

**IN THE DISTRICT COURT
AT PALMERSTON NORTH**

**CRI-2016-054-002934
[2017] NZDC 10390**

NEW ZEALAND POLICE
Prosecutor

v

SHERYLE MARIE MYERS
Defendant

Hearing: 18 May 2017
Appearances: Sergeant K Anstis for the Prosecutor
F D Steedman for the Defendant
Judgment: 18 May 2017

NOTES OF JUDGE G M LYNCH ON SENTENCING

[1] Sheryle Myers is 45 years old, and she is for sentence this afternoon on three charges of theft, six charges of burglary, one charge of using a document and one charge of failure to answer bail. I need to track through the sets of offending and as Mr Steedman observed the offending is over a broad period from August to January at a time when Ms Myers had just essentially unravelled.

[2] The first charge is the theft which is charging document 4452. Ms Myers was at the [Shop 1], she stole a Story doll valued at \$99.99 off the shelf, removed the packaging using scissors she had brought with her leaving the packaging on the floor, hiding the doll on her person and leaving the store without paying for it. So it is a burglary with a degree of premeditation to it.

[3] The next charge is theft 3849 Wednesday 28 September 2016 again at [Shop 1]. Ms Myers selected a make-up item, concealed it in her jacket, left the store without paying for it. It was valued at \$21.99.

[4] Next in time is a theft again at [Shop 1] 4128 15 October 2016. Ms Myers stole a fragrance gift pack valued at \$244.00 leaving the store without paying for it.

[5] Next in time is the first of the six burglaries 3846. At about 11.30 pm on Wednesday 19 October 2016 Ms Myers went to a McGiffert Street, Palmerston North property located at the rear of a large group of flats. Ms Myers entered through an insecure laundry door while the victims were asleep in the address, uplifted a laundry bag from the area, headed to the kitchen where she placed the contents of the fridge into the bag. She went into the lounge area uplifted a Codys alcohol box, and began drinking and filling the box with Xbox games. She took a medication bottle containing a tablet, then left via the laundry door where a police patrol had disturbed her. She went to the rear of the flats where a large hole in the fence provided an exit but stopped by the police before leaving.

[6] The next charge in time is the burglary 4454, overnight Saturday 12 November 2016 the defendant went to the victim's carport area on Appleby Place, and began to search it. She removed a black rubbish bag from the area, placed six pairs of shoes from a nearby shoe rack into the rubbish bag. In an attempt to gain entry to the victim's shed Ms Myers dropped a silver necklace on the driveway and the DNA testing showed that it was Ms Myers who was the burglar.

[7] The next offending relate to the burglaries 4588, 4587, and 4586. In relation to 4586 the victim in her 90s had been placed in a rest home leaving her fully furnished house also on Appleby Place uninhabited. Between 7 November 2016 and 30 November 2016 Ms Myers who lived behind the victim's house gained entry to the house by forcing a fan light window and unlocking a back door. Over a period of time Ms Myers slowly removed the victim's property including ornaments, a television, a vacuum cleaner, dining ware and food.

[8] In relation to 4587 this is, again, the same address but this time vacated and for sale, with a small amount of property being left at the rear of the house. On or about 23 November 2016 Ms Myers has gone to the back of the address and removed a silver oven, and clothes from the property.

[9] 4586 relates to a shed at the address. On or about 7 December 2016 Ms Myers tried the door of a shed, found that it was locked, has gone around to a roller door of the garage, it was also locked but it was able to forced a short way up and Ms Myers was able to remove a lawnmower and water blaster.

[10] The next in time is the using a document charge, charging document 0114. About 6.00 pm on Thursday 8 December 2016 Ms Myers was at Z petrol station, she used the victim's payWave cards to make two separate transactions totally \$70.39. At 7.45 am on Friday 9 December Ms Myers returned to the petrol station selected a number of items from the store, and attempted to pay but the first transaction was declined because the amount exceeded the card limit. Ms Myers then entered a PIN number which was incorrect. The transaction was declined. An item was removed from the collection bringing it below the payWave limit and the transaction was completed for \$79.00.

[11] The final burglary is charging document 0491. On 28 January 2017 at about 10.00 am Ms Myers went to the Duff Crescent property, she has jiggled the sliding door of the garage until the lock opened then taken a lawnmower from the shed placing on the lawn, and intending to take it. She has then observed a Hirepool lawnmower sitting unattended on the lawn, and has pushed this mower home. A rugby ball with the victim's name written on it was also taken. Ms Myers has then mowed her front lawn before putting the lawnmower on sale on the Internet for \$140, later selling it for \$100.

[12] The final charge for today is a breach of bail 9 March 2017. This is particularly galling as I gave you compassionate bail to clean out your Housing Corp house as you knew you were going to jail at sentencing. All you have achieved, of course, is putting off the inevitable and making it harder for those wanting the

compassion, you sought to get it though I rather think you do not really care too much about that.

[13] In relation to your history which Mr Steedman talked about you have been a regular offender, particularly, by way of dishonesty on my count something like 21 convictions for dishonesty.

