NOTE: PUBLICATION OF NAME(S) OR IDENTIFYING PARTICULARS OF COMPLAINANT(S) PROHIBITED BY S 139 OF THE CRIMINAL JUSTICE ACT 1985.

NOTE: PUBLICATION OF NAME(S) OR IDENTIFYING PARTICULARS OF WITNESS(ES) UNDER 17 YEARS OF AGE PROHIBITED BY S 139A OF THE CRIMINAL JUSTICE ACT 1985.

IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

CRI 2012-019-0117799
[2014] NZHC 3082

THE QUEEN

v

ALBERT PAUL HAGGAR

Hearing: 4 December 2014

Appearances: J Tarrant for Crown
A Beveridge for Prisoner

Judgment: 4 December 2014

SENTENCING NOTES OF ANDREWS J

Charges

[1] Mr Haggar, following a sentence indication hearing, you have pleaded guilty to:

(a) 17 charges of assault on a child (in respect of which the maximum penalty is two years' imprisonment on each charge);

(b) two charges of injuring with reckless disregard for the safety of others (the maximum penalty is five years' imprisonment on each charge);

(c) one charge of doing an indecent act on a young person (the maximum penalty is seven years' imprisonment); and

(d) one charge of male assaults female (the maximum penalty is two years imprisonment).

Facts

[2] The offending occurred over a period of seven years from 2005 to March 2012.

[3] There are three victims: two child victims (to whom I will refer as "V1" and "V2") and one adult victim ("V3"). V1 was between 5 and 12, and V2 was between 7 and 13 during the period of the offending. It occurred while you had care of the children.

[4] The offending involved physical abuse, specific acts of injury, and sexual abuse of a reasonably minor nature, against V2. In the main, it appears that the offending was punishment for perceived bad behaviour such as not carrying out chores in the way you expected, or on occasions when you lost your temper, or indeed for no particular reason.

[5] The offending comprised slapping and hitting the children around the face and head with your hands or using a wooden spatula; punches to the children's stomach and face; picking them up and throwing them across to the wall or against a

wall, or forcing them against a wall; on one occasion dropping hot tea onto one of the children's leg; kicks in their backs; and forcing a spoon of chilli powder into one of the children's mouth.

[6] The children suffered bruising, black eyes, a burst ear drum, swelling of fluid on the elbow and injury to the tail bone. They were terrified of being with you.

[7] The sexual abuse of V2 involved sucking or touching her breasts. The male assaults female charge relates to slapping V3 on the face.

Victim impact statements

[8] You have heard two victim impact statements read out this morning from V3 and V2. I have read a further victim impact statement from V1. It is fair to say that the two children have suffered greatly, both physically and emotionally, as a result of your offending. V2 suffered a painful tailbone injury when she was 12. Emotionally, you took away her pride and self-confidence and replaced it with pain and disgust. She was continually anxious about what was happening to herself and V1. She has been diagnosed with post-traumatic stress disorder and has required counselling. She has also suffered from depression and insomnia, which has also required treatment. She has struggled to maintain school standards. She lost friends, because you stopped them from visiting after they spoke out about your violence.

[9] V1 also suffered both physically and emotionally. He suffered an injured elbow when he was 9 and a perforated eardrum when he was 11. He still has a 30 percent reduction in his hearing, and this has had far-reaching consequences on his schooling and his life in general. Because he was very young at the time of the offending, he does not remember anything before that time. He says he was pretty much scared all the time, scared of you, and scared of doing things wrong, or not doing them the way you wanted them done. He didn't know if what he was doing was how you wanted it, so he was always nervous, scared that he would get hit. If he didn't do things as you wanted them done, he was yelled at, screamed at, and hit. He has only sad memories of being hit, and told he was useless. He only felt safe when V3 was present.

[10] I have read your letter to the Court. You say that you accept that what you have done is wrong, and that you understand the impact it has had on V1 and V2, and the harm caused to them both physically and emotionally. You also accept the wider effect that your offending has had on other people.

Pre-sentence report and psychological report

[11] I have been provided with a pre-sentence report, and a psychologist's report obtained on instructions from your counsel.

