NOTE: PUBLICATION OF NAMES, ADDRESSES, OCCUPATIONS OR IDENTIFYING PARTICULARS OF COMPLAINANTS PROHIBITED BY S 203 OF THE CRIMINAL PROCEDURE ACT 2011. SEE http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360350.html

INTERIM ORDER PROHIBITING PUBLICATION OF NAME, ADDRESS, OCCUPATION OR IDENTIFYING PARTICULARS OF DEFENDANT PURSUANT TO S 286 OF THE CRIMINAL PROCEDURE ACT 2011. SEE https://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360472.html

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CRI-2023-044-3981
[2025] NZHC 3631

THE KING

v

M

Hearing:	26 November 2025
Appearances:	M W Nathan for Crown P K Hamlin and D J DeGallais for defendant
Date of sentence:	26 November 2025

SENTENCING NOTES OF JAGOSE J

Counsel/Solicitors:
P K Hamlin, Barrister, Auckland
Meredith Connell, Auckland

[1] M, I'm going to address you now. At the end of my address to you, I will ask you to stand. At the moment I ask just that you listen.

[2] You have pleaded guilty to a representative charge of sexual violation by unlawful sexual connection,[1] and to a charge of sexual conduct by doing an indecent act on a child under 12 years of age.[2] Your offending occurred between September 2021 and September 2023: the former against a girl then aged between five and seven years old; the latter against a girl then aged between eight and 10 years old.

[3] As a sentence of preventive detention might be appropriate, you have come to me in this Court to sentence you for that offending.[3] In sentencing you, I must accept as proven all facts essential to your pleaded guilt.[4] I also may accept as proved any facts agreed on between you and the Crown.[5] Those are specified in the summary of facts to which you pleaded guilty, which I will outline shortly.

[4] I have read and listened to all that the lawyers have had to say, both for you and for the Crown. As you will have known, the Crown proposes a starting point of seven-and-a-half to eight years' imprisonment, with a minimum period of imprisonment of five years. Your counsel, Philip Hamlin, similarly proposes a six-and-a-half to seven-year starting point, acknowledging the likelihood of a minimum period of imprisonment, with an end sentence, he suggests, of six to six-and-a-half years' imprisonment.

[5] Alternatively at issue is if you should be sentenced to preventive detention, to protect the community from you if you pose a significant and ongoing risk to its members' safety.[6] That will require me to be satisfied you are likely to commit another serious sexual offence if released on your sentence's expiry date,[7] and then to take into

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1 Crimes Act 1961, ss 128(1)(b) and 128B. Maximum penalty: 20 years' imprisonment. Given the 'unlawful' aspect of the charge is the absence of consent, the charge could—and, given s 132(5) which provides a child's consent is no defence, arguably should—have been brought under s 132(1), which renders anyone who has sexual connection with a child liable to imprisonment for a term not exceeding 20 years.
2 Section 132(3). Maximum penalty: 10 years' imprisonment.
3 Sentencing Act 2002, s 90.
4 Section 24(1)(b).
5 Section 24(1)(a).
6 Section 87(1).
7 Section 87(2)(c).

account a range of other factors.[8] Preventive detention means, to be eligible then for parole, you will have to demonstrate you no longer posed such a risk.

[6] The lawyers' submissions are comprehensive. I have given them careful consideration. I am not going to recite them, because sentencing is an intense exercise of my own judgement. I am not bound by the lawyers' views; I have to come to my own decision. To meet sentencing's multiple purposes,[9] I must satisfy myself of the appropriate sentence for the gravity (or seriousness) of your offending, including your culpability (or responsibility) for it, as the least restrictive outcome appropriate in the circumstances.[10]

Background

[7] I now outline your offending as you agreed it happened.

