

**IN THE DISTRICT COURT
AT TAURANGA**

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

**CRI-2018-083-000668
[2019] NZDC 1707**

**NEW ZEALAND POLICE
WHANGANUI SPCA**
Prosecutor

v

LOUIS BRIAN TUIRANGI DELVES
Defendant

Hearing: 23 January 2019

Appearances: Sergeant S Brennan for the Prosecutor New Zealand Police
A R Lyne for the Prosecutor Whanganui SPCA (via telephone)
K Hadaway on behalf of J Myers for the Defendant

Judgment: 23 January 2019

NOTES OF JUDGE J P GEOGHEGAN ON SENTENCING

[1] Mr Delves, you appear for sentencing today on a range of charges: one charge of driving with an excess breath alcohol level, one charge of careless driving, one charge of driving while disqualified (both the driving while disqualified and excess breath alcohol level being charges that you have been convicted for similar offences on at least two previous occasions), two charges of breach of community work, one charge of intentional damage, one charge of resisting, one charge of breach of bail and four charges of failure to ensure adequate care of an animal.

[2] The maximum terms of imprisonment in respect of the animal welfare charges is one year imprisonment and in respect of the driving offences is two years' imprisonment.

[3] Looking at the summary of facts in respect of the animal welfare charges, they involve the ill treatment of two Staffordshire Bull Terriers named Tank and Sass. An SPCA inspector had been alerted to their poor condition and had called in to your home in June, 2017.

[4] The dogs were found to be in very poor condition. They were emaciated and infected with worms and fleas. Their discomfort and distress was obvious. Within two months of being taken into care, they had gained 10.5 and 9.5 kilograms respectively which shows what an emaciated state they were in when they were picked up by the SPCA.

[5] The driving and intentional damage charges arise from events on 12 May, 2018 as you were driving your car in the street in Whanganui. You lost control of your vehicle, veering across the other side of the road, nearly going down a steep bank. You were a disqualified driver at the time and you had a breath alcohol level of 983 micrograms, so you were over twice the legal limit.

[6] While in the cell at the police station after you had been arrested, you broke the wooden bed framing in the cell.

[7] The resisting charge arose on 11 June, 2018 when police were trying to locate you in order to execute a warrant. When they located you, you were abusive, threatening and refused to co-operate.

[8] The breach of community work charges arises from the fact that you were sentenced to 150 hours' community work on 22 August 2017 and while you had completed 118 hours, you failed to complete the remaining 22, although I acknowledge Ms Hadaway's submissions on your behalf that you have now completed your community work.

[9] You have two previous convictions for drink-driving offences and two for driving while disqualified. You have other convictions for wilful damage, breach of Court orders and dangerous driving.

[10] I have a total of four reports from Corrections by way of pre-sentence reports in this case and I need to expand on that. At the outset of this sentencing, Ms Hadaway sought a further adjournment. That is because a suitable address for an electronically-monitored sentence had not been located. I have declined to grant that adjournment and I have declined largely because you have either failed or refused to become meaningfully engaged in this sentencing process with the result that it has been delayed on a number of occasions.

[11] In respect of the driving charges, and perhaps the others, you pleaded guilty on 26 June, 2018 and were remanded to 4 September for sentencing. You were subsequently interviewed by a Corrections officer for a pre-sentence report. That report refers to the fact that you were too intoxicated at the time to complete an interview.

[12] Another appointment was made for 17 July. You did not attend that appointment. It was subsequently ascertained that you had gone to Tauranga and that move clearly was done without any communication with Corrections at all. A report dated 24 October, 2018 advised the Court that no suitable address could be ascertained for an electronically-monitored sentence. The matter was further adjourned.

[13] You apparently re-engaged with sentencing on 19 November but a further adjournment of the sentencing was required to try and find an address suitable for an electronically-monitored sentence.

[14] On 4 December 2018, you failed to attend an appointment with a probation officer. The report filed in Court referred to the fact that there was no response to telephone calls and attempts to contact you. On 14 December, a letter was sent to you by Corrections and there was no response. On 7 January, there was an attempt at phone contact by Corrections and there was no response.

[15] You have advised me that you were required to attend a family tangi on 7 January and I acknowledge that that may well be the case, but the reality is that you have had an extraordinary number of opportunities to engage with Community Corrections and that is why I am not prepared to give you any further adjournment today.

[16] Not surprisingly, the report, such as it is before the Court, recommends imprisonment and there is really no alternative in view of your offending. I have received helpful submissions from Mr Lyne regarding the animal welfare charges. It is suggested that an appropriate starting point, taking into account all four charges, is one of six to eight months' imprisonment.

