look boys, she’s coming”. A beer bottle was also inserted into her vagina. At some point, you penetrated her anus with your penis. She attempted to escape the house but was chased and dragged back. Eventually, she was able to escape when you took her to a pub. You were sentenced to six years’ imprisonment for that offending, with the Judge describing you as “the most blameworthy” of the group.¹²

[32] The third set of offending was in 1995. A 45 year old woman was alone in central Auckland. She suffered from ME, chronic fatigue syndrome, had consumed medication and alcohol, and had become disorientated and confused. You picked her up in your vehicle and drove her to a remote location. You sexually violated her by raping her and inserting your fingers into her genitalia. You eventually took her back into Auckland.

[33] The fourth set of offending occurred in 2001. You picked up a 25 year old woman who was hitchhiking from Hamilton to Paeroa. You drove her to a motel in Katikati and made sexual advances, which she rejected. You apologised and offered to take her to Paeroa. When she got back in the car, you took her to a remote area and sexually violated her by inserting your finger into her vagina. You then took her to a house in Waihi from which she escaped.

[34] In 2002, you were sentenced to 15 years’ imprisonment for the 1995 and 2001 offending, with a minimum period of imprisonment of 10 years.

¹² *R v Anderson* 6 December 1983 (sentencing notes of Barker J) at 2.

[35] You also have a number of other previous convictions for burglary and other property-related offending.

[36] The Crown submits that given the seriousness of your previous convictions for sexual offending, as well as the pattern established, an uplift of up to 18 months' imprisonment is available. However, in light of the starting point sought and the requirement that an uplift not be disproportionate, both counsel submit, and I accept, that an uplift of 12 months' imprisonment – that is, 16.6 per cent of the starting point – is appropriate.

[37] I turn to your guilty plea. On the Thursday before your District Court trial, tests came back revealing your DNA was located in swabs taken from the victim's vagina and peri-anal areas. The following morning, you intimated that a guilty plea would be entered. You pleaded guilty to the offending on the morning of the trial. While this came at a late stage, it meant the victim was spared having to give evidence. Both counsel submit, and I agree, a discount of 15 per cent is appropriate for your guilty plea in these circumstances.

[38] Your counsel, Mrs Freyer, also refers to your age and poor health. She seeks a further discount of 10 per cent to bring the end finite sentence down to five years' imprisonment. I acknowledge you are 64 years old and suffer from heart failure (for which you were hospitalised in September 2020), diabetes and kidney disease. Mrs Freyer submits your health has deteriorated significantly while on remand. But your diabetes is managed by the prison team; you had trouble with hypertension in the past, but your blood pressure has been well controlled recently; and while dialysis is in your future given your kidney disease, you are certainly quite far from dialysis in terms of your kidney function at this stage according to the medical reports I have seen. An offender's age and ill health are to be taken into account to the extent they are applicable and if not recognising them would render an otherwise appropriate sentence disproportionately severe.¹³ But I do not consider a discrete discount for your ill health is necessary or appropriate given your circumstances and the starting

¹³ *M (CA91/2012) v R* [2013] NZCA 325 at [52].

point for the offending, uplift and guilty plea discount I have adopted, at least some of which are below the top end of the available range.

[39] Offsetting the uplift for your previous convictions and your guilty plea discount as a percentage of the adjusted starting point of six years' imprisonment, the resulting finite sentence would be six years and one month's imprisonment.

Preventive detention

[40] I turn to consider whether a sentence of preventive detention would be appropriate rather than a finite sentence. The Crown submits that you pose a significant and ongoing risk such that a sentence of preventive detention is required to protect the community. Mrs Freyer ably submits that it is unnecessary, citing your poor health and likely age at the time of release.

[41] Before preventive detention can be imposed, I must be satisfied that you are likely to commit another qualifying sexual offence if released at the end of your sentence.¹⁴ I must then consider a number of factors in determining whether preventive detention would be appropriate in your case.¹⁵

[42] Dealing first with the threshold question of likelihood of committing a future qualifying sexual offence, I have received reports from two qualified health assessors, Dr Pillai and Dr Jacques, to help me in my assessment.¹⁶

[43] Dr Pillai considered that there are significant risk factors present that indicate that the estimate of the Static 99 sexual risk assessment of moderate to high is likely an underestimate of future risk. These factors are your persistent and stable patterns of offending that have established themselves over decades. Dr Pillai said this suggests the presence of strong underlying deviant sexual scripts that you act on when circumstances align. These have been enabled by persistent antisocial beliefs and attitudes that justify your behaviour and lifestyle. In Dr Pillai's opinion, this places

¹⁴ Sentencing Act 2002, s 87(2). The other pre-conditions clearly apply.

