

**IN THE DISTRICT COURT
AT AUCKLAND**

**CRI-2014-004-001520
[2016] NZDC 4704**

NEW ZEALAND POLICE
Prosecutor

v

DAVID SCHELVIS
Defendant

Hearing: 18 March 2016
Appearances: Mr Sweetman for the Prosecutor
Ms McQuinlan for the Defendant
Judgment: 18 March 2016

NOTES OF JUDGE L TREMEWAN ON SENTENCING

[1] David Schelvis, you are for sentence, having just graduated from the Alcohol and Other Drug Treatment Court, Te Whare Whakapiki Wairua.

[2] Graduating from this special Court is an enormous achievement, for which you are entitled to proper credit.

[3] You face twelve charges relating to the period October 2013 to February 2014. They are: Two charges each of burglary; theft, and failing to appear in answer to Court bail, a charge of refusing to permit a blood specimen to be taken, refusing to accompany a law enforcement officer, assault, unlawfully taking a motor vehicle, being found without reasonable excuse in a building, and wilful damage.

[4] I need not go into the details of the offending except to say that I have considered all of the material on file. Obviously they are serious matters.

[5] The two burglaries are the lead charges - one occurred when you entered a dwelling house and took a briefcase containing a laptop, and beer. You later said you needed water but having entered, you took the chance to take the property, which was later returned. The victims had been home upstairs at the time. The other burglary occurred when you entered the dwelling house, to be confronted by the owner. You ran off, and later said that you had wanted food. The charge of 'unlawfully being found in a building' relates to premises where you were dossing down nearby. In terms of the drink-driving related charges, I note that you have seven previous offences for such offending and this must therefore also be seen as another lead offence.

[6] So much has changed since the dark days when these events occurred and I will turn to what you have done to effect that change shortly. But first it is appropriate that I refer to your previous history of offending, which runs to 11 pages. You had previously received terms of imprisonment on twenty different charges, including for burglary and drink driving. You also separately have an Australian conviction history.

[7] Clearly, the underlying feature of your offending was your addiction to alcohol and other drugs, which needed to be addressed if things were to change.

[8] Since entering this Court, you have been working hard to take back control of your life. We have watched you grapple with your issues, showing great courage and determination to do this. Never did we gain the impression that you were after the easy road – you knew there wasn't one. You were prepared to do whatever it took to establish the foundations of a mature recovery.

[9] Had you not entered this Court, a sentence in the vicinity of 28 to 30 months imprisonment would have been a well warranted sentence, however due to the credits you have earned, a sentence which leaves you in the community is available today, on a principled basis.

[10] I now turn to outline your achievements since you entered the Court.

[11] You completed the Salvation Army Bridge programme and then moved to Wings accommodation where you resided for many months, before moving to a level 4 house where again you spent many months. Now you live with your partner Kara, in private rental accommodation and you greatly value the stability of these arrangements and the new lifestyle you have been creating together there.

[12] In the Court, you have been regularly tested for alcohol and other drug use. This has included wearing a SCRAM device for many months. You earned all of the medals which the Court presents, including a twelve month medal. As we know there was a later lapse, after which you recommitted to your recovery journey and as at today you have 183 days of sobriety, and you have just been presented with your six month medal.

[13] Of course, recovery is a road that has many twists and turns – and in the Court you have had issues along the way. However, you have persevered and always got “back on the bike” and carried on. You now know how to better approach these issues and have gained much wisdom as a result of everything that has happened. You have a better understanding of what is at stake and know that you must be on guard for any signs of arrogance or complacency.

[14] At the end of the day, recovery is not so much about how many days of continuous sobriety one has, so much as how much one is committed to the recovery lifestyle dealing with setbacks, reaching out, using tools and remaining focused on the road ahead.

[15] You are very well engaged with the 12 step fellowship. We have cards showing attendance at over 360 meetings! You have a very close relationship with your main sponsor who is spending time overseas working in a treatment facility. The Court has received many positive letters from him about your progress. You have maintained contact with him but also have a local sponsor. You have a ‘tight five’ and a great many recovery friends including participants and graduates from the Court.

[16] You have 'worked the steps' several times and made amends where possible, for what you have described as past "reckless, vile, drunken and drugged behaviour". This has been a long but worthwhile process.

[17] It should also be noted that you offered to meet any victim of your offending at a Restorative Justice conference though anxious about this; you were willing just the same. However none wanted to meet.

[18] In the Court you also worked intensively with your case manager Lisa Mannion and your peer support, Dave.

[19] You undertook the Moral Reconciliation Therapy (MRT) programme to Step 8.

[20] Like most of our participants, your general health and dental health has significantly improved while you have been in the Court.