[8] It is in essence that—from your presence as a distantly related member of the victims' whānau, at family gatherings habitually held at your residence in Auckland's Dairy Flat—you repeatedly isolated the younger victim to a room or garage, removed her underwear and licked her genitalia. On one occasion, in the course of isolating her to the garage, you also grabbed her vagina through her clothing. On another occasion, having isolated her to a room, you directed her to "lick Grandad's cock", she later remembering having to breathe through her nose to do so. These are the facts of your sexual violation offending. Similarly, when the older victim approached you for assistance with an injured cousin at such a family gathering, you touched her vagina through her clothing. She told you to "stop". These are the facts for your sexual conduct offending against a child.

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8 Section 87(4). Effectively codifying the common law principles for preventive detention in *R v Leitch* [1998] 1 NZLR 420 (CA), the factors are: (a) any pattern of serious offending disclosed by the offender's history; (b) the seriousness of the harm to the community caused by the offending; (c) information indicating a tendency to commit serious offences in future; (d) the absence of, or failure of, efforts by the offender to address the cause or causes of the offending; and (e) the principle a lengthy determinate sentence is preferable if this provides adequate protection for society.

9 Section 7: accountability, responsibility, victims' interests, reparation, denunciation, deterrence, community protection, rehabilitation and reintegration.

10 Section 8.

Victim impact statement

[9] We, you and I, have heard from the girls' mother. Her statement is to assist me in understanding her views about your offending and to inform you about the impact of your offending from her perspective.[11] She does not *want* to relive the circumstances of your offending, being "incredibly painful" to her. But, as you heard, her daughters' disclosure of your offending "shattered" her, leaving her feeling "helpless, broken, like [she] had failed to protect them". You took away the confidence, love, pride and peace she had in her motherhood and in her parenting. She felt worthless, "drowning in guilt".

[10] The girls' mother says you abused the whānau's trust in you, instead to take advantage of her daughters' innocence and silence, forever changing their childhood and leaving them feeling unsafe in the world and fearful. She wants "their voices, their courage, their pain, and the seriousness of [the] harm" to guide my decision, because "they deserve justice … and protection from [you] forever", is what she said.

Personal circumstances

[11] I turn to look at your personal circumstances. You were in your early 60s at the time of your offending. You are now 65 years old.

—familial role

[12] Your connection with the girls and their mother is that you lived at the address of your offending with your daughter, she described as "the aunty" of the girls' father. I am asked quite strongly to recognise—in the diverse communal living arrangement you are said to have occupied, even to the extent in raising the girls' complaints with police their mother was unsure of your name and age—I am asked quite strongly to recognise your lack of biological connection to, and two-generational separation from, them renders you no more in a position of trust and care than any other stranger at the address. I would reject that proposition out-of-hand, but also as contradicted by the ease of your repeated isolation of the younger girl from family company and your self-

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11 Victims' Rights Act 2002, s 17AB.

identification to her as "Grandad", whatever that name may mean to each you and those who use it of you.

—criminal history

[13] Your criminal history includes your convictions for possession of objectionable publications on various dates in 2002–2004, and meeting a young person after sexual grooming of them in November and December 2007, on pleading guilty to all of which you were sentenced to nine months' home detention in May 2009.[12] The publications primarily comprised still and video images of naked girls, including as exploited in sexual activity with adults; the victim of the latter offending was a 14-year-old girl who you pursued at length, only to be undone when police adopted her persona.

[14] You also were sentenced in this Court in December 2009 to five years' imprisonment after being found guilty by a jury of unlawful sexual connection with, and doing indecent acts on, a girl under 12 years of age in July 2006.[13] The victim of that offending was a distantly related co-worker's six-year-old child, for whom you were to care during her parent's absence in Australia.

[15] You have other convictions for dishonesty, driving and non-compliance offending, broadly book-ending your past sexual offending.

—health assessor reports

[16] In sentencing you with consideration for preventive detention, I must have reports from at least two health assessors about the likelihood of you committing further serious sexual or violent offending.[14]

[17] I have extensive reports from each psychologists Charlotte Wetton and Jim van Rensburg, and psychiatrist Krishna Pillai, who all interviewed you in the past few months.

