

8 DECEMBER 2023

Mr McCulloch, you have been found guilty by a jury of three counts of indecent assault, and one count of rape by digital penetration. It is my task to find facts for sentencing purposes but, in this case, the facts substantially follow the verdict. To find you guilty, the jury must have accepted both the truth and reliability of the complainant's evidence beyond reasonable doubt, and I will sentence in accordance with her evidence. To the extent it is necessary to make findings of fact, I note I may only make findings adverse to you if satisfied beyond reasonable doubt they have been proved, and I may only make findings of fact in your favour if they are proved on the balance of probabilities.

The complainant was a friend of your granddaughter. She was 16 and in grade 10 when the crimes were perpetrated upon her. Arrangements had been made for your granddaughter and the complainant to have a sleep over at your residence on the evening of 12 November 2021. The two girls spent the night in an upstairs bedroom talking, having dinner and communicating on their phones. The next morning, 13 November, you entered the bedroom. Both your granddaughter and the complainant were awake. You sat on the complainant's bed and asked her whether she would like a back scratch. You then started scratching her back underneath her top. You moved your hand down underneath her shorts and underwear and started to grab hold of her bottom. You squeezed and rubbed her bottom with your hand. This amounts to the first count of indecent assault. Your actions continued for a couple of minutes. The complainant felt shocked and uncomfortable. Eventually she told you to get off her and go and sit with your granddaughter.

You then left the room. Shortly after, your granddaughter also left the room. Both of you went downstairs for a period of time. Your granddaughter was making breakfast. You returned to the upstairs bedroom under the pretence of hurrying the complainant along as an outing was planned. When you returned, you sat on the bed and placed your hand under the complainant's underwear and again started to squeeze her bottom and move your hand around towards her vagina. The complainant resisted and kept her legs crossed. You moved your hand to the front of her vagina and continued to try to touch it. You then started touching her stomach and rubbing her bare skin. This behaviour amounts to the second count of indecent assault.

Following on from this, you placed your hand underneath her underwear and began rubbing her vagina before inserting your fingers into her vagina, and moving them in and out. The complainant believed you did this for approximately one minute. This act amounts to the crime of rape. The complainant was in shock and said in her evidence "I just froze". You then moved your hands up underneath the complainant's top. You tried to kiss her on the lips. The complainant described feeling your tongue and lips upon her lips. You moved your hands towards her breast area. The complainant had her hands over her breasts. You told her to move them so you could suck her breasts. This behaviour amounts to the third count of indecent assault. Shortly after this, your granddaughter came back upstairs. As you heard her on the staircase you stopped what you were doing but told the complainant she should return that evening so you could continue your sexual endeavours with her.

After you left the bedroom, the complainant and your granddaughter went to the bathroom. The complainant told your granddaughter that you had "got too close to her". She later told a friend, via social media, that you had behaved inappropriately towards her. Two days later, the complainant told her sisters what you had done to her before telling her step-father and

mother. The matter was then reported to police. You were interviewed. You denied you had behaved in any sexual manner, but admitted to having tickled the complainant and given her back scratches. Oddly, you said that your hand may have inadvertently brushed her vagina or breast area. Having observed your demeanour during the record of interview, I have no doubt you were well aware of what you had done but were not prepared to admit it, or take responsibility for it.

The complainant was 16 years of age when you raped her. She was obviously young and at an important stage of her emotional and sexual development. Section 11A of the *Sentencing Act* applies to this crime. It is aggravating that at the time of the crime, the complainant was under your care, supervision and authority. The complainant's family had entrusted you to care for her during the sleep over. The complainant was entitled to feel safe and secure within your home. Instead, you took advantage of the situation to commit a series of very serious crimes.

Your crimes have had a terrible impact upon your victim. I have read her victim impact statement. It is unnecessary for me to traverse all that she has outlined. It is sufficient to say that she describes the type of stress, anxiety, upset, uncertainty and trauma that is sadly so often experienced by victims of sexual crimes. The impact of sexual crimes upon children in particular is often profound. It is frequently the cause of long term serious harm, which can affect victims for many years in often unseen and misunderstood ways. In this case, whilst no physical harm was caused, there is no doubt your crime has given rise to significant psychological harm. Sadly, your crime has also destroyed the treasured friendship the complainant shared with your granddaughter.

You are now 72 years of age. You are single with two adult children and four grandchildren. You were employed within the police service for many years. I accept that if that becomes known within the prison environment it may place you at a higher risk. You have no prior convictions of a sexual nature. Indeed, the only matters on your record are some minor traffic infringements. Previous good character in a matter of this nature however, attracts limited weight in the sentencing exercise.

In 2017, the law of rape was amended to include penetration involving body parts other than the penis. Previously, digital penetration was an aggravated sexual assault. The obvious intention of the amendment was to indicate that all forms of non-consensual penetrative sexual crimes were "equally serious", and so digital penetration without consent is a form of bodily invasion and is unquestionably a serious matter. It can be said, however, that such penetration does not carry with it the risks associated with penile penetration, such as pregnancy in the case of a female, and in any case, sexually transmitted diseases. Your conduct here was humiliating, intrusive, degrading and damaging and was pursued in the face of resistance. The complainant had asked you to move away from her after the first indecent assault and had clearly tried to resist your advances during the second incident. You must have appreciated you were causing her distress. Emphasis needs to be placed on factors of deterring others from such behaviour and condemnation of the conduct.

There are no mitigating features in respect to your criminal conduct. You are not entitled to the mitigation a plea of guilty would have attracted. The complainant was required to give evidence and was cross-examined. It is obvious from her comments in her victim impact statement that the need to come to Court added to her trauma. You have not shown any remorse for your conduct, nor its affect upon your victim. Your attack was brazen and persistent. You did not desist despite her obvious resistance. Your behaviour only came to an end when you

heard your granddaughter returning to the bedroom. I take into account that the acts of sexual assaults were relatively short lived, although afterwards, of course, you tried to manipulate the complainant by suggesting she return that evening. Such a comment must have added, in my view, to her confusion, humiliation and distress.

To serve the sentencing aims of punishment, vindication of the victim, the protection of children generally, and specific and general deterrence, a period of imprisonment must be imposed. I bear in mind that all crimes arose essentially from the one incident, although there was a short period of time – probably only minutes - which separated the first indecent assault and the balance of the criminal conduct. The totality principle requires consideration. Given your lack of prior convictions, I will provide for the possibility of release on parole at the earliest time permitted by law. Because I intend to impose a global sentence, I am required to identify the sentence which would have been imposed for each crime separately. This identification will not take into account considerations of totality or proportionality arising from the overall sentence.

The sentences I would have imposed for each crime separately in this case are periods of imprisonment as follows: Count 1 – six months; Count 2 – nine months; Count 3 – two years and six months; Count 4 – seven months. The aggregate sentence to be imposed must be moderated to reflect proportionality and totality, but given the circumstances of the crimes, not to a large extent.

Mr McCulloch, you are convicted of each count upon which you have been found guilty. I make an order under the *Community Protection (Offender Reporting) Act 2005*, directing that the Registrar cause your name to be placed on the Register and that you comply with the reporting obligations under that Act for a period of ten years. I impose a global sentence. You are sentenced to imprisonment for three years and three months from 30 November 2023. I order that you are not eligible to apply for parole until you have served one half of that sentence.

I make an order for compensation in favour of **[name redacted]** the terms of which will be adjourned sine die.