

Judicial Outcomes in Sexual Offence Cases: A Gendered but Nuanced Disparity

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Introduction – Sexual Offending

- Historically, viewed as male-perpetrated crime, with women typically the victim
- Women commit 4%- 5% of all sexual offences.
- Comparable in severity and type to that by men
 - Wide range of acts including self-exposure of genitalia, incest, making objectionable material, vaginal and anal penetrative acts (digitally or with an object), fondling and non-contact offences
- Impact on the victim – just as harmful

Introduction

- Women Who Sexually Offend
 - often perceived as less harmful/ less serious or their offending is discounted in some way (they were looking for love, they were co-erced by a male to co-offend against a child)

Gendered Norms

Women: Traditionally expected to be nurturing, cooperative, emotionally expressive and focused on caregiving roles.

Men: Commonly expected to be independent, assertive, stoic, and focused on providing or achieving.

Sexual Scripts: Males are over-sexed, females under-sexed, males worth and status is increased by sexual experience, males are initiators of sexual behaviours, females are recipients of these requests

How are WWSO treated in the Judicial System?

- Two theories that relate to how women may be treated in the judicial system
 - Double Deviancy Theory (or Evil Woman Hypothesis)
 - Chivalry Theory

Double Deviancy Theory

(Evil Woman
Hypothesis)

Women who engage in serious crime (i.e., 1st deviant behaviour) are more likely to be severely punished than are men appearing for the same crime because they have deviated from their social roles of being feminine, law-abiding citizens (i.e., 2nd deviant behaviour).

Heidensohn, 1985

Chivalry Theory

Women who commit 'unfeminine crimes' such as violent or sexual crimes, are likely to be treated in a chivalrous manner at sentencing (i.e., more lenient outcomes) because their intentions are not perceived as criminal.

Pollack, 1950

To date: What we know

- Judicial sentencing outcomes - leniency bias towards women.
 - women are less likely to receive prison sentence.
 - when they do receive a prison sentence, these tend to be shorter than handed down to men.
 - Chivalry theory supported
- Possibly explained by differences in offending type, severity of offence, aggravating and mitigating factors.

Recent studies – matched cases

- Shields and Cochran (2020).
 - Matched Females (n = 566) with Male sexual offenders on age, ethnicity, trial or not, offence severity, previous convictions, victim age and sexual offence type
 - Similar findings - less likely prison sentence & shorter sentence term
- Beeby, Hobbs, Gross, Hayne & Patterson (2020).
 - Matched cases (n = 10) on age, sexual offence type, severity, range of offence characteristics
 - Classified and coded for mitigating and aggravating factors, as well as case relevant factors (e.g., mental health, trauma histories)
 - Case relevant factors, number of mitigating & aggravating and way applied similar
 - Females less likely to receive a sentence but when did, no leniency given
- Burgstedt, Beeby, Hobbs, Gross, Hayne & Patterson (2022)
 - Judicial focus on particular personal circumstances seen as relevant for females but not males (e.g., vulnerability, poor mental health and adverse backgrounds).
 - Females described emotively – depraved and cruel

Why does it matter?

- Principle of Parity
- Impact on victim.
- Hides the real problem of sexual offending behaviours by women.
- Impacts on development of assessment and treatment protocols for women

Present study

- To further consider sentencing outcomes for matched cases of women compared to men who sexually offend
- Increased sample size of matched pairs across 3 countries.
- Compare sentencing type (e.g., prison) for women compared to men who have sexually offended.
- For those sentenced to prison, compare mean sentence length for women to men.
- Compare pair-wise matched sentencing outcomes for women and men who have sexually offended.

Method

- Court case reports ‘sentencing decisions’ sourced from online databases, from NZ, Australia and Canada.
- We included:
 - all cases where a women was sentenced for a sexual offence.
 - offences against adults or children.
 - cases where women acted alone or with a co-offender.
- Matched each female case with a male case.

Case-matching

- Cases matched within country or state.
- Characteristics and severity (e.g., penetrative, frequency).
- Assault factors (e.g., physical force).
- Situational factors (e.g., group offending).
- Characteristics of the offender (e.g., age, prior offending).
- Victim factors (e.g., age, relationship with offender).

Included cases

- New Zealand - 10 matched pairs
- Australia - 7 matched pairs
- Canada - 30 matched pairs
- Women, $N = 47$, 16 to 56 years ($M = 31.8$ years)
- Men, $N = 47$, 21 to 59 years ($M = 37.2$ years)