[12] I note from these that you are 56 years old, and were raised and educated in South Africa. You said that you had a loving albeit strict upbringing. Your education was interrupted when you joined the South African army. Subsequently you took over management of your father's businesses, and then you operated businesses on your own account both in Australia and in New Zealand.

[13] Your first marriage ended amicably after four years. Your second marriage ended after 10 years. As I understand it you do not have contact with your two children of this relationship, due to their wishes. Your third marriage has also ended.

[14] The pre-sentence report writer spoke to some of your friends. They spoke highly of you. You were described as being "efficient and professional", a person having integrity, and "the salt of the earth, a friend forever".

[15] The pre-sentence report records that notwithstanding your guilty pleas, you strongly denied committing the offences, and maintained that you had pleaded guilty so as to prevent trauma to V1 and V2 by putting them through the trial process. The psychologist took you through each of the charges, and has recorded your responses. In many cases you deny the offending, in others you say that the offending was not as serious as the victims reported. In one case you said that a false allegation had been made for a collateral purpose. You attributed V1's and V2's behaviour to V3's inability to manage them, and you attributed your own responses to what had happened to you in the past.

[16] Ms Beveridge recorded, in her submissions, that you had accepted the Police summary of facts when you entered guilty pleas to the charge. I am advised that you do not seek to make an application to withdraw those pleas. That is confirmed by what you say in your letter to the Court. Sentencing must therefore proceed on the basis of the facts set out in the summary of facts.

[17] The pre-sentence report records you as being at a medium to high risk of re-offending, and posing a high risk to the safety of others, until such time as you are prepared to take responsibility for your actions, and address factors underpinning your offending. The psychologist assessed you as being at a very low risk of general criminal offending and, if you do not have children under your unsupervised care, at low risk of violent offending. However, the psychologist noted that the duration of your violence towards the children, and the severity of your behaviour, indicate that this is an entrenched behavioural problem for you. He suggested that further risk could be mitigated by your completing a comprehensive domestic violence programme to address your attitudes, your unrealistic expectations of others, relationship problems, and your ability to manage your emotions.

[18] As you know following the sentence indication hearing, I adjourned your sentencing to allow you to undertake rehabilitative treatment. The psychologist reported that you have made a positive start, in engaging with the Hamilton Abuse Prevention Programme. You have completed an induction session and eight subsequent individual sessions. You are reported as having engaged well with the programme to date.

Sentencing process

[19] The first step in sentencing you is to establish the starting point. The starting point is the sentence that would be imposed on the most serious of the charges on which you have been convicted, if you had been convicted after a trial in court. The second step is to take that starting point and adjust it for aggravating or mitigating factors relating to the offending, to reach the appropriate starting point for your offending**.** I also consider matters that relate to you, personally, because these may also lead me to adjust your final sentence, either upwards or downwards.

[20] In sentencing you I have to take into account the purposes and principles of sentencing. With respect to the purposes of sentencing, I have to hold you accountable – to make you responsible for your offending. I have to consider deterrence – of you and others – and the protection of the community. I must also denounce your offending – what this means is to tell you that your offending is completely unacceptable in New Zealand society. At the same time, the purpose of sentencing any offender is to help the offender to get back into the community as a useful member of it.

[21] It is also relevant to note s 9A of the Sentencing Act 2002 (inserted as from December 2008) which sets out particular factors that must be taken into account when sentencing for violence against children under 14. Of particular relevance in this case are that the victims were defenceless, the duration of the offending, the fact that the victims have suffered harm, with long-term effect, and that this offending is a gross breach of trust, given your parental role.

[22] The Court of Appeal has stressed that the courts must take a serious view of violence against children.[1] I note that this judgment was shortly before s 9A confirmed the seriousness of this offending in statutory form. The Court of Appeal has also confirmed that cumulative sentences are appropriate for different types of abuse.

