

**IN THE DISTRICT COURT
AT CHRISTCHURCH**

**I TE KŌTI-Ā-ROHE
KI ŌTAUTAHI**

**CRI-2019-009-002562
[2019] NZDC 11547**

THE QUEEN

v

PHILIP NEVILLE ARPS

Hearing: 18 June 2019

Appearances: S Dayal for the Crown
A Williams for the Defendant

Judgment: 18 June 2019

NOTES OF JUDGE S J O'DRISCOLL ON SENTENCING

[1] Mr Arps you appear for sentence on two charges today. Both charges are charges that have been laid under the Films Videos and Publications Classification Act. They both relate to events on 16 March this year. Both charges carry with them a maximum sentence of 14 years' imprisonment.

[2] The summary of facts that is before me indicates that on 15 March this year a male armed with several firearms entered two mosques, shooting and killing 51 persons and injuring many more. As the male carried out the attack he filmed the event on a GoPro branded camera attached to the helmet he was wearing.

[3] The video was livestreamed on to the popular social networking site, Facebook, and made instantly available to view by other Facebook users. The video

shows in high definition the murder and wounding of those victims involved in the attack. It is therefore considered objectionable under the Act. The video was subsequently distributed by Facebook users and within a short period of time was widely available.

[4] On 15 March you were sent an electronic copy of the objectionable video which I have just referred to. On 16 March you sent the video to another unknown person and instructed that person to modify the video. The purpose of the modification was to insert “crosshairs” into the video and include a “kill count”. Crosshairs are referred to the aim on the scope of the firearm. A kill count refers to an increasing number which would appear somewhere on the video, counting the number of persons killed as the video plays. You had the modifications completed so that you could distribute the video further as a Meme. A Meme is defined as an image video or piece of text, typically humorous in nature, that is spread rapidly by internet users.

[5] In another series of messages, you distributed the unmodified video to approximately 30 or so of your associates. On the same day you received the modified Meme video back from the unknown person.

[6] When spoken to you admitted both distributing the video to multiple persons and requesting that the video be modified. You also confirmed that the video was modified and you received a copy of the modified version. When asked about your opinion on the objectionable video you replied that, “It was awesome.” When you were asked about the deaths of the victims involved in the attacks, the summary of facts says that you showed little empathy and replied, “I could not give a fuck mate.” Those are the matters in the summary.

[7] You asked me for a sentence indication. I read and considered the submissions filed by both the Crown and your counsel concerning the sentence indication. I heard submissions on 15 April. I gave a written decision on 17 April setting out the sentence indication and the sentence that I would impose should you plead guilty to the two charges. You accepted the sentence indication that I gave you and pleaded guilty to the two charges.

[8] Your counsel today has asked that notwithstanding the indication, that I consider standing back from imprisonment and impose an electronically monitored sentence.

[9] I am now required to sentence you and to set out the reasons for the sentence indication that I gave you. The sentence indication that I gave you was that there would be a starting point of imprisonment of two and a half years. I indicated that the final sentence would be one of 21 months' imprisonment. I indicated in the sentence indication that I was not prepared to convert the sentence of imprisonment to a sentence short of imprisonment and impose an electronically monitored sentence.

[10] The sentence indication that I gave you in its written form amounts to 134 paragraphs. I am bound by the sentence indication that I gave you. The sentence indication discusses all the matters that were raised in the submissions and discusses a number of cases that I referred to. The sentence indication can be attached to my sentencing remarks now and form part of my sentencing notes. I do not intend to read out the full 134 paragraphs of the sentence indication that I gave you. What I do intend to do is simply to highlight some of the matters that I raised in the sentence indication and refer to other matters that were not part of the sentence indication that I have considered, and primarily that involves the pre-sentence report which I did not have at the time of the sentence indication.

[11] In my sentence indication I took into account a number of factors, a number of considerations, a number of issues, a number of principles and a number of cases that I had been referred to. I indicated in my sentence indication, and indicate to you now, that the primary purposes of sentencing today is that of denunciation and deterrence.

[12] Your offending glorifies and encourages the mass murder carried out under the pretext of religious and racial hatred. It is clear from all the material before me that you have strong and unrepentant views towards the Muslim community. [Religion and the whole... Please do not interrupt while I am speaking.

[13] I took into account a number of cases, and in particular a Court of Appeal decision called *R v Patel*¹ and a High Court decision called *R v S*². They are relevant authorities which I took into account, but little comparison can be made with them because of the uniqueness of your offending.

[14] I also took into account and accept the Crown submission that s 9(1)(h) Sentencing Act 2002 is applicable and that you committed the offence because of your hostility towards a group based on their submission. That is, under the Sentencing Act, an aggravating factor.

