



Transcript of Proceedings

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Date: 29 October, 2008

CHILDRENS COURT OF QUEENSLAND

JUDGE BRADLEY

Indictment No 36 of 2008
CCJ-00000870/08(1)
Indictment No 37 of 2008
CCJ-00000871/08(7)

THE QUEEN

v.

ZIORA ZAYA WARNER

CAIRNS

..DATE 28/10/2008

SENTENCE

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HER HONOUR: Stand up, Zac. What do you have to say about these offences?

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DEFENDANT: What I want to say, your Honour, is that I'm very sorry and I really didn't mean that, and I didn't understand at the time what happened or like what I was doing wrong both times. I mean I really am sorry.

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HER HONOUR: And what did you learn from doing the counselling with the Griffith people and also with Billy Ross?

DEFENDANT: I learned how to deal with things better, just going through with it, like - yeah.

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HER HONOUR: Are you having ongoing contact with Billy Ross?

DEFENDANT: Yeah, he just contacted me since I've been at - yeah.

HER HONOUR: Okay. And are you willing to keep up that sort of counselling-----

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DEFENDANT: Yeah.

HER HONOUR: -----with the department? All right. And are you going to see this apprenticeship through?

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DEFENDANT: Yeah. Well, that's what's been on my mind like, and especially today, is just the apprenticeship and my future.

HER HONOUR: Okay. Well, Zac, you've pleaded guilty to 14 sex offences. That's a large number and they were committed over a significant period of time whilst you were being cared for by this family, and last time you appeared before me in 2006 you were very keen to get back to that family. In fact, you stole a car to enable you to get back to that family.

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But you did not treat that family properly or with respect, and in fact you gravely abused the trust that they placed in you by repeatedly sexually abusing the three girls. Your behaviour over that period of time was repeated and persistent. There were incidents that were very serious incidents of sexual abuse. It did involve you actually touching the girls on occasion and, on at least one occasion, there was a degree of force where you were sitting on top of one of the girls. Right from the outset, each of the girls made it clear that your advances were not welcome, but nevertheless you persisted in going into their rooms at night when they were asleep and sexually abusing them, even to the extent of - it's unknown how - but getting through doors that had been locked.

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Clearly, your behaviour had very serious consequences for all three of the girls. They obviously found each of the incidents terrifying and it has had serious and ongoing consequences and effects for them, both emotional and physical, and in terms of their relationships with the members of their family.

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The offending did, as I say, involve in some cases actual touching of the girls. This offending is made more serious by reason of the fact that in February 2006 you were convicted of other sexual offences; one count of indecent treatment of a child under 12 and one count of rape. That involved a child who was only three years of age, and it involved you touching

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her in the vaginal area and also getting her to touch your
penis. Those offences were committed in May 2005 when you
were 13 years of age. These current offences were committed
between November 2005 and May 2006 when you were 14 years of
age.

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You are now 17. In fact, you turned 17 in July this year so
you are now an adult in the eyes of Queensland law, and that
means that if you break the law from now on you will be before
a District Court and you will be liable to adult penalties
which could include gaol.

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What can be said on your behalf is that when you were finally
questioned by police about these offences in October 2007, you
did cooperate with the police and make admissions to them and,
perhaps even more importantly, prior to being questioned by
the police you made admissions to the people who were
conducting the sexual offence Griffith program with you, and
you made admissions to those counsellors about these offences
and in fact it seems that this offending was taken into
account when you were counselled in relation to the previous
matters.

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You have entered early pleas of guilty and 10 of the counts to
which you have pleaded guilty have proceeded on an ex-officio
indictment. It is unfortunate that there was a lengthy delay
between when the girls made their complaints to their mother
and when the police were finally notified, and I'm not saying
any particular person was to blame for that. Certainly you

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weren't to blame for that. The delay is unfortunate in that you are now being sentenced more than three years after the offending was committed.

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On the other hand, though, that delay has illustrated that you have, since then, managed to stay out of any trouble. You have satisfactorily completed the Griffith program and the exit report which I've just read is a very positive one and, frankly, you've grown up a lot more. You've become a lot more mature and you are now hopefully someone who has a lot more insight into your behaviour and the consequences of it, both for you and for other people.

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Unfortunately, you did not fully comply with your bail conditions and particularly a curfew condition, and you have spent seven months on remand in detention at the Cleveland Youth Detention Centre. That wasn't as a result of committing further offences, it was as a result of your breaching your bail condition. However, whilst you've been in Cleveland the reports are that you've progressed well, that you've completed some educational requirements whilst you're there, and you have now, since your release, continued to work well with the department and you've now obtained an apprenticeship which you've started. You're to be congratulated for that and hopefully you'll follow that right through to the end.