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12 *R v [M]* DC Auckland CRI-2008-004-17678, 7 May 2009 [2007 offending sentencing].
13 *R v [M]* HC Auckland CRI-2008-0900-7550, 11 December 2009 [2006 offending sentencing].
14 Sentencing Act, s 88(1)(b).

[18] By reference to standard statistical risk assessment instruments—as well as to other relevant clinical factors, including your life-long harmful sexual behaviour continuing into your present age—Ms Wetton assessed you as posing well above average to high risk of sexual offending in the future, likely including serious offending in your case against girls in their childhood or early teenage years, despite your previous imprisonment and intensive treatment in 2012. She characterises you as driven by "high sexual preoccupation, sexual deviance and criminal personality traits". She observes your current offending is "a diversification and escalation" from your prior offending, illustrating the inutility of your self-regulation after initially responding well to treatment. Such treatment is not available in the community.

[19] Dr Pillai found it difficult to offer an assessment of your future risk on release from imprisonment. In reliance also on static and dynamic risk assessment measures, Dr Pillai nonetheless assessed you as falling into "a group of sex offenders with persistent drive to offending driven by sexual deviance which persists into late life", "shar[ing] characteristics with a group of offenders at above average risk of sexual re-offending". He describes your history as suggesting "a consistent pattern of deviant sexual interest and persistent high motivation to offend", leading you "to actively overcome barriers to access victims", of which he assesses you present above average risk of continuing, and treatment "did not have lasting effect" to reduce.

[20] Mr van Rensburg also arrives at "an above average risk rating" for you. He distinguishes himself from Ms Wetton's characterisation by saying he would not describe you as "having a criminal personality", or that you are "inclined to interpersonal aggression or overly compulsive behaviour".

Approach to sentencing

[21] I now explain how I will go about your sentencing.

[22] The usual sentencing method involves two stages. First, I decide a starting point for the type of offending for which you are convicted. That involves identifying also any aggravating or mitigating features of the offending.[15] Then I take into account

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15 *R v Taueki* [2005] 3 NZLR 372 (CA) at [8].

all aggravating and mitigating factors personal to you, to be calculated as a percentage of the starting point.[16] Last, I stand back to assess the appropriateness of that sentence in your individual circumstances.[17]

[23] In the end, my sentence is to reflect this community's repudiation of your crimes, the sentence being "determined not on impulse or emotion but in terms of justice and deliberation".[18] I must have regard for the statutory purposes and principles of sentencing.[19] I must hold you accountable for your offending and for the harm you have caused.[20] Your sentence should be sufficient to denounce your conduct,[21] to deter you and others from committing such offences,[22] and to protect the community.[23]

[24] I must consider the gravity and seriousness of your offending, and take into account its effect on victims.[24] The sentence must take into account the desirability of consistency in sentencing,[25] and anything in your circumstances as would make an otherwise appropriate sentence "disproportionately severe" in your case.[26] I must impose the least restrictive outcome appropriate in the circumstances.[27]

[25] These purposes and principles of sentencing have no ranking.[28] My ultimate consideration is if "the sentence is a just one in all the circumstances", having regard to "the circumstances of the offence and offender against the applicable sentence purposes, principles and factors".[29]

[26] That is also the beginning for consideration of any sentence of preventive detention, because I then must be satisfied you were likely to re-offend if "released at

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16 *Moses v R* [2020] NZCA 296, [2020] 3 NZLR 583 at [46]–[47].
17 *Berkland v R* [2022] NZSC 143, [2022] 1 NZLR 509 at [22], citing *Hessell v R* [2010] NZSC 135, [2011] 1 NZLR 607 at [38].
18 *R v Puru* [1984] 1 NZLR 248 (CA) at 249.
19 Sentencing Act, ss 7 and 8.
20 Section 7(1)(a).
21 Section 7(1)(e).
22 Section 7(1)(f).
23 Section 7(1)(g).
24 Section 8(a), (b) and (f).
25 Section 8(e).
26 Section 8(h).
27 Section 8(g).
28 *Moses v R*, above n 16, at [4], citing *Hessell v R*, above n 17, at [37].
29 *Moses v R*, above n 16, at [49].

