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<http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360350.html>

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

**I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE**

**CRI-2019-096-003345
[2023] NZHC 923**

THE KING

v

BENJAMIN NILESH GOUNDAR

Hearing: 24 April 2023
Counsel: T G Bain for Crown
K Lakshman for Defendant
Sentence: 24 April 2023

SENTENCING NOTES OF ISAC J

[1] Thank you Mr Goundar, you may remain seated for now but I will get you to stand at the end.

[2] You appear for sentence on one representative charge of assault committed between the 13th of October 2017 and the 5th of January 2018 in relation to the victim, AB. You were convicted of that charge after trial by a jury in October 2022.

[3] The context is that you are appearing today following an acquittal at a re-trial on eight other charges of a far more serious nature including sexual violation and threatening to kill the same complainant in the case, AB.

[4] The factual circumstances for sentencing must make sense of a previous jury's verdict in light of the evidence before them. They were unable to reach a verdict on eight charges for which you have recently been acquitted but they did convict you on one representative charge of assault. While the victim's evidence was that the assaults generally were a precursor to serious sexual assaults committed by you, his evidence was that the assaults were not confined to occasions when sexual violence took place. He said that you would on a couple of occasions slap his face because he had not cleaned your cell as you had wanted. There is no evidence of significant physical injury arising from those assaults but I accept Mr Bain's submission for the Crown that there was an element of overbearing on your part in that there is evidence accompanying the assaults to suggest that you referred to the victim on occasion as your bitch and would direct him to undertake relatively menial personal tasks on your behalf. So I proceed to sentence you on that basis.

[5] Your personal circumstances are these. In 2011 you abducted and raped a teenaged victim in the Hamilton area. You were subsequently convicted and had been in custody where you remain as a serving prisoner. I am advised by your counsel, Mr Lakshman, that once you are paroled you are subject to a deportation order and will be removed from New Zealand immediately.

[6] The aggravating factors of the offending I find are these. Firstly, the age and relative vulnerability of the victim who was only 18 years at the time. You were in your late 20's a larger and far stronger man. And secondly, an element of abuse of trust. The evidence, which I accept, is that you induced the victim to move into the cell with you and it is in that context that the assaults began. I also accept the Crown's submission that there are no mitigating factors relevant to the offending or to you personally.

[7] Turning to the starting point the maximum penalty available is 12 months. The Crown urge me to adopt a sentence at the higher end, between nine and 12 months, on the basis that this is the most serious offending of its kind. In mitigation Mr Lakshman says on your behalf that the assaults were not serious and that a sentence of three months should be adopted as the starting point and end point.

[8] Given that you are still serving a custodial sentence the parties are at least agreed that a short term of imprisonment is the appropriate sentence in the circumstances and it is with your consent that I proceeded to sentence you today without first obtaining a pre-sentence report. In my view the appropriate starting point for sentence in relation to your offending is a sentence of two and a half months' imprisonment, but I uplift it by two weeks to reflect the fact that you have committed similar offences of violence, assault, in connection with the 2011 matters for which you are serving a term of imprisonment.

[9] So I ask you to stand now please Mr Goundar. On the charge of assault of AB I convict you and sentence you to a total of three months' imprisonment. That term is to be served cumulatively on top of the term of imprisonment you are currently serving.

[10] Thank you, you may now stand down.

ADDENDUM:

[11] I make a final order suppressing publication of the victim's name and any details that might lead to his identification.

Isac J