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I do take into account what's been raised in the presentence report that's been prepared and it's clear that you have had a very chaotic and disrupted childhood. That has been

characterised by instability and inconsistency, and clearly there's been a lack of a male role model in your life until very recently. Obviously, that has had a significant effect upon your behaviour over the last few years.

I should say that the issue has been raised in the victim impact statements from the three victims in this offending of subsequent behaviour by you, or people who are around you, which has been perceived as threats and intimidation. I obviously have not received full evidence about all of that and I accept that that all occurred prior to you being questioned by the police and prior to you being placed on bail, and that the threat that was made was probably made by your brother rather than you. So in the circumstances, although Mr Connolly submitted that that was an aggravating feature, the way the evidence rests at the moment in front of me with respect to that, it will not make any difference to the penalty that I impose on you. But obviously you've got to respect other people, and threats and intimidation are not the right way to go about that.

The psychological assessments that have been done in relation to you - there was one done on the 13th of July 2005 by Mr Ritchie, and another on the 29th of November last year - and his second assessment indicates his belief that, as a result of his examination of you, his questioning of you and his assessment of you, you have matured significantly between those two assessments and that's to be expected when you change from the age of 13 to 17.

Mr Connolly has submitted that I should sentence you to detention of some two to two and a-half years. Certainly the nature of this offending, and particularly the repeated and persistent nature of this offending and the fact that it did involve three complainants, each of whom made it clear your advances were unwelcome, does lead to the conclusion that detention is called for. However, you have spent 204 days in detention on remand and, in my view, particularly given the significant steps you've taken in terms of rehabilitation and in terms of employment, and because of the fact you've stayed out of trouble since May 2006, in my view that is sufficient detention for you to have served.

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However, I am going to impose a longer period of detention upon you, but release you as from today, so that you will have the balance of that term hanging over head, and I also intend, with your consent, to place you on a further probation order so that the programs and counselling that have been started can continue.

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Now, you know what's involved with probation. You're still on a three year probation order until February next year. The main rules of probation are:

1. That you must not break the law again;
2. You must report to the department and receive visits from them as directed;
3. Let them know if you change your address or where you're working;

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4. You can't leave Queensland without their permission; and

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5. You must comply with any orders or directions given to you for counselling and programs.

Will you agree to further probation?

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DEFENDANT: Yes, your Honour.

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HER HONOUR: I should also say that the exit report by Ms Schumach, the psychologist from the Griffith Youth Forensic Service, which is dated the 24th of April 2007 concludes with the following quote:

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"Zac's level of risk of committing further sexual offences has been assessed post-intervention as being low to moderate. Zac has successfully completed all required treatment elements and has demonstrated a good understanding of all issues addressed. Zac has been strongly encouraged to continue the implementation of his safety plan and safety strategies."

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It is further recommended by Ms Schumach that ongoing counselling, reviewing and rehearsing of your safety plan should continue, and that's another reason why in my view it's important that you do have a further period of probation.

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So the probation will be with respect to Indictment Number 36 of 2008 which is the four count indictment. With respect to that I will place you on probation for two years with the

special condition that was recommended in the presentence
report, that you attend the Griffith Youth Forensic Service or
any other program, as directed by the Department of
Communities, comply with all reasonable requirements of the
program and maintain a rate of progress that is satisfactory
to the treatment program.

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I will just ask Mr Duncan, were there any other conditions
that the department would be seeking?

MR DUNCAN: No, your Honour, other than the standard probation
conditions which are already read out, your Honour.

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HER HONOUR: Yes.

MR DUNCAN: Certainly from our perspective the further
intervention in relation to counselling to address the sexual
offending is imperative at this stage.

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HER HONOUR: Yes. And two years would be sufficient? Well, I
imagine that would be a sufficient time.

MR DUNCAN: Yes, your Honour.

HER HONOUR: Yes; okay. All right. That's the order with
respect to that indictment.

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Now, with respect to Indictment Number 37 of 2008, that's the
10 count indictment, I have taken into account the
desirability of not holding a child in detention but, given
the nature of these offences and the circumstances of them, I
do order that the defendant child be detained for 408 days.
However, pursuant to the Juvenile Justice Act, I order that

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the defendant child be released from detention after serving
50 per cent - so that's 204 days which you have already served
- in light of the circumstances of your rehabilitation and
pleas of guilty and obtaining the apprenticeship.

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With respect to each offence a conviction is recorded.

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So the bottom line is, Zac, that you have to stay out of
trouble because, if you don't, you'll be breaching your
release order from detention and also two probation orders,
and if that's the case then you could well be looking at
further detention.

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Now, you must report today to the department, so you talk to
Mr Duncan before you leave about getting all that started.

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DEFENDANT: Yes, your Honour.

HER HONOUR: Anything else you were seeking, Mr Connolly?

MR CONNOLLY: No, your Honour.

HER HONOUR: Okay.

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