the sentence expiry date" of any other sentence open to being imposed.[30] Except in the most general and unsatisfactory terms, I cannot assess that likelihood without identifying that other sentence. And the objectives materially are distinct: general sentencing addresses a range of purposes, as I have explained;[31] preventive detention has only one, community protection.[32]

—determinate sentence

[27] So far as a determinate sentence is concerned, my choice of starting point is guided by the Court of Appeal's establishment of 'bands' for sexual violation offending where the lead offence is unlawful sexual connection.[33] Your lead offence is of unlawful sexual connection, for which there are bands of two–five, four–10 and 9–18 years' imprisonment.

[28] Your particular culpability for that offending will determine where the starting point is located within the applicable band. I am urged to apply that guidance—rather than as may be drawn from derivative decisions, the latter approach risking "upward sentencing creep and a lack of consistency"[34]—while at the same time to "fully [appreciate] the context of the guidance, and in particular the examples of offending in the various bands".[35] The Supreme Court also has reinforced, while "[g]uideline judgments do not replace sentencing discretion with a 'mechanistic' box-ticking exercise", "[w]here there is a guideline judgment it should be applied …".[36]

[29] I take the following seven aggravating factors as applicable in your case:[37]

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30 Sentencing Act, s 87(2)(c).
31 At [5] above.
32 Sentencing Act, s 87(1).
33 *R v AM (CA27/2009)* [2010] NZCA 114, [2010] 2 NZLR 750 at [113].
34 *L (CA215/2021) v R* [2021] NZCA 297 at [18].
35 *Gunn v R* [2025] NZCA 590 at [117].
36 *Berkland v R*, above n 17, at [24], referring to *Zhang v R* [2019] NZCA 507, [2019] 3 NZLR 648 at [48].
37 Sentencing Act, s 9(1). Section 9A also requires, in sentencing for cases of violence against children under 14 years of age, I take account of particular aggravating factors. I am not aware any other Judge has applied s 9A in sentencing for sexual violence, as both index offences may be characterised. The s 9A factors explicitly are in addition to any factors I may take into account under s 9: s 9A(3).

(a) as illustrated by the victim impact statement, the serious long-term emotional and psychological harm resulting to the girls and their mother from your offending;[38]

(b) the comprehensive abuse of your position of trust in relation to them;[39]

(c) the repetitive nature of your offending over a period of time (its normalisation illustrated by your direction to the younger girl, which normalisation her mother later observed);[40]

(d) your offending included significant elements of degradation and cruelty in isolating the younger girl and directing her actions;[41]

(e) the girls, by their ages and status in the wider family group, were particularly vulnerable to you as their "Grandad";[42]

(f) your offending clearly was premeditated;[43] and

(g) these are comparable offences committed against separate girls at different times, with some suggestion of their continuation of your propensity for similar offending.

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38 Section 9(1)(d) (and s 9A(2)(b)).

39 Section 9(1)(f) (and s 9A(2)(c)). Offending against younger or vulnerable family members usually involves a breach of trust: *W (CA105/2025) v R* [2025] NZCA 529 at [6]; G *(CA505/2024) v R* [2025] NZCA 520 at [1] and [89]; *Bays, Re v R* [2025] NZCA 498 at [10] and [23]; *L (CA542/2024) v R* [2025] NZCA 300 at [3] and [23]; *F (CA691/2021) v R* [2022] NZCA 217 at [41]; *L v R* [2019] NZCA 676 at [52]; *T v R* [2018] NZCA 342 at [15]; and *Howe v R* [2010] NZCA 367 at [11]–[12]. And see *R v Wihapi* [1976] 1 NZLR 422 (CA), where breach of trust was cited as an aggravating factor in a case where the offender had sexual intercourse with his niece, who was in his care.

