

EDITORIAL NOTE: SOME NAMES AND/OR DETAILS IN THIS JUDGMENT
HAVE BEEN ANONYMISED.

**IN THE DISTRICT COURT
AT AUCKLAND**

**CRI-2014-055-002185
[2017] NZDC 13993**

NEW ZEALAND POLICE
Prosecutor

v

NICOLA JANE BELLWORTHY
Defendant

Hearing: 28 June 2017
Appearances: Sergeant D Lou for the Prosecutor
R Slade for the Defendant
Judgment: 28 June 2017

NOTES OF JUDGE H M TAUMAUNU ON SENTENCING

[1] Nicola Bellworthy, I will ask that you remain seated for the moment because I need to give reasons for the sentence I am about to impose and it will take me some time to do so. The charges that are before the Court for sentence are numerous. I have already indicated today that I intend to adopt a starting point that was originally adopted on a totality basis by the Judge who presided over the AODT Court eligibility hearing back in July 2015 and that starting point was four years' imprisonment. I have also indicated that a global discount, when looked at in the round, for the purposes of the rehabilitation efforts that have gone in during Ms Bellworthy's time in the AODT Court and also taking into account the guilty plea will result in a 50 percent discount from that starting point to arrive at an actual sentence of two years' imprisonment.

[2] The police are not opposed to the Court taking that approach today. What is also clear in the circumstances of the case is the fact that Ms Bellworthy spent nearly

two years being monitored by the AODT Court, she has only recently been exited, the reason for the exit from the Court was both a voluntary exit and as well as that a positive methamphetamine test was returned and although it is unfortunate that such a lot of effort has gone in while on remand and while being monitored by the AODT Court, this Court now has to deal with sentencing.

[3] The charges themselves do need to be dealt with in detail because it informs the starting point sentence and the Court does have to be transparent about what discounts are being applied here. So in chronological order, on 26 April 2014 Ms Bellworthy stole various items from [the victim business] in Broadway valued at just under \$500. She failed to appear on 27 June 2014. She received a heat gun and stud sensor valued at \$150 between 4 August and 22 October 2014. She failed to appear on 27 August 2014. She received an Apple Macbook Pro laptop and handbag valued at \$4400 between 30 August and 4 September 2014. She used a document, namely an ANZ bankcard on 4 September 2014.

[4] She received a black leather wallet valued at \$100 between 3 and 4 September 2014. She received a Toshiba laptop and Makita belt sander valued at just under \$1000 between 7 and 22 October 2014. She received a Stihl concrete saw valued at \$2000 between 27 September and 22 October 2014. She received registration plates valued at \$23.15 between 3 and 4 October 2014. She received two motor vehicle registration plates between 9 and 12 October 2014 valued at \$14.51. She received a Dewalt cordless drill charger and a Q card valued at under \$500 between 9 and 12 October 2014. She had in her possession glass pipes, straws and scales and empty point bags for the purpose of consuming methamphetamine on 12 October 2014.

[5] She stole a JBL Bluetooth speaker system valued at \$249 on 31 October 2014. She drove a vehicle while suspended on 11 November 2014. She had in her possession a glass pipe for the purpose of smoking methamphetamine on 24 December 2014. She committed burglary at [address 1 deleted], Meadowbank on 24 December 2014. Between 23 and 24 December 2014 she received a Toyota Altezza motor vehicle valued at \$12,000. She entered a building, burglary of an

address in Wairere Road The Gardens on 16 December 2014. She failed to appear in Court on 12 January 2015.

[6] She entered a building [address 2 deleted], Ellerslie on 24 January 2015, namely burglary. She used a document, namely a Warehouse Stationery BizRewards card on 31 December 2014. She used a document, namely an ASB bankcard dishonestly between 11 and 12 January 2015. She received an ASB debit card and ASB credit card valued at \$20 on 12 January 2015. She received a New Zealand drivers licence valued at \$38.20 in another person's name on 14 January 2015. She received jewellery valued at \$12,000 on 15 January 2015. She committed burglary of [address 3 deleted] between 15 and 16 January 2015. She committed burglary of an address at [address 4 deleted] on 16 January 2015.

[7] She committed burglary of an address at Mount Lebanon Crescent on 19 January 2015. She dishonestly used a document, namely a Q card for the amount of \$1002 on 20 January 2015. She received jewellery and electrical items valued at \$1200 on 21 January 2015. She unlawfully got into a motor vehicle on 28 January 2015 and finally she received an Apple iPad Mini valued at \$925, a men's gold Seiko watch valued at \$299, another watch valued at \$301, in total valued at \$1525 on 28 January 2015.