¹⁵ Section 87(4).

¹⁶ The Court is required to consider reports from at least two appropriate health assessors about the likelihood of the offender committing a further qualifying sexual or violent offence: s 88(1)(b).

you at a high risk of further sexual offending despite your advancing years. He said that while there is likely some drop off in sexual drive related to age and physical infirmity, where there is persistent deviant sexual interest the reduction in recidivism with age may be delayed by a decade or more.

[44] Dr Jacques said you have multiple risk factors for future sexual violence and that your future risk of sex offending and of committing a future qualifying offence is high. But Dr Jacques went on to refer to your progress with an intensive treatment programme in 2006 and noted you did not commit a further sex offence until 2019. He said that during that time you managed to live in the community without reoffending for a number of years. As a result, and given your age and physical health problems, Dr Jacques concluded that you present a moderately high risk of committing a further qualifying sexual offence.

[45] As the Crown notes, in modifying his assessment from “high” to “moderately high”, Dr Jacques appeared to be unaware that you remained in custody from 2006 until June 2016. So you managed to live in the community without committing a qualifying sex offence only from June 2016 until September 2019.

[46] On the other hand, I note that Dr Jacques’ reduced risk assessment was in part based on your physical health problems. He said that they may worsen over time, which may reduce your risk of reoffending. In saying that, he was apparently unaware of the issue with your kidney function. So was Dr Pillai. It is unfortunate that the Court is having to consider the risk assessments in light of information unknown to the report writers especially given the delay that has already occurred with your sentencing. Mrs Freyer relies particularly on a letter from a renal registrar which indicates you have chronic kidney disease. She submits it is well known this does not get better but acknowledges there is no medical evidence indicating the timing of deterioration. A further adjournment would be unsatisfactory. The issue is not so much a lack of evidence but difficulty with prediction.

[47] Given your health conditions and your likely age at the time of release, Mrs Freyer submits your risk to the community would be reduced. I have already referred to your health issues. While not acute, I accept they may deteriorate over the next six years and may reduce the risk that you will commit serious sexual offences in future.

[48] The Crown also notes that Dr Jacques incorrectly recorded that your previous sex offending had involved sex workers or women you had offered money to for sex, which suggests he was confused by your account of the offending. The extent to which this was a factor in his overall assessment is unclear. The Crown also disputes Dr Jacques' conclusion that your latest offending does not represent an escalation in the frequency or severity of your offending. I accept that your latest offending occurred a little over three years after release, which may be seen as somewhat more frequent than some of the previous intervals. But I do not accept that it involves a real escalation in severity. Your latest offending was serious, and somewhat more serious than the 2001 offending, but the 1983 and 1995 offending was even more serious. Even so, given these issues with his report, I treat Dr Jacques' conclusion that the risk is moderately high rather than high with some caution.

[49] In any event, while I am conscious that your health issues may deteriorate and may reduce your risk of reoffending, having regard to the expert opinions of high or moderately high risk and my comments on them, I am satisfied that you are likely to commit another qualifying sexual offence if released from prison after six years and one month. There is insufficient information about your health prognosis to conclude otherwise.

Section 87 factors

[50] Therefore, I turn to consider the factors in the Sentencing Act that I must take into account in determining whether or not a sentence of preventive detention is appropriate.

[51] The first factor is whether there is a pattern of serious offending.¹⁷ As your counsel accepts, there is a pattern of serious sexual offending in your criminal history. In each instance you have isolated vulnerable women and forced them into sexual activity using a method of verbal manipulation combined with physical intimidation. Dr Pillai referred to a “sustained pattern of deviant sexual interest” which is “remarkably consistent”, and said the pattern includes “the use of crèmes rubbed on the bodies of the victims and the repeated pattern of inserting objects and digits (hands) into the victim’s vagina”. Also, when your remands in custody are taken into account, the various incidents occurred between two and six years apart.

[52] Secondly, the seriousness of the harm.¹⁸ Your counsel accepts there has been harm to the community caused by your offending. The serious harm you have caused to the latest victim has been highlighted in the victim impact statement I have referred to.

[53] The next factor is information indicating a tendency to commit serious offences in future.¹⁹ I have already referred to the expert risk assessments. Some of your comments to the report writers add to the concern about your tendency. In your interview with Dr Pillai, you described your “hatred against women” and told him you were “angry at women ... how they treat you, use you and deceive you”. You said the anger arose from an incident of abuse when you were younger and was reinforced by a further incident when a female relative (by marriage) failed to protect one of your children from offending by another man. As the Crown submits, you did not show insight into how your anger could be addressed or managed, and you have demonstrated no understanding or remorse for the harm your offending has caused.