40 Section 9(4)(a).

41 Section 9(1)(e).

42 Section 9(1)(g) (and s 9A(2)(a)). This provision frequently is applied in cases of offending against children: *R v Pateman* [2017] NZHC 2401 at [44]; and *R v Edwards* [2018] NZHC 256 at [30]. Offences against children are regarded more seriously than a similar offence against an adult: *R v Accused (CA291/90)* [1991] 3 NZLR 405 (CA). In *R v B* [1986] 2 NZLR 751 (CA) at 753, the Court of Appeal said sexual offences against young children "rob [them] of their childhood". And where a victim of violence is a family member and dependent on the offender for emotional and physical support the "aggravating factor of vulnerability almost inevitably will be triggered": *Solicitor-General v Hutchison* [2018] NZCA 162, [2018] 3 NZLR 420 at [27].

43 Sections 9(1)(i). Impulsive sexual offending tends to be regarded as less serious than premeditated offending such as the grooming of children: *R v AM (CA27/2009)*, above n 33, at [37].

These factors have some mutual resonance. But, in combination equivalent to perhaps three but more likely four factors, they increase your culpability beyond a moderate and toward a high degree. There are no mitigating factors of your offending.

[30] That culpability takes you solidly into band two, perhaps to the lower end of band three.[44] For your unlawful sexual connection conviction, that is a four- to 10-year starting point. With the combined aggravating factors I have identified, I take the cusp of the two bands, meaning a starting point of nine years on that conviction. Given my aggravating factors include the impact of your overall offending on each girl, I apply no uplift for your sexual offending against the older girl.

[31] An additional aggravating factor is "the number, seriousness, date, relevance, and nature of any previous convictions of the offender",[45] if "illuminat[ing] some aspect of an offender's 'increased culpability' for the offending to be sentenced".[46] As the health assessors recognise, your criminal history illustrates your persistence in sexually offending against vulnerable victims, despite previous sentences and treatment. I will uplift my starting point by one year on that account, to bring me to an adjusted starting point of 10 years' imprisonment.

[32] Turning to consider your personal mitigating factors, you are entitled to credit for your guilty pleas, meaning at least the girls and their mother did not have to give evidence for your prosecution. If made on the "first reasonable opportunity" for such, it warrants recognition by up to a 25 per cent credit,[47] and better than if made later.[48] Such a credit is to "reflect all the circumstances in which the plea is entered, including whether it is truly to be regarded as an early or late plea and the strength of the prosecution case", to "identify the extent of the true mitigatory effect of the plea".[49]

[33] While "[a] plea can reasonably be seen as early when an accused pleads as soon as he or she has had the opportunity to be informed of all implications of the

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44 *R v AM (CA27/2009)*, above n 33, at [121].
45 Sentencing Act, s 9(1)(j).
46 *W (CA105/2025) v R* [2025] NZCA 529 at [29], citing *Wipa v R* [2018] NZCA 219 at [27]–[28].
47 *Hessell v R*, above n 17, at [45]; and *Moses v R*, above n 16, at [23].
48 *McDonald v R* [2021] NZCA 531 at [37].
49 *Hessell v R*, above n 17, at [74].

plea",[50] that is not the same thing as pleading only when all negotiations with the prosecution are concluded. Here your pleas were entered some 18 months after you were charged, during all of which time the girls and their mother were put to the anxiety of forthcoming trial, and your plea entered only after the prosecution had made its case for establishing your previous sexual offending against children as evidence of your propensity for such offending. You, of course, knew that all along. I will allow only a 10 per cent credit for your guilty pleas in the circumstances, and that includes any allowance for remorse such as might be thought shown by your letter of apology to me, dated March 2025 and read to me this morning. Remorse is to be shown, not merely expressed.

[34] Mr Hamlin also seeks on your behalf a credit for your deprived background as you told the health assessors. The question for sentencing is if that 'disadvantage' had materiality for your offending, as impairing your rational choice to offend and therefore diminishing your moral culpability, impacting considerations of deterrence and proportionality.[51] But the more serious and orchestrated your offending, the more am I to emphasise your choice in offending; other sentencing purposes then take prominence.[52]

[35] I am not prepared to allow any credit on account of your background for a number of reasons. First, you have not asked me to hear from anyone on your background and its relationship to your offending.[53] That is a matter of choice for you to make; if doing so, you necessarily open up those sources of information to this Court's examination.