[14] The sentencing report was helpful. Your offending is described as both compulsive and opportunistic. You would go out and shoplift if your family's needs were not being met. So there was clearly an underlying financial difficulty here I accept that, and as we know there are also some health issues. Your risk of offending is assessed as medium, arguably it is probably a bit higher than that. But I would imagine Ms Myers with the counselling and therapy which will come your way both from within Arohata under sentence and on release conditions you can make some headway.

[15] Your lifestyle was described as chaotic and without structure, and Mr Steedman spoke to that this afternoon. The report writer probably nailed it when you were described as having sometimes an inability to manage your circumstances, leaving you feeling overwhelmed and struggling to meet activities of the daily living. Gambling and misuse of alcohol and drugs is a problem and a work in progress for you.

[16] You are described as a recidivist offender with a medium risk of re-offending, someone however who accepts responsibility for her offending, but in the report writer's opinion there was a lack of genuine remorse and victim empathy.

[17] I am not going to track back over what Mr Steedman spoke to this afternoon, but one of the matters he did focus on was being remanded in custody has come with some good and some bad. The bad obviously your lack of contact with your partner, and more importantly the children. However, the good he described as you being able to engage with the Mental Health Services, and get the help that you need and you are compliant a medicinal regime and it is appearing to pay dividends. So it may well be with that and the therapy that you can make the sort of start that you

want to make on your release. You want to put the children front at centre, it is good to hear that and you want to be the mother to these children that they need, and that was encouraging to hear.

[18] The purposes of sentencing are to hold you to account, to denounce your offending and to deter you and others for offending in a similar way. The deterrence, of course, needs to be specific to you because it appears that you have a sense of entitlement that you can help yourself to the property of others. I do not overlook the rehabilitative needs because in amongst the reasons the report writer identifies the offending, there are issues such as alcohol and drugs and, of course, the mental health issues. Nor do I overlook the principles of sentencing and in particular the need for consistency in sentencing in matters like that and imposing the least restrictive outcome.

[19] In *Arahanga v R* [2013] 1 NZLR 189¹ the Court of Appeal suggested dwelling house burglaries at the relatively minor end of the scale should attract a starting point of between 18 months and two years and six months at [78] the Court said this:

This Court has deliberately not set a tariff for burglary because the range of circumstances in which the offence can be committed is so varied burglary of a domestic residence is a significant aggravating feature at sentencing due to the height of risk and confrontation with the occupants. Dwelling house burglaries at the relatively minor end of the scale tend to attract a starting point of approximately 18 months to two years and six months' imprisonment.

[20] The Court of Appeal noted that its decision should not be taken to set a fixed minimum starting point for dwelling house burglary. The High Court in *Snowden v Police*² observed that a burglary of a private residence normally attracted a starting point of not less than 18 months imprisonment. At [17] the Court said:

This aggravating feature by itself would in my view warrant a starting point of at least 18 months on the burglary charge.

[21] I appreciate that three of the burglaries of Appleby Place were of a house that was not occupied because the elderly occupant had gone into a home, but that was

¹ *Arahanga v R* [2013] 1 NZLR 189.

² *Snowden v Police* HC Hamilton CRI-2010-469-52, 15 July 2010.

something likely to be known to you given that she was a neighbour. The gradual removal of property from her home illustrates that you knew you had a clear run. Accordingly, while the risk of confrontation with an occupant was much less than in ordinary residential burglaries, the offending is aggravated by your targeting of this address and, of course, you went back yet again to remove property from the rear of the address once it was vacated and placed for sale, and yet again you broke into the garage.

[22] The burglary of [house number deleted] Appleby was of a carport, and the final burglary at Duff Crescent was of a garage, but in each case you have gone onto the properties. You have not gone into the homes at those properties and invaded the occupant's privacy, but you still created a risk of a confrontation with a returning occupant or observant neighbour. The Duff Crescent burglary is also aggravated by your involving your daughter, which is simply astounding.

[23] So of the six burglaries two involve actual entry into the home. The burglaries are, of course, the lead offences I propose to adopt a global start point. Totality plainly comes into play and I adopt a start point of two years and nine months.

[24] On the three thefts and the use the card I adopt a global start point of three months. A total start point of three years is not disproportionate to the overall gravity and culpability of your offending and requires no adjustment.

[25] I elect not to uplift the start point for your history of dishonesty. You have as I observed earlier 21 convictions for dishonesty charting your descent into drug misuse, however, had I uplifted to avoid the risk of double counting it would have been perhaps around three months or so, but I have elected not to do so.

[26] From the three years I deduct nine months for your guilty pleas. There is no deduction for remorse because there is no discernible remorse. The end sentence then is two years and three months which you are now convicted and sentenced to by imposing the following sentences:

- On the burglaries you are convicted and sentenced to two years and three months.
- On the thefts and the use of a document to two months imprisonment, but concurrent.

[27] It is tempting to add to the sentence for the failure to answer bail because of the reasons I discussed, but I am satisfied that the end of sentence of two years and three months meets the purposes of sentencing and is the least restrictive outcome. Accordingly, on the failure to answer bail you are convicted and sentenced to one month imprisonment, but concurrent.

[28] While I would like to impose reparation orders that is simply beyond your means now and likely to be beyond means on release.

G M Lynch
District Court Judge