

**IN THE DISTRICT COURT
AT ROTORUA**

**CRI-2016-019-001079
[2016] NZDC 16010**

NEW ZEALAND POLICE
Prosecutor

v

[TIM FORESTER]
Defendant

Hearing: 18 August 2016

Appearances: Sergeant M Gould for the Prosecutor
D O'Connor for the Defendant

Judgment: 18 August 2016

NOTES OF JUDGE A J S SNELL ON SENTENCING

[1] Mr [Forester], you appear for sentence on one charge of causing harm by posting a digital communication. That carries a maximum penalty of two years imprisonment or a fine of up to \$50,000.

[2] What you did is that you, at the conclusion of a 10 year relationship, became very disgruntled. On 1 February, you posted a picture of the victim on a particular work-based Facebook page. The image depicted the victim completely nude in a frontal position with her face clearly identifiable, and it allowed viewers to easily identify her. You followed that up by doing the same thing on another Facebook page of a significant corporation. You did that on 6 February and it was the same picture. You followed that up again on a personal Facebook page belonging to the victim, and

then again, on 8 February, on a Facebook page of a friend of the victims. On that occasion, you posted the name of the victim and the address.

[3] Your actions were motivated to cause harm, humiliation and embarrassment. I have a victim impact report and that is exactly what you did do. The victim felt completely violated by what you did. She feels ashamed and embarrassed, discriminated against, and humiliated.

[4] You have relevant previous convictions, those being using a telephone and an offence of disturbing use of a telephone. Both of those offences occurred in January and you were dealt with in late January and early February for those two items.

[5] In sentencing you, you came before the Court and I gave you a sentencing indication of two months home detention and six months post-detention conditions. I reached that, taking into account both ss 7 and 8 Sentencing Act 2002, primarily to hold you to account for your offending, to promote in you a sense of responsibility for your actions, to uphold the need to give you a deterrent sentence to deter others from this type of offending, and to denounce this type of offending, but also bearing in mind that I must impose the least restrictive outcome that I can upon you.

[6] I would have set a starting point for you of around six to seven months of imprisonment. That would be reduced primarily by your plea, but there were some positive aspects in terms of submissions made to me at the time. That resulted in a term of imprisonment of around four months remaining.

[7] Because that is a short term of imprisonment and taking into account the plea of guilty which was part of the discount, and the fact that that has saved the victim coming along and having to give evidence and deal with this matter further, I decided that this could be commuted to home detention and I follow that sentencing indication and uphold that.

[8] Today you are sentenced to two months home detention. That is at the new address that has been provided, and that is at [address deleted].

[9] There will be six months post-detention conditions. The normal conditions of home detention will apply to you and that will also include that you are not to have, possess, or consume alcohol or any non-prescribed drugs during the period of home detention or post-detention conditions. In accordance with the sentencing indication that you received, during the course of the home detention and the post-detention conditions, you are not to possess, or have available to you, any items that are capable of internet transmission, so that you are not to be on Facebook or any other site where you have committed these offences, or actions that have led to this offence.

[10] Over and above those matters, I understand that there is an application today for a temporary protection order. There will be a protection order issued. I am satisfied that the victim is somebody who has had an action of effective domestic violence committed against her. I am satisfied that she is a victim and that she wants the protection order. That will be granted. You will be directed to attend a domestic violence programme. That will be the Hamilton Abuse Intervention Project Trust, and that is at Thornton Court, 135 London Street, Hamilton. You will be given documents relating to that, and with that, a temporary protection order for the victim.

[11] There is to be a non-association clause with the victim throughout the period of your home detention and post-detention conditions.

[12] You can be held in custody for up to two hours. You need to sign some paperwork. Once you have signed all of that, you are to go directly to the home detention address. Once you are there, you are to wait there until someone from the probation service arrives to hook you up with that sentence.

A J S Snell
District Court Judge