

**IN THE DISTRICT COURT  
AT WELLINGTON**

**CRI-2017-085-001569  
[2018] NZDC 1931**

**INLAND REVENUE**

v

**PAUL LE CHEMINANT**

Hearing: 26 January 2018  
Appearances: M De Villiers for the Crown  
P Brosnahan for the Defendant  
Judgment: 26 January 2018

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**NOTES OF JUDGE B DAVIDSON ON SENTENCING**

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[1] Mr Le Cheminant, you appear for sentence on 29 charges of aiding and abetting 3 companies, of which you were an owner and director, to apply PAYE and other deductions for a purpose other than payment of tax.

[2] Over a 4½ year period between January 2010 and July 2014 the companies did not meet payment of deductions totalling in excess of \$680,000. Subsequently around \$52,000 was paid; the unpaid amount for sentencing purposes is around \$635,000. As I observed at the sentence indication hearing, throughout the period of the offending there would have been undoubted warnings and contact from the Inland Revenue Department to you.

[3] That of course all sounds fairly bleak, but there were 2 salient features which emerged at the sentence indication hearing which, in my view, put the offending in context.

[4] The first was that the amount of default was only about 20% of the payment obligations of the 3 companies over the period. It was not a case of wholesale default; the companies met in excess of three-quarters of their obligations over that period.

[5] The second was a feature, which I just mentioned a moment ago, of efforts by you in 2014 when it was obvious that the companies were in financial difficulty to sell the businesses. To do so, approval from [business name deleted], the biggest creditor and the Inland Revenue Department would have been required.

[6] As I understand it, these arrangements did not materialise because the Inland Revenue Department would not approve. Had it done so it appears there would have been a very distinct possibility that a very significant sum of money, perhaps as much as \$350,000 or even more could have been made available to the Inland Revenue.

[7] Those features of the offending are unusual and must be seen against the offending as a whole and which, in my view, put it into a somewhat unusual category.

[8] I do not propose to do through the sentence indication remarks again, but I do propose to go through your personal circumstances because they are highly relevant to your sentencing today.

[9] You are 45 and you have no previous convictions. You are currently bankrupt; your adjudication is due to end in September of this year. You have been wholly compliant with the obligations imposed upon you by the Official Assignee. You have good employment where you are well regarded; your employer is supportive, fully aware of the charges you face and of your bankruptcy.

[10] At the moment \$150 per week is paid from your wages to the Official Assignee and on paid to creditors. This will continue until September this year. It is implicit, as I said at the time of the sentencing indication, that you would be able to meet a reparation order over time but today I am advised that family are prepared to assist you with an immediate order for reparation.

[11] You live with your partner and her dependent teenage daughter in accommodation suitable for either of the electronically monitored sentences of home or community detention. However, your employment and your shared child care responsibilities for your own 3 children make home detention a very problematic sentence, with a real risk that you might lose your employment and with the real risk of a very negative impact on your relationship with your children. For that reason the probation officer recommends a sentence of community detention; one, of course, which is further down the sentencing hierarchy.

[12] A significant point made by the probation officer is important and worthy of emphasis. If home detention were imposed and permitted absences were regularly granted on quite legitimate grounds, in practical terms the sentence begins to look like community detention in any event.

[13] Today the prosecution make it very clear that they would not support a sentence of community detention. Their submission is that it would be out of proportion to sentences imposed in other cases, would not properly reflect the gravity of the offending and would simply allow you to continue with your everyday life much as it is today.

[14] I have to say I do not agree with those submissions. I think people fail to understand that to be curfewed to your house 12 hours per day, 7 days a week for 6 months is a significant penalty; and if anyone believes otherwise frankly I think they are dreaming.

[15] At the sentencing indication hearing I settled on a starting point for the offending of around 3½ years' imprisonment. I indicated then that there should be a discount for your lack of previous convictions, the very significant and apparently quite realistic efforts towards reparation in 2014 and the reparation offer that was then made. After allowances for those discounts and a full credit for your plea of guilty, an end sentence of 2 years' imprisonment was indicated with commuting to home detention.

[16] Ideally, and normally, home detention should be imposed but I think I need to stand back from this and ask myself would such a sentence be more destructive than constructive. It seems to me imperative that you remain in the community, that you remain in employment, that you be available to assist with the care of your own children as much as is realistically possible. As well of course the offer of immediate payment of reparation is another mitigating feature which has emerged since the sentence indication was given.

[17] I intend to sentence you to community detention, community work and reparation. I make it very clear that the sentence of community detention is imposed as a reflection of your personal circumstances. If matters had not been properly raised by the probation officer and fully canvassed in the report, the normal sentence would be home detention; but this is a sentence unique to you because of the personal circumstances revealed in your probation officer's report.

[18] On each of the charges you are sentenced, firstly, to community detention for a period of 6 months. The curfew will commence on 29 January 2018 and on that date you must co-operate in the installation of the electronic monitoring equipment which relates to the sentence. Under the sentence you are curfewed to the address of [address deleted], Wellington between the hours of 7.00 pm to 7.00 am daily.

[19] Secondly, you are also sentenced to complete 300 hours' community work. I decline, despite the requests of your counsel, to impose the maximum. I have never imposed the maximum amount of community work; it is probably beyond the capability of just about anybody.

[20] You are also ordered to pay reparation in the sum of \$20,000 payable in full by 1 February 2018.

B Davidson  
**District Court Judge**