

**IN THE DISTRICT COURT
AT MANUKAU**

**I TE KŌTI-Ā-ROHE
KI MANUKAU**

**CRI-2020-092-001555
[2020] NZDC 22167**

NEW ZEALAND POLICE
Prosecutor

v

JAMES JOEY NGARO ANDERSON
Defendant

Hearing: 27 October 2020

Appearances: M Beresford for the Prosecutor
C Paterson for the Defendant

Judgment: 27 October 2020

NOTES OF JUDGE DAVID J HARVEY ON SENTENCING

[1] Mr Anderson, you are before the Court facing charges of posting a digital communication with the intention of causing somebody harm, that is serious emotional distress, threatening to kill, breach of intensive supervision and failing to comply with the direction of a medical officer of health under the COVID-19 emergency provisions. That offence, coupled with the way in which you carried out the threats to kill and your posting a digital communication, point to a person who seems to be prepared to do anything that they like without giving any thought to the harm that they might be causing others.

[2] The rest of the country, or most of it, gave up their civil liberties during lockdown for the greater good so that we would not be in the situation that is present in France and Spain and England and the United States at the moment where

COVID-19 is running rampant. There were no community transmission cases today and there have not been for the last five days. It may well be we have got it under control, but it is as a result of discipline. If everybody had done what you did, it might be an entirely different story, and that was the reason why we had the lockdown.

[3] As far as posting the digital communication is concerned, when the Harmful Digital Communications Act 2015 was enacted, the purpose of it was to deal with cyberbullying. It was to deal with the way in which younger people interacted with one another online. It was a considerable surprise to those of us who were involved in the enactment of the legislation and who researched its initial impact to find out, in fact, that most of the cases involving posting harmful digital communications involved failed relationships, like yours, and it was a matter of considerable concern that that was the particular problem that the legislation was going to have to deal with.

[4] Your particular offending as far as the harmful digital communication is concerned is very serious because it involves posting material online where other people are going to see it, where it is going to cause distress to the person that is written about, and you intend that, and there is no doubt that you did. It was a failed relationship and you wanted to get even and this was a way that you could do it.

[5] Now, it is not something that just happens on the spur of the moment, although Mr Paterson described it as a meth-fuelled rant. It requires quite a few steps to actually post a harmful digital communication, and the implications of it are quite severe. It may have gone out to your 200 friends or followers or whomsoever they might be, but the fact of the matter is that once material is posted on the Internet, it does not go away, it is there, it is there forever, and you may take away or discontinue the initial offending post but it will be around somewhere and it can crop up and cause the person about whom it was written considerable embarrassment again in the future, so it is an ongoing problem.

[6] The courts have recognised the seriousness of the offending by dealing with cases and looking at sentences of imprisonment, and it is recognised by both Mr Paterson and by Mr Beresford that we must start thinking about imprisonment as

the first point of the enquiry. Your lawyer, Mr Paterson, has suggested between nine and 10 months' imprisonment. Mr Beresford has suggested between 11 and 12 months. I am inclined more to the more serious level, simply because I consider this to be serious offending by its very nature, so my view is a starting point of 12 months' imprisonment with a further two months added on for the obstruction charge and for a breach of intensive supervision of one month. I am folding in the threatening to kill into the harmful digital communication.

[7] Because of your previous convictions, you get a further uplift of two months, that brings us to 17 months, but you are entitled to a discount for a guilty plea and that reduces the 17 months down to 12. Now, that brings us into home detention territory, and although Mr Beresford is of the view, and initially I must say that I favour it, that you should be going to jail and spending some time there, you have already spent a considerable amount of time in custody, and I take that into account. You have probably done the punitive part of the sentence, so now we can start looking at some form of rehabilitation, but it is not going to be just walk out of here with intensive supervision or supervision or something like that. I am going to sentence you to six months' home detention, and that will be served at the address that we have spoken about, [address deleted]. The period of time will be six months, and then following that, you will be subject to conditions for six months, and they are set out under the intensive supervision section of the pre-sentence report:

- (a) You are not to possess, consume or use any alcohol or drugs not prescribed.
- (b) You are to attend an assessment for a non-violence programme as directed by the probation officer.
- (c) You are to attend assessment for any other programme as directed by the probation officer.

Judge D Harvey
District Court Judge

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