

**IN THE DISTRICT COURT
AT HAMILTON**

**I TE KŌTI-Ā-ROHE
KI KIRIKIROA**

**CRI-2020-019-003741
[2020] NZDC 17572**

NEW ZEALAND POLICE
Prosecutor

v

MARTIN JAMES MCVICAR
Defendant

Hearing: 27 August 2020

Appearances: S Tohovaka-Staples for the Prosecutor
M Curran for the Defendant

Judgment: 27 August 2020

NOTES OF JUDGE G S COLLIN ON SENTENCING

[1] Mr McVicar, you appear today on two charges, the intentional damage of a TV the property of the Distinction Hotel and intentionally failing to comply with an order made under s 11 of the COVID-19 Public Health Response Act 2020. That charge carries a maximum term of imprisonment of six months.

[2] You have pleaded guilty at the earliest opportunity. You accept the summary of facts. Your lawyer has filed extensive submissions on your behalf.

[3] The situation is that you were in Australia for work and because of tragic family circumstances you were required to return to New Zealand at very short notice. This was necessary so that your wife could make an urgent trip to Scotland for those reasons. You hoped to be granted an exemption to be able to return home immediately

to care for your children. Unfortunately, things did not work out. The exemption that you sought was not granted and you were required to be in managed isolation in a hotel in Hamilton and were unable to return to Queenstown as you had hoped to do for very good reasons.

[4] I accept that you got tested before you came home. Before you left Australia, you emailed trying to obtain a compassionate exemption. You did all that you could in order to get back to Queenstown before you came here.

[5] On arrival in Auckland you were told that no exemptions would be granted, and you were placed on a bus to the Distinction Hotel in Hamilton. You were quite distraught really about that. Your family circumstances were difficult for you and you were troubled by that. However, it was clear to you what the rules were. You were spoken to about not leaving the facility. When it became clear that you may well leave you were approached and warned. Notwithstanding that you chose to leave. You went to a nearby alcohol store in Te Rapa Road where you purchased some beer and a bottle of wine, which you then took back to the facility and consumed.

[6] You have apologised. You say that you acted in a way you never would have done, that you were desperate, confused and felt alone. I have no doubt that that was the case having regard to the particular circumstances that saw you return to New Zealand and the difficulties that your family faced.

[7] You were arrested the next morning, but on your arrest, it was discovered that the television in your room had been damaged. I accept that you have pleaded guilty early. You have accepted full responsibility for your actions. You are by all accounts a responsible man with family and with business interests. You are 52 years of age. You have not previously appeared. You say that you are truly remorseful. I have got no reason to doubt that at all.

[8] There is also a significant public interest in the protection of our borders and the public have every right to be concerned about people that leave isolation when they should not have done. However, I accept that your culpability could be considered at the lower end of the scale and agree with your lawyer in that regard. You left only

for a brief time. You went to the bottle store and it appears that you returned shortly after without any deviation or any significant contact with any members of the public. I accept that you are of previous good character.

[9] There are some other matters which I think can be taken into account. Your lawyer highlights that you have already received significant punishment for your actions including the mental anguish at not being able to return home, and the fact that you were held on remand for some six days which for you would have been a significant punishment.

[10] Your lawyer urges me to impose the least restrictive outcome, but the offending does have to be marked by some sentence. You have offered to pay reparation for the television that has been broken, that can be paid by today. Therefore, on the charge of intentionally damaging the television you are to pay reparation of \$1,000 by 4 pm today.

[11] In relation to both charges, the intentionally failing to comply with the order under the Public Health Response Act and the intentional damage of the TV you are sentenced to forty hours of community work which is the minimum amount I can impose.

Judge GS Collin
District Court Judge

Date of authentication: 01/09/2020
In an electronic form, authenticated pursuant to Rule 2.2(2)(b) Criminal Procedure Rules 2012.