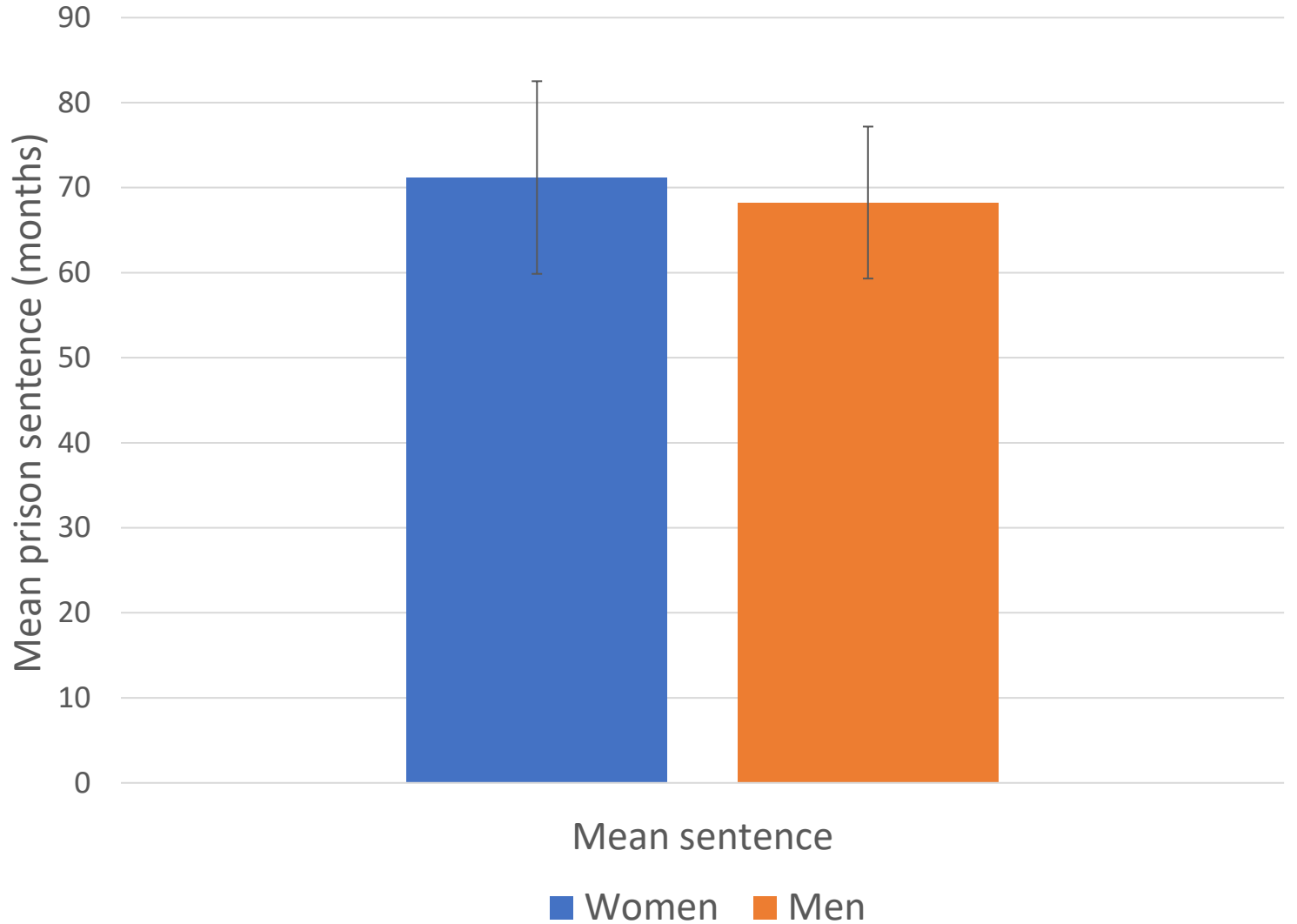
Analysis

- ChiSquare analysis - relationship of gender (women; men) and whether a prison sentence was handed down (prison; not prison).
- t-test analysis - mean prison sentence length handed down to women compared to men.
- Pearson's correlation - relationship between matched pairs of women and men on prison sentence length.
- r-to-z transformation (two-tailed) - compare the calculated correlation to the expected $r = 1$ (where the correlation is perfect).

Results

- For the matched pairs where one was sentenced to prison and one was not ($n = 10$ pairs), the men were significantly more likely to be sentenced to prison – 80% of the men compared to 20% of women.
- For those sentenced to prison ($n = 36$ pairs), there was no significant difference in mean sentence length handed down to women compared to men.