[36] Second, the contention of such deprivation expediently is drawn from the health assessors' reports, which are instead to address the likelihood of your future offending. To the extent they contain anything of your background, it is elicited only from you and only for that purpose, and not to demonstrate how your background may have related to your commission of your present offending. And, to be clear, I also do not accept Ms Wetton's references to your "familial" connection to the girls materially

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50 At [75].
51 *Berkland v R*, above n 17, at [138].
52 At [16(c)].
53 Sentencing Act, s 27(1).

to undermine her risk assessment. As is clear from much of your offending, now and previously, its escalation is facilitated by your increasing *familiarity* with the victims of your offending, not necessarily that you are in a *familial* association with them.

[37] My third reason is that no credit for your background was given for previous sentencings for earlier sexual offending, despite their significant comparability to the present. You denied your 2006 offending at sentencing, which the Judge then recorded was "a cause for continuing concern".[54] Instead, you presented as "a normal family man, [then] married for 27 years with children and grandchildren",[55] "willingly undergoing counselling for … addiction" to child sexual exploitation materials.[56] In earlier sentencing for your 2007 offending, that Judge expressly mentioned the evidence of the large family from which you come and in which you were considered a leader, noting "the support that they are clearly giving you and would continue to give you".[57] That took the Judge to his sentence then of home detention,[58] because he was satisfied of your "strong family support and… strong motivation for rehabilitation".[59] As those witnesses are not called by you now to tell me about your background and its relationship to your offending, I infer they no longer have anything supportive to say.

[38] In those circumstances, your background now is of little relevance; your choice to continue offending takes prominence in my sentencing of you. I thus afford you only the guilty pleas' 10 per cent credit on my adjusted 10-year starting point.

[39] That is an end sentence of nine years' imprisonment. On any view of it, that is a lengthy determinate sentence. Nonetheless, standing back, I consider it appropriately reflects the seriousness of what is effectively your continued sexual grooming of girls for your satisfaction, now escalating to girls in your vicinity even without their being committed to your care (as was the case in 2006) or your attention (as was the case in 2007).

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54 2006 offending sentencing, above n 13, at [9].
55 At [24].
56 At [21].
57 2007 offending sentencing, above n 12, at [30].
58 At [32].
59 At [33].

[40] Although it then is entirely academic and without any precedential value, that end point would break down to:

(a) six years' imprisonment on your conviction for sexual violation by unlawful sexual connection; and

(b) three years' imprisonment on your conviction for sexual conduct with a child under 12 years of age.

—minimum period of imprisonment

[41] You ordinarily would be required to serve at least one-third, or three years, of that nine-year sentence before being eligible for parole.[60] If that period is too short for the purposes of sentencing in your case, I may require you to serve up to two-thirds, or six years, of your sentence before you would become eligible for parole.[61]

[42] Your sentence is required to have a degree of reality about it.[62] Given your previous imprisonment sentence, your experience in custody alone seems unlikely to deter you from further offending. And the prospect you may be released into the community perhaps as soon as late next year is insufficient to hold you accountable for the harm you have done, or properly to denounce that conduct, or to protect the community from you.[63] On the other hand, to require you may not be released for six years is to deny you much incentive to obtain insight for your successful rehabilitation.

[43] For those reasons I would require you to serve a minimum period of imprisonment of five years. During that period you would not be eligible for parole. Even if then released, you would be subject to release conditions for the balance of your term of imprisonment. Whether you are then released would depend entirely on you satisfying the Parole Board, if released, you will not pose an undue risk to the safety of the community or to girls in particular.

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60 Parole Act 2002, s 84(1).
61 Sentencing Act, s 86(2) and (4).
62 *R v Gordon* [2009] NZCA 145 at [15].
63 *Shaw v R* [2016] NZCA 110 at [25]; and *Fleming v R* [2011] NZCA 646 at [22].

