

**IN THE DISTRICT COURT
AT HAMILTON**

**CRI-2016-019-002839
[2016] NZDC 15446**

THE QUEEN

v

AMY SIMEON-SMITH

Hearing: 28 July 2016
Appearances: T Tran for the Crown
M McIvor for the Defendant
Judgment: 28 July 2016

NOTES OF JUDGE R H RIDDELL ON SENTENCING

[1] Ms Simeon-Smith, you appear today for sentence on one charge, which is effectively a blackmail charge which carries a maximum sentence of imprisonment of 14 years. There is a pre-sentence report available to the Court and I see that in that report you have indicated that you do not have an address that would be suitable for an electronically monitored sentence. Through your counsel you advise the Court that if I am considering that kind of sentence then sentencing would need to be adjourned off to another date. I am not going to do that. I am going to sentence you today.

[2] I turn now to the elements of the offending and I think it has been well set out in your counsel's submission that this was a site which is not specifically a dating site but a situation where wealthy men by arrangement can assist young women who need help with paying various bills. Your counsel noted it was made clear by you on the website that you were not an escort or a prostitute, it was simply an opportunity

to receive financial assistance and in consideration for that financial assistance you would provide the victim with company, going out to dinner and that kind of companionship. When you had some serious bills that you were unable to pay, you indicated this to the victim. He had already paid you \$850 for tyres and other necessities and he indicated to you that if he was expected to meet this account with a finance agency, then he would expect you to sleep with him that night. That was not part of the initial arrangement as set out on the website but you were desperate to have the account paid and so sexual relations occurred.

[3] Very shortly after that the victim texted you to say the arrangement was off. You felt that you had been taken advantage of and you wondered whether the money you had been promised for that debt was now going to be paid. You then pretended to the victim that you had made some sort of intimate visual recording. That was not true. You then requested some money and an apology. You received \$500 from the victim but no apology. As a result this charge was brought. You entered a very early guilty plea. You agreed to enter into restorative justice but the victim was not willing to do so.

[4] There are a number of factors which I should have regard to and I refer first of all to the Crown's submissions which have been filed in writing. I have been reminded of the principles that apply in the Sentencing Act 2002 and they are the kind of things that require me to denounce your conduct, to hold you accountable, to keep the public safe from this kind of offending and I note that blackmail offending is regarded as very serious by the Court. I have also taken into account that there was an element of premeditation in your offending. It was an arrangement whereby the victim was supposed to provide you with financial support and it was only after the victim ended the relationship and that arrangement that you entered into this idea to blackmail the victim.

[5] The victim has been fearful as a result of this offending. He was afraid that there was a recording made and that it might be made public. He has set out in a very lengthy victim impact statement of the impact the offending has had on him.

He has talked about being fearful of going out socially, of resorting to staying at home, putting on a great amount of weight, eating junk food and that it is only now that he feels able to resume the life that he had before but he is still fearful nevertheless. He describes himself as being vulnerable as the result of this offending and as I say the effect on him is set out in the victim impact statement.

[6] Through the written submissions counsel has set out a number of cases describing the starting point in those decisions as between one to two years in prison and that there are various cases in which the end sentence date was between 10 to 12 months' imprisonment.

[7] On the other side of the ledger your counsel has set out also in written submissions the following factors. You have entered an early guilty plea. You are extremely remorseful for your offending. You have no relevant offending and in fact your previous criminal history is relatively minor relating to driving and drinking. The Sentencing Act 2002 also reminds the Court that the least restrictive sentence should be imposed and that there should be a rehabilitative element to any sentencing. I must take into account your age, that you are remorseful and that the pre-sentence report has in fact recommended a sentence of community work. Your counsel accepts that perhaps the starting point might be around 12 months in prison, but because of the other cases to which I have been referred, the Court can step down from prison or a home detention or community detention and instead impose a term of community work. I have also been reminded that you were prepared to stick by your side of the bargain in this arrangement which was that you would receive some assistance for your debts and that was the agreement. There was no initial agreement for a sexual liaison and that you felt pressured into that as being the only way by which you could resolve this pressing debt.

[8] I am satisfied that the decisions I have been referred to in which the Court imposed a term of imprisonment can clearly be distinguished and I turn now to the issue of sentencing. I think the mitigating factors in your favour far outweigh the aggravating factors, and while blackmail is a very serious charge and is treated seriously by the Court, I suspect that finding yourself before the Court today has been more than enough punishment for you. It means that you will carry that on

your criminal record as a conviction. I have also taken into account that through your counsel I have been told that the victim, despite the impact of the offending he has described on him, is nevertheless still recorded as being on that site and still putting him out there as being willing to assist young women.

[9] You are convicted on the charge. There are other decisions and *Darby* is one of them where the Court imposed 150 hours of community work where the offending involved \$5000. This involves \$500 and you have offered to pay reparation and I consider that a term of community work significantly less than that is appropriate in all the circumstances. You are convicted. You are sentenced to undertake 90 hours of community work and to pay \$500 reparation. That is to be paid at \$10 per week starting within 21 days.

R H Riddell
District Court Judge