

**IN THE DISTRICT COURT  
AT GISBORNE**

**CRI-2017-082-000201  
[2017] NZDC 15664**

**THE QUEEN**

v

**PAUL STANLEY JOHNSON**

Hearing: 18 July 2017

Appearances: J E Rielly for the Crown  
M Taumaunu for the Defendant

Judgment: 18 July 2017

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**NOTES OF JUDGE W P CATHCART ON SENTENCING**

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[1] As you know, Mr Johnson, you appear for sentence in relation to three charges. The most serious is a representative charge under the Harmful Digital Communications Act 2015 in that you caused harm to the complainant by posting digital communications. It is a representative charge. It is subject to a penalty of two years' imprisonment and/or a \$50,000 fine.

[2] You were also found in possession of cannabis plant and possession of methamphetamine.

[3] The offence of causing harm by digital communication is reflected in your conduct between 5 and 12 May 2017 towards the complainant. The schedule attached to the agreed summary records 58 threatening and/or abusive messages to the victim via Facebook.

[4] The messages included racial and religious slurs, a threat to bomb her Facebook account with messages and repeated threats that you would knock out her front teeth with a hammer. I have gone through those text messages. They are persistent, abusive and have a menacing nature about a number of them.

[5] With respect to the cannabis, when you were arrested on the lead offence, you were found in possession of one gram of cannabis head and .3 grams of methamphetamine in your pockets.

[6] When you spoke to the police you admitted sending the threatening messages to the victim. Also, you admitted that the cannabis was yours. You admitted the white crystal powder substance was yours, but you claimed it was glucose.

[7] For the purpose of sentencing you, I need to take into account the statutory purposes of the Harmful Digital Communications Act 2015. By its nature the offence is one that causes harm by posting the digital communication. Thus, there are important principles that must be reflected in the sentence. The first is to deter, prevent and mitigate the harm caused to this victim. Second, to provide that victim with a quick and efficient means of redress. There also needs to be a deterrence of you and others like-minded. There needs to be a sentence which denounces your conduct, seeks to hold you accountable for what you have done to the victim. There is also an element of protecting the public given your propensity to carry out these acts. I am conscious also that, if applicable, I need to look at your prospects of rehabilitation and reintegration.

[8] I have two cases which are of assistance to me in a broad sense. The first is *Police v Tamihana*.<sup>1</sup> In *Tamihana*, the person sent a Facebook message to the mother of the victim. Attached to the Facebook message was a video attachment which, in general terms, disclosed a sexual scene involving that female person and another. It thus caused real emotional distress to that particular victim. The Judge in that case adopted a starting point of nine months' imprisonment.

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<sup>1</sup> *Police v Tamihana* [2016] NZDC 6749.

[9] Mr Taumaunu referred me to a decision in *Police v Bust*.<sup>2</sup> There, the offending involved texting the complainant over what is said to have been a drug debt; threatening him and his father in a pretty serious way. The offender accepted a sentence indication of six months' imprisonment on the Harmful Digital Communications Act 2015 offence. As Mr Taumaunu accepts, the starting point for that offending had to be higher.

[10] I take into account the fact that this is a representative charge. The offending amounted to a campaign of racial and religious slurs peppered with texts of a violent threatening nature. In my view, the appropriate starting point is one of nine months' imprisonment.

[11] To incorporate the other charges, I intend to uplift that starting point by a period of one month to reach an overall position of 10 months' imprisonment.

[12] I must take into account your previous convictions. What makes those convictions particularly relevant is that there is clearly a propensity for violence in your history, particularly towards women. I note from the pre-sentence report that in your relationships with four previous partners, you have 11 convictions for male assaults female.

[13] Also, you have some very serious violent offences; injuring with intent to injure, assault with a weapon x 2, assault with intent to injure and wounding with intent to injure. You received terms of imprisonment over the years for that violent offending.

[14] There is therefore a need to increase the starting point to reflect these relevant convictions. From that history, it is clear that you had the propensity to carry out the threats in the text messages. It is relevant for that reason also. I thus increase the starting point by a period of two months.

[15] I have considered the pre-sentence report and the victim impact statement. The victim impact statement is dated 17 May. The victim does not indicate that she wants

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<sup>2</sup> *Police v Bust* [2016] NZDC 4391.

to resume any relationship with you. She says she is afraid of you and gives reasons for that.

[16] The pre-sentence report is not good reading. The author points out that you have a history of violent offending and you are capable of carrying out the threats. They assess your risk of causing harm to another person as high. If you are to continue in this relationship with this younger person, that is a matter of concern because you present as a high risk to her safety.

[17] Also, I note that you are a senior gang member according to the pre-sentence report. However, that is not a factor that has any adverse influence on this particular sentencing.

[18] You are entitled to a discount of 25 percent for your early guilty pleas in relation to this matter. Taking into account that mitigating factor, the overall sentence is as follows:

- (a) On the lead offence of causing harm by posting digital communications, you are sentenced to nine months' imprisonment. There will be standard release conditions for a period of six months after the sentence expiry date. There will be special release conditions for a period of six months after the sentence expiry date and they are stated in the pre-sentence report.
- (b) On the charge relating to possession of methamphetamine, one month's imprisonment, concurrent.
- (c) On the charge of possessing cannabis plant, one month's imprisonment, concurrent.

[19] Mr Johnson, the total sentence is nine months' imprisonment.

W P Cathcart  
District Court Judge