Prison sentence length



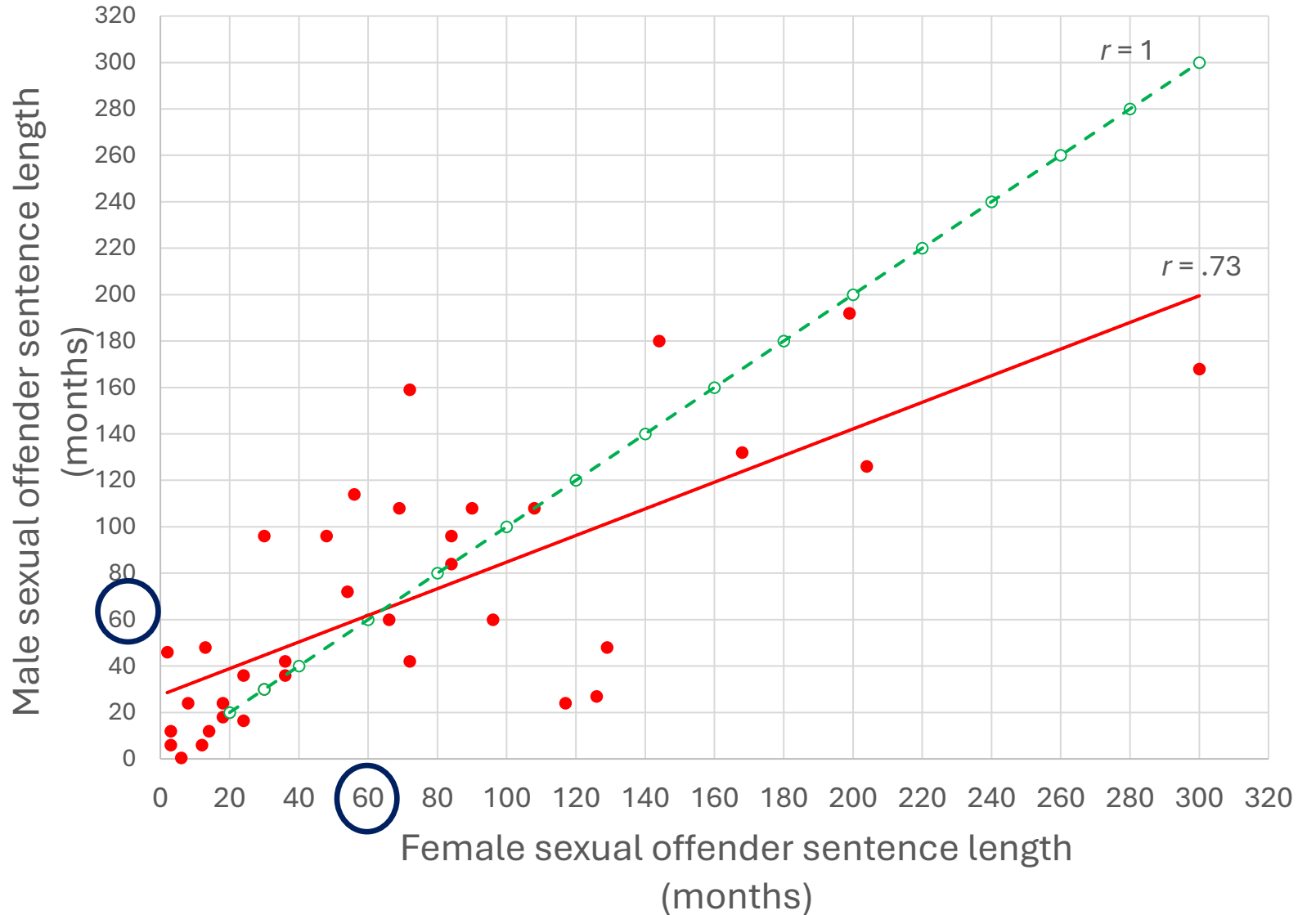
Results

- If we assume equal sentencing then when we plot sentence length given for each women and man pair we would expect a perfect correlation of 1.
- We found that there was a significant relationship, that is greater sentence length for women equated to a greater sentence length for matched men.
- However, this deviated significantly from the expected correlation of 1. That is, as prison sentence length increased for the women, there was a trend towards a shorter prison sentence for the matched men.

Results

- More specifically, for prison sentence lengths of under 60 months there appeared to be a leniency towards women; for prison sentence lengths greater than 60 months there appears to be leniency towards men.

Correlation matched pairs prison sentence length



Discussion – Main findings

- Men were more likely than women to be sent to prison.
- Although similar mean prison sentence for women compared to men, pair-wise approach demonstrated differences.
 - Shorter length prison sentences - leniency towards women
 - Greater length prison sentences - women were treated more harshly.

Discussion – Nuanced

- More complex picture than first thought
 - Possibly seeing both chivalry and double deviancy theory in action
 - May depend on severity or heinousness of crime

It depends....

- Fits with previous research on different discourse used by judges to describe the culpability of women, compared to men:
 - Culpability of women engaged in non-assaultive sexual offending was **minimised** compared to men
 - Female – “misguided” “acting in her interests....ensuring properly housed, fed”
 - Male - “viscious, bullying power play”
 - Culpability of women engaged in more violent assaultive was **villainised** compared to men –
 - Female “depraved” “dreadful unspeakable violations” –
 - Male - “brain snap” “use of dangerous drugs”.
- Damiris, McKillop, Christenson, Rayment-McHugh, Burton & Patterson (2021)

Discussion – Further research required?

- Mixed method research – quantitative and qualitative
- Carefully designed matched cases so as to control for all case factors
- So as to fully identify what is going on
- Can however, raise awareness of unconscious bias that may exist

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