

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

**IN THE DISTRICT COURT
AT AUCKLAND**

**I TE KŌTI-Ā-ROHE
KI TĀMAKI MAKĀURAU**

**CRI-2020-004-003030
[2020] NZDC 21424**

NEW ZEALAND POLICE
Prosecutor

v

TARIQ TAZDEEK ALI
Defendant

Hearing: 19 October 2020
Appearances: M Duhamel for the Prosecutor
D Cross for the Defendant
Judgment: 19 October 2020

NOTES OF JUDGE P WINTER ON SENTENCING

[1] Mr Tariq Ali, you are today before me for sentence in relation to three charges. They are unlawful possession of an imitation pistol, possession of methamphetamine and obstructing a medical officer or person assisting a medical officer of health.

[2] On 25 March 2020 a state of national emergency was declared in New Zealand by the government in response to the COVID-19 virus pandemic. At the time of the offending, alert level 4 was in place nationally, as it was likely that the COVID-19 disease was not contained. Substantial limitations on travel and movement and associations with others were directed by the Ministry of Health. There has been extensive publicity around these measures. Pursuant to s 71A of the Health Act 1956, the New Zealand Police are legally authorised to assist a medical officer of health to

ensure compliance with the Ministry of Health directives. The police have adopted an engage, communicate, educate and encourage approach to ensure compliance with the Health Department measures, with enforcement only being pursued when absolutely necessary.

[3] You had previously been warned by the police for breaches of the Department of Health guidelines, specifically to remain at your place of residence. You were found to be travelling for non-essential personal movements at 10.12 am on 1 April at Aldern Road, Massey. Then you failed to remain at your place of residence and were travelling for non-essential personal movements at 10 pm on 8 April, one week later, at Trig Road, Whenuapai.

[4] You live in Auckland, and you were supposed to be in lockdown at the address of [address deleted], Massey. At 3.55 am on Friday 17 April 2020, that is, just over a week after your second warning, you were driving a Toyota motor vehicle on Ponsonby Road, Auckland. You were stopped by police and an enquiry was made as to your purpose of travel. You provided the police with a letter from the company [name deleted], a wholesale food distributor, in which you had written your name to falsely pass off as an essential worker. Enquiries made with the manager revealed that you did not work for the company and had never been an employee.

[5] The police, when speaking to you, noticed that you were in possession of drug paraphernalia and conducted a warrantless search under the Search and Surveillance Act 2012. On the front passenger seat, police located a backpack containing personal documents belonging to you. Inside that was a small pouch. The pouch contained a zip lock bag which had 0.3 of a gram of methamphetamine in the form of white crystals, together with a glass pipe commonly used to smoke methamphetamine. On the back seat of the vehicle was a small leather pouch containing a black steel pistol. The pistol appeared to be manufactured for the purpose of firing blank cartridges. Modifications had been made to it, including drilling out the barrel to make it functional. The pistol was not loaded, and it has not been tested to see whether in fact it functions correctly, and accordingly a charge of possession of a pistol was amended to one of possession of an imitation firearm.

[6] In explanation for breaching the alert level 4 lockdown, you said that you were going to see a working girl, and that you had been warned for COVID-19 breaches twice before, so you used the letter to make it look like you were an essential worker. In explanation for possessing the methamphetamine and the glass pipe, you stated that it was for your personal use, and that you had used a gram that day and you struggle with methamphetamine addiction. In explanation for the possession of the pistol, you stated that a friend left the bag in your car and that you had dropped him off earlier in the day. You said that you had moved the bag, and when you had moved the bag it felt like it contained a gun. You did not open it to look inside it to confirm what it was, because you did not want to get your fingerprints on it.

[7] You are a 35 year old man, and you have previously appeared before the Court. Your list of previous convictions is not lengthy. I note that your last conviction was in the North Shore Court in 2013. You have only previously been dealt with by way of fine. I have a helpful pre-sentence report dated 13 October. You are assessed as being at low risk of re-offending because of your minimal conviction list. The report writer states that there is nothing to indicate that you have a propensity for violence, despite the possession of a pistol, in the report writer's assessment.

[8] The Court had previously asked that electronic monitoring be assessed as a potentially suitable sentence for you. Unfortunately for you, you live in a shared accommodation complex with your wife, who is present in court today supporting you, and other members of your family. That address is not suitable for electronic monitoring because the signal capacity is not sufficiently strong for that sentence to be supported. I did ask the probation officer today whether there was any possibility of a booster signal being installed at that address, and there is not.

[9] It is recommended that you receive a sentence which involves a rehabilitative aspect because you acknowledge, and so does your family, that you have a methamphetamine addiction which is still current. You frankly admit that you are still addicted to methamphetamine. You work with your father as a builder. You were initially on 24 hour electronic bail without exceptions. That was modified, I am told, by your counsel to allow for you to be able to work with your father. You have spent some time on stringent bail conditions.

[10] I have stood this matter down because I wanted to confirm the details of penalties imposed in relation to the charge under s 72(d) of the Health Act 1956. The decisions that I have been able to access all indicate that a sentence of imprisonment must be imposed in relation to that type of offending. I accept that in your case you had been warned but two times previously. However, the aggravating feature of the third instance, when you were stopped and charged, is that you had falsified a document for the purposes of showing it to the authorities with the intention of placing yourself within the category of essential workers, who were exempt from the provisions of the Health Act, so long as they were working in their capacity as essential workers or travelling to and from their work. That did not apply to you and is an aggravating feature of the present offending.

[11] I have been unable to locate any decisions in my research that indicate a sentence of imprisonment should not be imposed under the circumstances that you face today. I had given consideration to imposing a sentence which was of a therapeutic nature and did not involve imprisonment. However, I must sentence you to a sentence of imprisonment today, and I will do so.

[12] You will be sentenced to 28 days' imprisonment in respect of the charge of obstructing a medical officer or person assisting a medical officer of health, under s 72(d) of the Health Act. In relation to the other charges, that is, unlawful imitation of a pistol and possession of methamphetamine, I accept that you have been under stringent bail conditions. I will impose a concurrent sentence of 28 days in relation to the charge of possession of imitation pistol. You will be convicted and discharged in relation to the charge of possession of methamphetamine. That is all, thank you.

Judge P Winter
District Court Judge

Date of authentication: 03/11/2020
In an electronic form, authenticated pursuant to Rule 2.2(2)(b) Criminal Procedure Rules 2012.