[23] In your case the principles of sentencing I must consider are the gravity of your offending, including your culpability, the seriousness of your offending in comparison with other types of offences, and the general desirability of maintaining consistency in appropriate sentencing levels. I must take into account the information I have about the effect of your offending on the victims. I am directed to impose the least restrictive outcome that is appropriate in the circumstances. It is desirable to keep offenders in the community as far as that is practicable with regard to the safety of the community. However, the Court can impose a sentence of imprisonment in order to achieve the purposes of sentencing that are relevant to your case.

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1 *R v P* [2008] NZCA 476, at [38].

Submissions

[24] At the sentence indication hearing, Ms Dunn (who appeared at that hearing for the Crown) submitted that cumulative sentences should be imposed in respect of the ongoing offending against the two child complainants, then smaller uplifts applied for the charges of doing an indecent act, and the charge of male assaults female. She referred me to the Court of Appeal sentencing decisions in *Teilauea v R*,[2] *R v P*,[3] and the High Court's decision on appeal in *Kawhena v R*.[4]

[25] Today, Ms Tarrant has in essence reiterated the submissions made earlier by Ms Dunn. That was that on a global basis, a starting point of three years' imprisonment should be imposed for your sentencing and that there should then be an uplift of six months for the indecent act and male assaults female charges. In her oral submissions today, Ms Tarrant spoke only to the pre-sentence report and the psychologist's report. She stressed that these reports showed that you were in denial as to the offending, you minimised it, you accepted minor parts of the offending, and you deny all other offending. In essence, Ms Tarrant submitted you are not prepared to accept responsibility for your offending. She submitted you showed little remorse or victim empathy, and little insight into your offending. For those reasons Ms Tarrant submitted that no substantial discounts were available to you for personal factors, other than in respect of your guilty plea.

[26] At your sentence indication hearing, Ms Beveridge correctly submitted that previous sentencing decisions provide limited assistance, given that sentencing is very much based on the facts of the offending and the nature of the offender. As she noted, there is no guideline sentence. Sentences for this type of offending have ranged from community-based sentences, up to terms of imprisonment. She also referred me to three sentence decisions, being: *H v R*[5], *R v E*[6], and *S v R*.[7] In all of those cases a sentence of home detention was either noted as an option, or in fact imposed.

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2 *Teilauea v R* [2014] NZCA 391.
3 *R v P* [2008] NZCA 476.
4 *Kawhena v R* [2014] NZHC 908.
5 *H v R* [2013] NZCA 126.
6 *R v E* CA166/05.
7 *S v R* [2011] NZCA 178.

[27] Ms Beveridge submitted that the starting point should be in the area of two years nine months' imprisonment, and that no uplift was required. She further that you are entitled to receive a discount of 25 per cent discount for your guilty pleas.

[28] Ms Beveridge further submitted that when mitigating factors such as the fact or your guilty pleas, remorse and your good position in the community were taken into account, the sentence could be substantially reduced.

[29] Today in her submissions, Ms Beveridge referred to, in particular, the psychologist's report in an attempt to reconcile what you said in your letter to the Court and your guilty plea, as against the denials that are noted both in the pre-sentence report and the psychologist's report.

Starting point

[30] I take as the lead charge for setting the starting point the two charges of injuring with reckless disregard for safety.

[31] Your offending can only be described as serious. It was offending that went on for seven years, there were two victims – both young children – and there were multiple occasions of serious assaults which in many cases caused injury. As the Court of Appeal has said, the offending must be taken seriously. It only ceased when you moved to Australia. At that time the children made their complaints.

[32] In all of these circumstances, and considering the duration of the offending, the type of offending and the effect it has had, I accept the Crown's submission of a global starting point of three years imprisonment for all of the charges involving the child victims of either assault or injuring with reckless disregard for safety. Further, I accept that an uplift is required for the charges of doing an indecent act, and male assaults female. For those matters an uplift of three months is appropriate. That takes the adjusted starting point to three years and three months' imprisonment.

Personal factors

[33] I turn to consider personal factors. I have read the character references provided to me. I remain of the view that I expressed at the sentence indication hearing that given the very long duration of offending in respect of which you have pleaded guilty, no discount can be given for previous good character. The positive attributes described in those references did not prevent your offending. As the psychologist observed, you could have all the positive attributes described in those references, while still demonstrating a dysfunctionally strong need to control your closest relationships with those who depend on you.