[15] I also took into account a number of mitigating factors that Mr Williams referred to. There is no evidence that you are connected with any terrorist organisation. You did not distribute the video after the Chief Sensor ruled it objectionable.

[16] I take into account the impact that this offending has had on your family and your business. I take into account that you have, I have been told, been in isolation while you have been in custody. I also take into account your plea of guilty and I also take into account that there is no evidence that you distributed the modified video.

[17] I think that your actions in distributing the video the day after the attack when families were still waiting to hear whether family members had been killed, demonstrates particular cruelty on your part and callousness on your part.

[18] I took into account in the sentence indication a number of matters that have been raised in other cases. Those matters include the nature of the publication that you distributed, the volume of material involved, the number of people to whom the material was distributed. I took into account your purpose in distributing the video and requesting the modifications. I took into account as the primary purpose of you distributing the video and making the modifications, your attempt to glorify the death of members of the Muslim community.

¹ *Patel v R* [2017] NZCA 234.

² *R v S* [2018] NZHC 2465.

[19] When I gave the sentence indication I did not have a pre-sentence report before me, nor did I have the matters that were referred to in the pre-sentence report. There are matters in the pre-sentence report that confirm that in my view the appropriate starting point is one of two and a half years' imprisonment.

[20] There are also matters in the pre-sentence report that confirm my view that your culpability is high. There are also matters in the pre-sentence report that confirm my assessment that this was in effect a hate crime against the Muslim community. There are also matters in the pre-sentence report that confirm my assessment that any sentence short of imprisonment would not achieve the purposes and principles of sentencing.

[21] You have made a number of comments in the pre-sentence report where you have attempted to justify your offending. The assessment made in the pre-sentence report is that you are at high risk of re-offending for similar offending. You have a view that the mainstream media is corrupt and owned by Zionist media groups. You have indicated that the request for the crosshairs and the kill count was an attempt to lighten up the video and to make it a bit funny. You have asserted your right to distribute the video under the banner of freedom to pursue your political beliefs. It is obvious from the pre-sentence report that you have shown no empathy or remorse, except for the cost that this offending has had towards you and your family.

[22] There are also other matters, Mr Arps, in the pre-sentence report that give me real cause for concern about you. I think to mention them all publicly in Court today would be seen by you as being a "badge of honour" to both you and to others that have similar political beliefs. By way of example, and I will give one example and good right-thinking members of the community can make their own opinion about it, but you have compared yourself, when speaking to the writer of the pre-sentence report, you have compared yourself to Rudolph Hess. Quite frankly there is no comparison, Mr Arps.

[23] I take as a starting point a sentence of imprisonment, as I indicated in my sentence indication, of one of two and a half years' imprisonment. That takes into account the seriousness of the offending, the gravity of the offending and your

culpability. I am not going to uplift it for your previous conviction for offensive behaviour in 2016. The police asked me to do that; I am not going to do that. I think that is reflected in the seriousness of the offending, the gravity of the offending, and particularly your culpability.

[24] I am prepared to reduce that, as I indicated, by two months to take into account the fact that any sentence of imprisonment may be served in a secure unit. I then intend to reduce that by seven months to take into account your plea of guilty. It was an early guilty plea and it saved a trial. You are entitled to full credit for that.

[25] The sentence, therefore, on both charges is one of 21 months' imprisonment. That is a short-term sentence of imprisonment and I am required by law to consider whether to reduce that from imprisonment to one of home detention. I am not prepared to reduce the sentence of imprisonment to one of home detention. First, I do not believe that an electronically monitored sentence would achieve the purposes and principles of sentencing. Secondly, while you have pleaded guilty, I do not see any indication of any remorse on your part. Third, the prospects of rehabilitation or you changing your views on religion or race are virtually non-existent. Fourth, you are not a young and youthful offender. In addition, your offending took place at home. Your risk of re-offending is, as I have said, high. The cumulative effect of all those matters is that I am therefore not prepared to reduce the sentence to one of home detention. The sentence that I therefore impose on both charges will be as I have said, 21 months' imprisonment.

[26] I intend to impose the standard conditions and special conditions of release. The special conditions are set out in the pre-sentence report. I impose those special conditions until six months after the sentence expiry date. A summary of those special conditions are:

- (a) You are to attend a psychological assessment with a departmental psychologist.
- (b) Second, you are not to possess or use any electronic device capable of accessing the internet or capturing, storing or distributing images.

- (c) You are to attend and complete any recommended intervention for alcohol and drug use to the satisfaction of your probation officer.
- (d) Finally, you are to make available any electronic device capable of accessing the internet that is used by you or in your possession for inspection by a probation officer.

S J O'Driscoll
District Court Judge