

**IN THE DISTRICT COURT
AT TAURANGA**

**I TE KŌTI-Ā-ROHE
KI TAURANGA MOANA**

**CRI-2021-070-002164
[2022] NZDC 7236**

THE QUEEN

v

RICHARD JACOBS

Hearing: 22 April 2022
Appearances: S Clark for the Crown
B Smith for the Defendant
Judgment: 22 April 2022

NOTES OF JUDGE T R INGRAM ON SENTENCING

[1] Mr Jacobs, here you are at the age of 45 years before the Court for sentencing for the first time in your life. You are facing charges of making an objectionable publication and then secondly a charge of publishing or distributing material which is threatening or insulting contrary to the provisions of s 131 of the Human Rights Act 1993.

[2] The first charge as I mentioned is laid under the provision of the Films, Videos, and Publications Classification Act 1993 and it carries a maximum of 14 years in prison. The circumstances are well known to you and I do not propose to go into much by way of detail. You made a video which incited hate against Māori people, and it included a number of completely unjustifiable claims by you about what would happen or would not happen.

[3] The reality of all that was bought home, I would suggest to you, when Judge Coyle gave you a sentence indication as long ago as 16 September. He said that in his view, for the reasons he set out in detail, that a starting point of two years' imprisonment was required for the totality of this offending. I could not agree with him more. I have carefully read his analysis and I do not propose to repeat it. I consider that the type of material which was produced and disseminated would well and truly justify a starting point of two years' imprisonment.

[4] I have received a number of reports on you. They all indicate that you are a man with a number of difficulties that other people do not have. You have had the misfortune to suffer some fairly well known conditions which has led you to a life of relative isolation, and you have come to the point where, like many people around the world today, you have literally "gone down the rabbit hole" looking for things on the internet which lead you in directions which on your own you probably never would have gone.

[5] The law of course accepts that people have different abilities in life, not everybody can figure everything out for themselves. You appear to be one such person and I accept that in practical terms you have had a disability which has precluded you from recognising the sheer idiocy of the views that you have espoused in that video.

[6] As you will be well aware from Judge Coyle's remarks the starting point on a charge of this kind with this kind of background has to be a sentence of imprisonment. And if I reflect for a minute on the reality of what a sentence of imprisonment would mean for a man like you it is a pretty serious punishment indeed.

[7] The thing you have to be concerned about if you are sent to prison, Mr Jacobs, there is not only what happens in there, with all the people who are there, and I know what they are like because I sent a good many of them there myself, you would have to deal with anything that came to you in prison, and then of course you would get out, and then you would have to deal with whatever came your way after you got out. A lot of the time it is what happens when you get out that is worse than what happens when you are in there.

[8] I accept, Mr Jacobs, that sending you to prison is going to be a particularly serious punishment having regard to firstly your personal characteristics as outlined in the pre-sentence report and much more clearly and explicitly in Mr van Rensburg's analysis. The question for me is given the extremely harsh nature of that punishment if I impose it, is it appropriate to send you there, or should I look for a more rehabilitative sentence?

[9] Mr van Rensburg's report makes it crystal clear that once you have talked to somebody with their head screwed on there is no difficulty in persuading you that the line of enquiry you had been following in your internet adventures was inappropriate, not likely to help anybody and is the result of twisted thinking.

[10] It seems to me, therefore, in line with Mr van Rensburg's assessment that you are someone who is well capable of being amenable to a suitable rehabilitative course, with a good chance that you will be rehabilitated if an appropriate course is provided in appropriate circumstances.

[11] I know from my experience as a Judge that the reality is you are not going to get that in prison, it is just not realistic to think that that is going to happen if you go to prison. I know very well that the record of people on home detention on rehabilitative courses is much better than with any other sentence. It, therefore, follows that a sentence of home detention offers the best prospects for your rehabilitation. That is no minor matter for a first offender who is 45 years of age.

[12] You are entitled to credit for your guilty plea, that would be worth 25 per cent. I accept that some more credit would be due in relation to your cooperation with the police and the matters set out in the psychological report, your lack of prior convictions and the fact that you have been off the internet for a year already.

[13] I have given careful consideration to what is an appropriate length of sentence, and I have come to the view that this is a case where home detention by itself is a significant punishment. But I do not consider that anything less than the maximum could ever be appropriate for what you have done here. To the extent that someone might say, well where is the credit for the guilty plea, the remorse, the co-operation,

the matters set out in the pre-sentence report, the lack of prior convictions, my answer to that is it is all contained in you not going to prison, just as simple as that.

[14] It is an exercise of judicial discretion to substitute one sentence for the other, and I consider that on balance the maximum sentence of home detention is the least sentence that could ever be appropriate for these particular circumstances. The harm that can be done by people doing what you have done is enormous.

[15] I accept that you did not have the intellectual tools to figure all that out before you did it, but I know only too well from what I have seen in this court room that people are easily tipped over the edge, people like you who spend their time on the internet, less time thinking more time digging down the rabbit hole for something that looks exciting and interesting to them. It would be no surprise to me at all to discover that if there was another shooting or some other incident that someone is going to quote your video as having been instrumental in what they did. It may not have occurred to you at the time, the reality of all that, but I know full well that people who see this kind of stuff do not unsee it, it remains with them forever and it colours the way they approach things.

[16] For all those reasons I consider that it is appropriate to deal with you by way of a rehabilitative sentence. The rehabilitative component will be contained in the conditions of the home detention but I consider that no less than 12 months home detention could ever be appropriate for what you have done here.

[17] In accordance with Mr van Rensburg's assessment I consider that a substantial sentence of community work is also desirable, not least because it will provide you with a way to make at least some reparation to the community who your actions have harmed.

[18] Taking all those matters into account I have come to the view that a sentence of home detention for 12 months is appropriate. On the charge laid under the Films, Videos, and Publications Classification Act 1993 which carries a maximum of 14 years' imprisonment you will be convicted and sentenced to home detention for a period of 12 months at the residence set out in the report. The conditions are as set

out in the report. There will be standard and special post-detention conditions for a period of six months after your detention end date again as set out in the pre-sentence report. You will also be sentenced to 300 hours community work.

[19] On the charge laid under the provisions of the Human Rights Act that has a maximum three months' imprisonment. On that you will simply be convicted and sentenced to 300 hours' community work.

[20] In relation to the sentence of home detention I want to point out to you what I invariably point out to others who are receiving that sentence from me. Those conditions that are imposed there mean what they say. You will need to sign up to them to get onto that sentence and you need to understand that I take them seriously indeed.

[21] The conditions include not to possess or use any electronic device capable of accessing the internet other than a device that has been approved in writing by a probation officer. And also you are not to possess or consume any alcohol or drugs not prescribed to you. You need to understand that says possess, you simply have a can of beer in your hand you are in breach of that. If you do, I will find out, you will be brought back in front of me, I will be sending you to prison. You will get what you would have got by way of a prison sentence on these charges, and I will give you something on top of that. My typical sentence for that would be something in the order of four to six months' imprisonment on top of that for breach of the condition. I have made it as clear as I can to you, you abide by these conditions perfectly and if you do not let us know now, and I will send you to prison and avoid the trouble later on.

[22] The net result for you today 300 hours' community work, 12 months' home detention.

Judge TR Ingram
District Court Judge | Kaiwhakawā o te Kōti ā-Rohe
Date of authentication | Rā motuhēhēnga: 27/04/2022