

ADJOURNED

The sentencing of a Department of Social Welfare approved foster parent charged with indecencies on five boys was adjourned to December 10.

Mr Philip Hall said further investigation was required before Anthony Robert Foote, aged 34, could be sentenced.

S. No.78/92

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

R E G I N A

V.

ANTONY ROBERT FOOTE

SENTENCE OF TIPPING, J.

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

S. No.78/92

R E G I N A

v.

ANTONY ROBERT FOOTE

Sentence: 16 December 1992

Counsel: R.E. Neave for the Crown
S.C. Barker for the Prisoner

SENTENCE OF TIPPING, J.

Antony Robert Foote you appear at the age of 34 for sentence on four charges of indecent assault, two charges of doing indecent acts upon boys and one charge of inducing a boy to do an indecent act upon you. There are five different victims ranging overall in age from seven to eighteen.

In respect of all you were acting as a foster parent, in two cases directly from the Department of Social Welfare and in the remaining three by informal placement. All the boys had obvious personal problems. You were in the place of a father to them and it must be said that you grossly abused the trust placed in you both by the boys and by the Department and the parents of the boys. The abuse involved masturbation and oral sex. The charges are representative or sample charges

demonstrating a course of conduct between the dates relevant to each complainant.

I have carefully read more than once all the material on the file including the pre sentence report and the victim impact statement. I will give you distinct credit for your pleas of guilty and of course for the time you have already spent in custody. I cannot elongate that time to take account of notional remission because, contrary to my own views, the Court of Appeal has said that that cannot be done except in a most unusual case, of which this is obviously not one.

I have also listened very carefully to Mr Barker's submissions on your behalf and I note in particular the following matters. It must be accepted that there was no extra brutality or force used, other, of course, than what is inherent in the offences themselves. I note also that apart from these matters you have done very good work for damaged and difficult boys. I accept that you have faced considerable pressures while awaiting sentence but there is force in the Crown's submission that that really cannot mitigate the proper sentence to any significant extent. To your credit you accept the need for counselling and help. You are a first offender and your counsel has asked me to give as much emphasis as I can to the rehabilitative element in the sentencing process.

Mr Neave for the Crown has highlighted what are the obvious aggravating features of this case. They are the gross breach of trust, the number of victims, five, and the length of time over which this offending has been going on, from May 1986 through to September of this year, using the outside dates

on the informations, albeit of course with different boys. This is a period of about six and a half years.

While there are clear differences some assistance can be gained from the decision of the Court of Appeal in a case called Darke C.A. 255/88, the judgment having been given on 20 April 1989. There seven years imprisonment was upheld, although it was said that a somewhat shorter sentence may have sufficed. In that case, quite different from yours, the appellant had offended before and was eligible for preventive detention, which you obviously are not. You have no previous convictions at all. There were five victims in Darke's case and elements of breach of trust. Although the breach of trust in my view is worse in your case than Darke the acts of indecency were significantly worse in the other case. Both of you, both Darke and you, pleaded guilty.

This case can obviously only be met by a substantial term of imprisonment. The much more difficult question is as to its length. My task is to weigh the aggravating features, which are substantial, with those which go the other way. The sentence must on any view of it denounce your crimes and express society's abhorrence, but against that the sentence must not lose perspective. It is my view that after allowing for your pleas of guilty but before crediting pre sentence custody an overall sentence of four and a half years imprisonment is appropriate.

I propose to pass the same sentence on all charges and not try and distinguish or apportion. Accordingly after allowing for your pre sentence custody the formal sentences of the Court are that on all charges you are to be imprisoned for