[21] To your credit, you also undertook 537 hours of voluntary community work for the Salvation Army. You like giving back. You were very highly regarded for your work, and in fact you then gained full time employment with the Salvation Army, gaining a position for which they had had a great many applicants.

[22] You have received very positive feedback for this work too. It is a positive sign of how well you are regarded, that Helen Ravlich, the Family Store manager is here today. She has previously written to the Court referring to your positive work ethic and exceptional customer service skills. You are seen as a reliable, trusted, and valued as an employee.

[23] You also like working for "the Sallies", given all that they do for those such as yourself and you like the structure and routine your job provides.

[24] You have also been undertaking Mental Health and Addiction Studies. You now hold a Level 4 certificate, with one paper left in your Level 6 Diploma in Trauma. You have currently placed your studies on hold, so as to better balance recovery with work and recreation. You have learnt not to overdo it. You may recommence study in 2017 if it seems manageable.

[25] In your graduation application you referred to another change you have made, being crime-free. You stated that since you have been in the Court, you have had no dealings with the Police other than in the actual Court itself, which is a far-cry from the situation previously. Since you have raised it David, our prosecutor confirmed for the team what you have said, that they have had no records of contact/interaction with the Police since 04 March 2014, more than two years.

[26] These days you work hard to keep things legal. You gave us an example being the car which you bought with money legitimately earned and which you keep in a legal and road worthy state, and drive within the law. You also obtained your full driver's licence. In the Court you also completed the comprehensive Harmony Trust driver safety programme. You referred to being "humbled and honoured" to meet the victim of a drink-driving crash, Tamati Paul, on that course. This had a significant impact on you; your feelings of self-entitlement have been replaced with feelings of real remorse.

[27] During your time in the Court you have been working on improving personal and family relationships. As I mentioned, you live with your partner. She has her own knowledge about recovery and you work to support each other and hope to establish a long and stable partnership. You have also appreciated being accepted by her family.

[28] You have also re-established relationships with your own family members. Your family now see a man who is supporting himself and contributing, rather than asking for support or avoiding his responsibilities and offending. Their trust in you has been rebuilt. You really appreciate your relationships with them and being invited to family gatherings these days.

[29] Your presentence report, prepared by Joe Elliott (our AODT Probation Officer) is a positive one. You explained to Mr Elliott that you used to offend for money for more alcohol and how very unstable life was prior to entering the Court. At that time, you had no respect for yourself or for others.

[30] Mr Elliott sees you as highly motivated to address these issues and he assesses your risk of reoffending and of causing harm to others as low, so long as you maintain your commitment to abstinence. As he rightly stated, you will need to remain vigilant.

[31] The report recommends a sentence of Intensive Supervision which I now impose, for a term of 12 months on the recommended conditions, with Judicial Monitoring. I request the first report in four weeks (by 15 April) with the follow up reports every three months for the duration of the sentence.

[32] On the charge of refusing to permit a blood specimen to be taken, you are to be indefinitely disqualified under s 65 of the Land Transport Act, however I backdate the making of the Order by 12 months and one day, under s 85(1) of the Act, which means that you can now apply to the relevant authorities to seek to come out from under your indefinite disqualification.

[33] On the charge of Refusing to accompany a law enforcement officer, this is fineable only, and on it you will be convicted and discharged.

[34] I now invite the other graduate from today, Aaryn Paenga to stand while I make some closing comments to you both.

[35] It seems fitting to us that the two of you are graduating from this Court at the same time, having come into the Court at around the same time almost two years ago. You have each come from difficult circumstances and had so many challenges. It is fitting that Judge Aitken is present today having been the Judge who oversaw the initial phases of your time in the Court. Like me, she is delighted to be a part of this milestone event today.

[36] We know that being in this Court is not easy. It takes courage and commitment to make the necessary changes. It is important that you do not see this as the end of the road, but just the beginning of the next phase of your journey. We know that your goal for the future is to maintain abstinence and live crime-free as a productive member of the community.

[37] You have both made such enormous and positive changes in your lives over the past two years. We are pleased to have been a part of your journey and proud of your progress. Ensure that you give yourselves credit for how far you have come. Believe in yourselves. As we know however, today is a special day but also just another day in recovery. You never graduate from your addiction. Be honest with yourselves, keep it simple, do the suggested things and stay connected.

[38] We look forward to seeing you and any of your whanau at 'He Takitini' this coming Monday, the 21 March at the Mt Eden Salvation Army, and we also hope that you stay in touch with us.

[39] On behalf of the Court, and all the judges but particularly Judge Aitken, I now close by warmly congratulating you both.

[40] I now pass the rakau to our Pou Oranga Matua Ra, to farewell you both from the Court.

L Tremewan
District Court Judge