[17] It is acknowledged that there are no tariff cases for offending of this kind but there is a need for sentencing consistency and the prosecution refer to the following aggravating features which justify the starting point referred to:

- (a) Firstly, there were two dogs rather than just one.
- (b) Secondly, the extent of neglect in this case was significant. These dogs were not just hungry, they were emaciated and one could readily accept that the animals were in significant pain and distress.
- (c) Thirdly, apart from the failure to provide food, there was a failure to provide appropriate shelter and obvious wounds on Sass were ignored.
- (d) Fourthly, the dogs were highly vulnerable and were chained up so were not able to roam for food.
- (e) Fifthly, you were in a position of trust regarding the care of the dogs and it could not be said that the lack of care was impulsive or a one-off incident over a brief period. It was obvious that these animals were in need of care and had been neglected for some time.

[18] Now I have heard from you directly today that you had left these animals with your mother, that you are not permitted back into your mother's home, that you were

not permitted to move the dogs. It seemed to me that you were endeavouring, effectively, to run a defence to these charges. The reality of the position is that they were your dogs. You were required to ensure that they were well cared for and you did not. I have no supporting evidence which would support the matters that you are referring to today.

[19] I have been referred to a number of authorities which involve similar offending. In considering these authorities and looking at the facts of this case, I adopt a starting point with reference to the offending of six months' imprisonment. I allow for your guilty plea, a discount of one and a half months which comes to an end sentence in respect of those charges of four and a half months.

[20] With reference to the animal welfare charges, the SPCA also seeks an order disqualifying you from owning dogs for a period of three years, an order requiring you to forfeit any other dogs owned by you, a reparation order for \$455.78 for the veterinary fees and a contribution to legal costs.

[21] I then have to consider the other offences. I consider that the driving and animal welfare charges are quite discrete offences and should be dealt with discretely and by way of cumulative sentencing provided that that does not offend against the principle of totality.

[22] The drink-driving offence particularly is a serious one. Your breath alcohol reading was high, your driving was poor and resulted in an accident. That in itself is testament to how affected you were by alcohol. You were a disqualified driver at the time. In my assessment, a starting point of nine months' imprisonment is appropriate with reference to that charge and the charge of driving while disqualified. Looking at the remaining charges, I consider that an additional sentence of one month would be appropriate.

[23] Accordingly, in respect of all charges bar the animal welfare charges, a starting point of 10 months' imprisonment is appropriate. I accept that you should be given a full allowance for your guilty pleas and that allowance is two and a half months leaving an end sentence in respect of those charges of seven and a half months. No further

adjustments are applicable. The total term of imprisonment therefore is 12 months. I consider that total term does not offend the principle of totality.

[24] I have to say that normally the Court would have the option of considering an electronically-monitored sentence. In a case such as yours, this is not possible in this case and that is because of your inaction and your conduct, but I consider it would be appropriate to grant you leave to apply for home detention if a suitable address became available.

[25] Accordingly, with respect to these charges:

- (a) You are sentenced in respect of the animal welfare charges to four months and two weeks' imprisonment.
- (b) In respect of the driving with excess breath alcohol charge, you are sentenced to seven months and two weeks' imprisonment.
- (c) You are disqualified from holding or obtaining a driver's licence indefinitely pursuant to s 65.
- (d) On the charge of driving while disqualified, you are sentenced to seven months and two weeks' imprisonment.
- (e) You are disqualified from holding or obtaining a driver's licence for 18 months.
- (f) On the charge of breach of community work, you are sentenced to one month's imprisonment.
- (g) On the charge of intentional damage, you are sentenced to one month's imprisonment.
- (h) On the charge of resisting, you are sentenced to one month's imprisonment.

- (i) On the charge of breach of bail, you are sentenced to one month's imprisonment.
- (j) On the charge of careless driving, you are convicted and discharged.

[26] The sentences in respect of the offences other than the animal welfare charges are cumulative. Cumulative on the animal welfare charges but concurrent with each other so your total sentence is one of 12 months.

- (a) There is to be an order disqualifying you from owning or possessing dogs for a period of three years, as per the draft order filed.
- (b) There is an order for forfeiture so that you are required to forfeit any other animals in your possession owned by you in accordance with the draft order filed.
- (c) You are ordered to pay reparation to the NZSPCA in the sum of \$455.78.
- (d) I direct you to pay a contribution of the costs of prosecution on the SPCA charges of \$250.
- (e) I grant you leave to apply for home detention.

[27] You are subject to the standard release conditions and the release conditions set out in the pre-sentence report dated 17 January 2019 to apply for a period six months from sentence-end date.

[28] I direct that a copy of these sentencing notes be forwarded to Mr Lyne for the benefit of the SPCA.



Judge JP Geoghegan
District Court Judge

Date of authentication: 08/02/2019

In an electronic form, authenticated pursuant to Rule 2.2(2)(b) Criminal Procedure Rules 2012.