[8] Now the lead charges for sentence are the burglaries and all of the charges that carry with them a maximum penalty of seven years' imprisonment or more and that includes a number of charges of receiving and also a number of charges of using documents. All of the other charges where the maximum penalties are less than seven years have been dealt with on a totality basis as well.

[9] I accept that the burglary charges are the lead charges for sentence. However in adopting the starting point of four years it is clear that a totality starting point has been adopted by the AODT Court Judge. I intend to do the same. What is clear is that the offending that is before the Court is symptomatic of Ms Bellworthy offending in this manner, particularly committing burglaries and all of the other dishonesty offending in order to obtain funds to purchase methamphetamine. That is why she was allowed entry into the AODT Court because the offending was

motivated by methamphetamine addiction and the need to obtain money to purchase the drug.

[10] Four years as a starting point seems to me to be well within range for what is effectively spree dishonesty offending and as discussed with Mr Slade earlier today, it does seem to me to be necessary to adjust that sentence down to somehow take account of all of the rehabilitation effort that has gone in on the part of Ms Bellworthy in terms of her appearances in the AODT Court. As I mentioned earlier, Ms Bellworthy has spent nearly two years in that Court, addressing the underlying addiction and unfortunately did not quite make it. That is no reason for Ms Bellworthy to actually give up because the struggle is a lifelong one and although a sentence of imprisonment has been indicated and will be imposed today, I am going to grant leave for home detention to be pursued which leaves significant motivation I think for Ms Bellworthy to take up that opportunity and to apply in due course for home detention to be substituted and I would suggest to you, Mr Slade, that when that does happen that the matter be brought before me if possible, because I am the sentencing Judge it makes sense that rather than ask another Judge to try and come up to speed with what is going on. I would certainly be interested in a rehabilitative residential treatment centre as an option and would encourage you, along with Ms Bellworthy to pursue those avenues.

[11] Getting back to the discounts that are appropriate in this case. It is one of those situations where the AODT Court has worked on the principle that s 25 allows adjournments for the purpose of rehabilitation programmes to be undertaken and completed and where the programme has been attempted but not completed to the satisfaction of the Court, that is not the end of the matter, credit still must be given to defendants who go down this track even if they are not entirely successful.

[12] In order to be as transparent as possible about the sentencing process, it is necessary to try and calculate the appropriate discount required to take into account and give credit for the rehabilitation time that Ms Bellworthy has spent before the AODT Court. The starting point of four years' imprisonment equates to 48 months' imprisonment. It seems to me to be appropriate to credit 16 months as a discount from that starting point to take into account the time that has been spent in the AODT

Court which by my calculation would then result in a starting point sentence of two years eight months. From that two years eight months term of imprisonment, which is roughly in line with what was indicated in the first place, a further eight months should be discounted to give discreet credit for the guilty pleas and on that basis the sentence would equate to 24 months.

[13] That would be the appropriate sentence in respect of the burglary charges and all of the other charges that attract a maximum penalty of seven years' imprisonment or more and on that basis, Ms Bellworthy, on those charges that I have just indicated, you are convicted and you are sentenced to imprisonment for 24 months, based on that calculation that I have just outlined. You are granted leave to apply for home detention and I have already mentioned to Mr Slade the desirability of that application being brought to me if at all practicable to deal with in the future.

[14] As far as the other charges are concerned, they are charges that attract various maximum penalties ranging from three months to one year. On all of those charges there is a conviction and a sentence of one month concurrent imprisonment is imposed. On the driving charge, there is a mandatory disqualification that needs to be imposed, that is for six months commencing from today.

[15] I do not intend to order any reparation whatsoever, simply because of the fact that I have just imposed two years' imprisonment and Ms Bellworthy is in no position to meet reparation.

[16] I also bear in mind that I am about to deal with the outstanding fines. In light of the two year imprisonment term that I have just imposed today, all fines are remitted, the total on the s 88 report is \$7150.90 and I make it clear no sentence is imposed in lieu of the fines, I simply remit them because of the prison term that I have just imposed on the other charges. That should be all that is required today but I will just check if any other orders are necessary.

[17] Standard conditions on release apply. I also apply special release conditions for six months after the sentence expiry date which will assist Ms Bellworthy's transition back into the community, if home detention is not granted in the meantime.

Ms Bellworthy, I will no doubt see you in the near future with a home detention application at some stage but that is all that is required for today. Thank you.

H M Taumaunu
District Court Judge