[54] Next, the absence of, or failure of, efforts to address the cause or causes of the offending.²⁰ You participated in the Adult Sex Offender Treatment Programme at Auckland Prison in 2006. As Dr Jacques said, this was positive. That was a substantive programme of individual and group treatment. But you were not released until 2016 and the treatment did not prevent you from offending in 2019. Also, in your

¹⁷ Sentencing Act, s 87(4)(a).

¹⁸ Section 87(4)(b).

¹⁹ Section 87(4)(c).

²⁰ Section 84(4)(d).

interview with Dr Pillai you minimised your offending and sought to shift blame onto the victim, and earlier victims. As Dr Jacques said, you show limited self-awareness and insight into the difficulties with your own reported trauma. Further treatment is clearly required.

[55] Finally, the principle that a lengthy determinate sentence is preferable if this provides adequate protection for society.²¹ Ms Murphy submits a sentence of around six years' imprisonment is not a lengthy term of imprisonment, and is likely to end before you turn 70 years old, which would not provide adequate protection for society, especially in light of Dr Pillai's opinion as mentioned that while sexual offending generally diminishes after the age of 60, where there is persistent deviant sexual interest the reduction in recidivism with age may be delayed by a decade or more. The Crown submits the previous failure of a lengthy determinate sentence to protect the community provides compelling evidence that a lengthy determinate sentence is an inadequate response.

[56] The fact that your offending does not warrant a longer finite sentence is not itself a reason to impose preventive detention. Whether or not a finite sentence of just over six years is considered lengthy, it is to be preferred if I reach the point where I consider it will provide adequate protection for society.

[57] Mrs Freyer relies on Dr Jacques' recommendation of a lengthy determinant sentence and submits that considering your serious health conditions and the likelihood your health can only worsen over time, a sentence of preventive detention, which could well mean you spend your entire old age in prison, is not appropriate and that a determinate sentence with a minimum period of imprisonment of two thirds, together with an extended supervision order (ESO) at the expiry of the sentence or release conditions, would be adequate to mitigate the risk of reoffending and also allow you to spend at least a portion of your old age in the community instead of in prison. That submission requires careful consideration.

²¹ Sentencing Act, s 87(4)(e).

[58] I treat Dr Jacques' recommendation with some caution given my earlier comments and the fact that the finite sentence expiry date may be sooner than he assumed. Even so, neither expert positively recommended preventive detention and both were open to the alternative of a finite sentence with subsequent supervision to manage your risk of sexual offending. As Mrs Freyer acknowledged, you would be eligible for an ESO under the Parole Act 2002, which may be sought at any time before the later of your sentence expiry date or the date on which you cease to be subject to release conditions if, at that time, there are concerns you are still at high risk of future offending.²² A finite sentence with an ESO would be preferable if I am satisfied it would provide adequate protection to the community.

[59] I have carefully considered whether a finite sentence of just over six years, together with an ESO, would provide adequate protection for the community. I have concluded that it would not. While age and deteriorating health may reduce your risk of reoffending as you approach 70, the likelihood of that is unknown; some of your health issues, including diabetes and hypertension, existed at the time of your latest offending; and, importantly, your attitude to your offending against vulnerable women and the risk that you will resume a transient lifestyle and substance abuse with inadequate support lead me to conclude that an ESO may well not provide adequate protection for the community. The Parole Board will be better placed to update the risk assessment based on your progress with further counselling treatment in prison and your health situation. It cannot be assumed that the Parole Board will simply require you to serve the rest of your life in prison.

[60] Overall, I consider that a sentence of preventive detention is required to protect the community. This is the least restrictive sentence that is appropriate in the circumstances.

Minimum period of imprisonment

[61] Therefore, I must also order that you serve a minimum period of imprisonment (MPI) of at least five years.²³ The MPI imposed must be the longer of what is

²² Parole Act 2002, s 107F.

²³ Sentencing Act, s 89(1).

necessary to reflect the gravity of the offence, or to protect the community. Given my earlier conclusions about your offending, I consider it is protecting the community that leads to the longer MPI. Ms Murphy submits that having regard to your age and Dr Pillai's comments, an MPI of six years' imprisonment is adequate to protect the community. But I agree with Mrs Freyer that an MPI of five years would be appropriate for this purpose, taking into account all the circumstances including, in particular, your age and health.

Result

[62] Mr Robertson, please stand.

[63] On the charges of sexual violation by unlawful sexual connection, I sentence you to preventive detention with a minimum period of imprisonment of five years.

[64] On the charge of indecent assault, I sentence you to two years' imprisonment, concurrent.

[65] Please stand down.

Gault J