[44] M, as you know from your prior experience of custodial treatment, you have a great deal of work to do to get to that standard such that you can be considered self--reliant. You will be close to 70 years old before you may be entitled otherwise to be released. The five-year minimum term would enable your completion of rehabilitative programmes in custody to reduce your risk then.

—preventive detention

[45] Sentencing you on your convictions also may engage preventive detention.[64] You qualify by conviction and age, and—unless rehabilitated in custody—I am satisfied you are likely to reoffend if released on expiry of a determinate sentence.[65]

[46] The pattern of your serious offending is to target girls in their childhood and early adolescence.[66] As the judicial decisions on your previous convictions and the girls' mother's statement in this proceeding illustrate, your offending has caused serious harm to the community.[67] All the reports I have affirm your tendency to commit similar offending in the future,[68] presenting at least above the average risk of such reoffenders. Your past efforts to address the causes of your offending have failed.[69]

[47] In a recent suite of decisions,[70] the Court of Appeal has reinforced preventive detention is not warranted if a determinate sentence with post-release extended supervision conditions may meet sentencing's multiple purposes. But features leading other judges away from preventive detention—such as a lack of warning, or untried rehabilitation—are not present here.[71]

[48] The health assessors doubt rehabilitative measures will take hold with you. Dr Pillai was of the view the "appropriate" child sex-offender programme in which you were engaged "did not have lasting effect in reducing [your] risk" and your

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64 Sentencing Act, s 87(2).
65 *Cooper v R* [2020] NZCA 683 at [24].
66 Sentencing Act, s 87(4)(a).
67 Section 87(4)(b).
68 Section 87(4)(c).
69 Section 87(4)(d).
70 *Brown v R* [2023] NZCA 487 at [86]; *Heke-Gray v R* [2023] NZCA 474 at [118]; *Tawhai v R* [2023] NZCA 444 at [37]; and *Moore v R* [2023] NZCA 286 at [76].
71 See *R v Parahi* [2005] 3 NZLR 356 (CA); *R v Kahu* [2010] NZCA 120; and *Carline v R* [2016] NZCA 451.

treatment and safety plan, while also "appropriate", "failed over time as your life circumstances changed". He was clear the risk of your reoffending "will [persist] into the latter years of [your] life … into [your] 70s and beyond". Ms Wetton observed your "enduring risk factors (including high sexual preoccupation, sexual deviance and criminal personality traits)" likely resurfaced on reduction of external monitoring and support. She points out the intensity of treatment to keep you and others safe is not available in the community.

[49] What these health assessors are saying is you are unlikely to be able to be relied on not to reoffend after release from prison. More than that, they are saying your predilection to reoffend will overwhelm measures established to deter you from that.

[50] Your unreliability in those respects is important, because the utility of extended supervision is dependent on the offender's self-regulation; all its standard conditions—each prescribing "the offender must"—are for the offender to perform.[72] Without your reliable engagement, extended supervision's "potential safety valve" is inadequate,[73] because you cannot be relied on probably to favour it over reoffending.[74] That extended supervision may be accompanied by intensive monitoring is no answer, because intensive monitoring is a one-off condition for no more than 12 months,[75] while your risk of reoffending persists undiminished thereafter.

[51] So even the lengthy determinate sentence I otherwise would impose will not provide adequate protection for society from you.[76] It thus is not preferable to your preventive detention. And so it is to preventive detention I will sentence you.

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72 Parole Act, s 107JA.

73 *Brown v R*, above n 70, at [86] and *Moore v R*, above n 70, at [76], citing *R v Mist* [2005] 2 NZLR 791 (CA) at [101].

74 *G v R* [2025] NZCA 301 at [34].

75 Parole Act, s 107IAC; *Thomas v R* [2024] NZCA 644 at [57]–[58].

76 Sentencing Act, s 87(4)(e).

Sentence

[52] M, please stand. On your convictions, I sentence you to preventive detention. You may stand down.

—Jagose J