

**IN THE DISTRICT COURT
AT NELSON**

**CRI-2016-042-000075
[2016] NZDC 6749**

NEW ZEALAND POLICE
Prosecutor

v

AARON STEPHEN TAMIHANA
Defendant

Hearing: 18 April 2016
Appearances: Sergeant J Steffan for the Prosecutor
R W Ord for the Defendant
Judgment: 18 April 2016

NOTES OF JUDGE D C RUTH ON SENTENCING

[1] Mr Tamihana, you are before the Court today for sentence on a number of matters. They arise, in the main, out of a relationship you have or had with a certain person, clearly a relationship that did not find favour with your partner's family.

[2] You face charges today of intentionally damaging a TV flat screen, of intentionally damaging a car windscreen for which reparation is sought, for failing to appear in Court when you were required to on 3 February, and last, but most significantly, you appear on a charge laid under very recent legislation, the Harmful Digital Communications Act 2015 in that with intention it caused harm to a named person and posting that communication would cause harm to any ordinary person in the position of the complainant and posted it causing harm to that person. That charge is susceptible of a maximum term in prison of two years and/or a fine of \$50,000.

[3] In relation to the matters that are perhaps less serious, I am told that you and the victim of that matter were previously in a relationship. That might have changed. At about nine in the evening of 6 November last year she was at home in Nelson. She started getting text messages from you that became increasingly angry and warned of you coming to damage her property.

[4] You went to her address in fact, picked up a rock and threw it through the rear windscreen of her vehicle, causing that window to smash. The following day she was still at home, you arrived again. There was a further argument which became heated. You took her flat screen television set, mounted on the wall, you pushed it into the wall, creating a hole, and then allowed the television screen to drop to the floor and break. You then left.

[5] You said in explanation that you were drunk and regretted your actions. You said that the TV getting smashed, however, was accidental and was as a result of the argument between the two of you.

[6] You have previously appeared before the Court. Most recently that was in 2015 for an incident that happened in 2013 of assault with intent to injure. You also have a large number of matters in your list which indicate a real problem with alcohol. You have failed to appear in Court before. You have a conviction for injuring with intent to injure back in 2012 when you were in Palmerston North. Another failure to answer Court bail. Breach of post-release conditions on two occasions. Breach of intensive supervision in 2010. Male assaults female in 2010. Common assault in 2009. So your history is one that is littered with assaultive behaviour and behaviour that indicates an unwillingness to abide by Court-imposed sanctions.

[7] Your history goes right back to the Youth Court where you had a charge of assault proved against you where you were simply discharged. Your adult offending started in 2004 as well and by the end of that year you had already clocked up two male assaults female convictions.

[8] In relation to the matter which I regard as the most serious, that arose when your relationship became volatile and it is clear that there were attempts on a number of occasions by your partner's mother to have this relationship terminated. There were periods of separation after which there were periods of reconciliation. You were aware of her mother's disapproval of that relationship.

[9] On 13 December last year you sent a Facebook message request to the mother. You had never previously met nor communicated with each other. It included a video attachment with the comment, "What your daughter's really up to." That was opened and played by her. It showed a scene which for present purposes I will simply refer to as a sexual scene involving your partner and another.

[10] This unsurprisingly made the victim very upset, angry and sad to see her daughter being portrayed in this way. She felt feelings of despair and probably rightly took the view that this was really payback time for her not approving of this relationship. The only thing you could say about it was that your partner was a consenting party to the filming.

[11] I have read a victim impact statement from the victim in this matter and she expresses all of the matters that any mother would express. Having to see the disgusting film that you made, whether your partner was a willing party to that or not, is totally irrelevant in my book and the victim sees that time and time again in her mind every time she thinks of it, it causes her further distress.

[12] That charge is laid under legislation which is relatively new, as I said, Mr Tamihana. It was enacted by Parliament to deter, prevent and mitigate harm caused to individuals by digital communications. The reason for that is pretty obvious; we live in a world where it is very easy and certainly in a very cowardly way and impersonal third person way to communicate with others without fronting up yourself. The other problem of course is that in this day and age broad dissemination of such material is just at the touch of a button so to speak.

[13] So, it is really all about the victims of this sort of abuse and one of the things I have to take account of is the context against which this happened and, as I have said, I am pretty clear in my mind that this was all about retribution.

[14] There have been very few decided cases in this area because of the recent implementation of this Act and so there is little guidance for this Court from particularly any Appeal Courts as to where sentencing in this area should fall.

[15] I have a pre-sentence report about you which says that you have paid some insurance excess, you fixed some property, that you are working, that you have had alcohol problems, and you are trying to reduce your intake and it is thought that you would benefit from a programme.

[16] I have read a letter from you in which you explain your disgust for your own behaviour and your remorse, and you say that you are prepared to face the consequences of what you have done.

[17] I take the charge relating to the harmful digital communication as being the lead charge here, Mr Tamihana. I am of the view that the act that you carried out was designed by its very nature to have the maximum impact possible on this young lady's mother. The fact that this was a relationship that did not find favour with her simply opened the way for you to enforce your retributive malice upon her.

[18] It is difficult for me to think of a more cowardly or sinister attack. This legislation is relatively new and so I do not make the assumption that this is the worst case of its kind, goodness knows there may be more serious cases yet to come, although it is difficult for me to think of one at this moment.

[19] I listened to what Mr Ord has said on your behalf, but I think that the dominant principle of sentence here is not only denunciation and holding you to account, but more importantly protection of the public and deterrence, that is deterrence to you so that you do not do this again, and deterrence to others who might think this is a good lark, because I can tell you it is not.

[20] I start with a figure of nine months' imprisonment. I add to that three months for the totality of your offending. I add a further three months for your previous convictions for violent offending and failure to obey other Court orders. That is a total of 15 months' imprisonment. I give you a full 25 percent for your guilty pleas which brings me down to 11 months. I then have to ask myself whether you are a person who should have the benefit of an electronically monitored sentence, and I bear in mind fully that the higher Courts have said that home detention in particular is a real alternative to imprisonment.

[21] In my view, to not imprison you would send totally the wrong message to you and others who might embark on this sort of behaviour. My view therefore is that imprisonment is the only sentence for you.

[22] You are sent to prison on the main charge for 11 months.

[23] As to the matters that are lesser in moment, on the charge of intentional damage you will be sentenced to one month's imprisonment.

[24] For the intentional damage of the car windscreen I simply order that you pay \$715 reparation. Payments will be fixed six weeks after your release. There is no other penalty.

[25] For your breach of bail, it being not the first, you are sentenced to two months' imprisonment, they are all concurrent.

[26] You will be subject to standard release conditions for six months beyond your sentence end date and there will also be a special release condition for the same period to attend a short motivation programme to the satisfaction of the programme facilitator and probation officer.

D C Ruth
District Court Judge