[34] Further, I have concluded that no discount can be given for remorse, over and above that which is reflected in a discount for your guilty pleas. Genuine remorse involves an acknowledgment of your offending and an acceptance that you are responsible for it. Despite what you say in your letter to the Court, it is evident from both the pre-sentence report and the psychologist's report that you continue to deny the offending, you say that the victims exaggerated it, and you say that it occurred as a result of a failure by V3 to manage the children, and the treatment you had as a child. That is inconsistent with acknowledgement of the offending and acceptance of your responsibility.

[35] You have taken steps to address your offending, and for that rehabilitative action I allow a discount of four months' imprisonment, to adjust the starting point down to two years and 11 months.

[36] You are also entitled to a discount for your guilty pleas. While normally, guilty pleas on the eve of trial, and where there appears to be a strong Crown case, would be minimal to zero. I accept that in this case, sparing V1 and V2 and other young witnesses from the ordeal of having to come to Court, to give evidence and to be cross-examined, justifies a greater discount. In the sentence indication I considered that the maximum discount would be 20 per cent. Having reconsidered the matter I remain of the view that a discount of 20 per cent is appropriate.

[37] Would you please stand.

Sentence

[38] Your end sentence is two years and four months' imprisonment. I will impose individual sentences for each charge, but all sentences are to be served concurrently. On each of the charges of injuring with reckless disregard for safety, you are sentenced to two years and four months' imprisonment. On the charge of male assaults female, you are sentenced to six months' imprisonment. On the charge of doing an indecent act, you are sentenced to five months' imprisonment. On each charge of assaulting a child, you are sentenced to six months' imprisonment.

[39] Mr Haggar, I sincerely hope that you will take every opportunity you are given to continue the work that you have started to address your offending.

[40] You may stand down.

ADDENDUM

Application for suppression of name

[41] An application was made on behalf of Mr Haggar for suppression of his name. The sentencing hearing was adjourned to give counsel further opportunity to make submissions on the application.

[42] The application falls to be determined under the provisions of the Criminal Justice Act 1985. Under ss 139 and 139A of that Act there is a statutory suppression in relation to the names of any witnesses and of any particulars likely to lead to their identification. That therefore applies to the two child victims of the offending. In that regard, the sentencing remarks have been amended so as to remove any particulars that might identify them.

[43] Under s 140 of the Criminal Justice Act, the Court may prohibit publication of the name of a person charged with an offence, or of any other person connected with the proceedings, or any particulars likely to lead to any such persons' identification.

[44] Given the amendments that I will be making to my sentencing remarks pursuant to ss 139 and 139A, the only basis on which Mr Haggar could be granted name suppression is if he satisfies the Court that an order should be made under s 140.

[45] In his judgment in *Pollard v New Zealand Police*,[8] Woodhouse J referred to the judgment of the Court of Appeal in *Re Victim X*,[9] in which the Court said that an applicant must establish "compelling reasons" or "very special circumstances" justifying departure from the open justice principle.

[46] The essence of Ms Beveridge's submissions was that Mr Haggar's name should be suppressed so as to prevent the possibility of there being any identification of anyone else who may have been connected with the offending. Ms Beveridge did not seek to establish any other grounds on which suppression should be ordered.

[47] Having heard further from Ms Beveridge and Ms Tarrant, I am not satisfied that suppression should be ordered. However, as noted earlier, I will review the draft sentencing notes carefully so as to ensure that there is no identification of victims of Mr Haggar's offending.

[48] Accordingly, there remains an order under ss 139 and 139A of the Criminal Justice Act preventing the publication of any of the names of any witnesses or any particulars likely to lead to their identification. Mr Haggar's is not suppressed.

Andrews J

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8 *Pollard v New Zealand Police* [2013] NZHC 2442 at [12].
9 *Re Victim X* [2003] 3 NZLR 220 (CA) at [35]–[37].