

**IN THE DISTRICT COURT
AT MANUKAU**

**CIV-2016-092-420
[2016] NZDC 5418**

IN THE MATTER OF an application by the Chief Executive for
the imposition of interim special
conditions on a returning prisoner

BETWEEN THE CHIEF EXECUTIVE OF THE
DEPARTMENT OF CORRECTIONS
Applicant

AND ROBERT MAHURI AMAI
Respondent

Hearing: 22 February 2016

Appearances: S Symon and D Dufty for the Applicant

Decision: 30 March 2016

DECISION OF JUDGE J H LOVELL-SMITH

[1] This is an application by the Chief Executive of the Department of Corrections for the imposition of interim special conditions on Mr Amai, a returning prisoner pursuant to s 27(5) the Returning Offenders (Management and Information) Act 2015 (“the Act”) without notice. Mr Amai is returning to New Zealand having been deported from Australia pursuant to s 501 of the Australian Migration Act 1958, on 16 February 2016.

[2] The interim special conditions sought to be imposed in respect of Mr Amai are:

- (a) To reside at an address as directed by a probation officer, and not to move from that address without the prior written approval of a probation officer.

- (b) Not to travel outside of New Zealand, unless with the prior written approval of the probation officer.
- (c) To attend and engage in a rehabilitative assessment, and any subsequent recommended treatment or programme, as directed by the probation officer and/or assessor/treatment provider.
- (d) Not to associate or otherwise have contact with any person under 16 years of age unless under the direct supervision of an adult who has been approved by a Probation Officer.
- (e) The above conditions are to remain in force for 30 working days following the respondent's arrival in New Zealand on 16 February 2016 and will therefore expire on 31 March 2016.

[3] I have considered the following documents in support of this application:

- (a) Notice of originating application for interim special conditions on returning prisoner signed by Stephen Ross Farmer, dated 19 February 2016. Pursuant to s 41 of the State Sector Act 1988 the Chief Executive of the Department of Corrections has delegated to her authority under the "Act" to make this application.
- (b) Affidavit of Stephen Ross Farmer dated 19 February 2016 annexing a copy of a Western Australian Police – History for Court document dated 25 January 2009, a copy of the Perth District Court dated 9 July 2009 in respect of Mr Amai's convictions for five offences of sexual penetration of a child and one offence of indecently dealing with a child [details deleted] and a copy of the sentencing notes of the Geraldton District Court dated 19 December 2008 for violent offending.
- (c) Determination notice under s 19 of the Act dated 3 February 2016 signed by Inspector G T Byers together with a delegation of authority

signed by Michael Bush, Commissioner of Police, dated 18 November 2015.

- (d) Memorandum as to Background by the applicant dated 19 February 2016.

[4] The determination notice under s 19 of the Act dated 3 February 2016 signed by Inspector G T Byers has determined that Mr Amai is a returning prisoner in accordance with the criteria set out in s 17 of the Act, namely:

- (a) On 19 December 2008 Mr Amai was convicted in Australia, being an overseas jurisdiction, of:
 - (i) Threatening to kill and attempted unlawful wounding (violence convictions), which involves conduct that constitutes an imprisonable offence in New Zealand;
- (b) In addition, on 9 July 2009 Mr Amai was convicted in Australia, being an overseas jurisdiction of:
 - (i) Five offences of sexual penetration of a child and one charge of indecently dealing with a child (sexual convictions), which involves conduct that constitutes an imprisonable offence in New Zealand;
- (c) In respect of the violence convictions, Mr Amai was sentenced to an effective term of three years imprisonment.
- (d) In respect of the sexual convictions, Mr Amai was sentenced to an effective term of five years imprisonment to be served cumulatively on his sentence for the violence convictions.
- (e) The total effective sentence imposed on the respondent for both sets of offending was eight years, being a term of imprisonment of more than one year.

- (f) Mr Amai was released from custody within six months of his return to New Zealand which will be on 16 February 2016.

[5] Section 27(2) of the Act provides that the Court must impose a special condition sought unless satisfied they are unnecessary. Section 26(3) of the Act provides that the Court must not impose a special condition unless it is designed to:

- (a) Reduce the risk of offending by the returning prisoner; and
- (b) Facilitate or promote the rehabilitation and reintegration of a returning prisoner; or
- (c) Provide for the reasonable concerns of victims of the returning prisoner.

[6] Mr Farmer, on behalf of the Chief Executive of the Department of Corrections, has certified pursuant to s 27(2) of the Act that:

- (a) Mr Amai has a conviction for an offence in respect of conduct that would be a relevant sexual or violent offence for the purposes of Part 1A of the Parole Act 2002 in New Zealand; and
- (b) that the interim special conditions referred to above are immediately necessary and should be imposed until the hearing of the substantive application; and
- (c) that in his view the interim special conditions sought are immediately necessary for the purposes specified in s 26(3) of the Act, namely:
 - (i) reduce the risk of reoffending by Mr Amai; and
 - (ii) facilitate or promote the rehabilitation and reintegration of Mr Amai.

[7] Mr Farmer deposes in his affidavit that Mr Amai's criminal history in Australia in particular a copy of the Western Australian Police – History for Court document dated 25 January 2009 records his criminal history for 2007 and 2008. Mr Amai was convicted in the Perth District Court on 9 July 2009 for five offences of sexual penetration of a child and one offence of indecently dealing with a child [details deleted]. The sentencing notes of that Court record that:

- (a) [Details deleted];
- (b) The respondent was sentenced to an effective term of five years imprisonment for the sexual offending. This was to be served cumulatively upon an existing term of three years imprisonment he was serving for offences involving violence (described in more detail below). He was therefore sentenced to a total effective term of eight years imprisonment; and
- (c) The Respondent was made the subject of a lifetime restraining order in favour of the victim. Together with conditions not to contact her, he was subject to a condition not to possess or obtain firearms or a firearms license.

[8] Mr Farmer has also considered the sentencing notes of the Geraldton District Court dated 19 December 2008 for Mr Amai's convictions for violent offending. Those notes record that:

- (a) The Respondent was convicted after trial of one charge of threatening to kill his wife, from whom he was separated, and one charge of attempting to unlawfully wound [details deleted]. He was sentenced to an effective term of three years imprisonment;
- (b) The charges both arose out of a domestic incident on 16 June 2007, when the Respondent's wife allowed him to visit her and their children despite a protection order being in place. During the visit

jealousy and rage appear to have led to threats and violence by the Respondent; and

- (c) The Respondent has a criminal history in New Zealand. This includes historic convictions for wilful damage, resisting arrest, dishonesty and traffic offending.

[9] Mr Farmer considers the interim special conditions are immediately necessary because they will reduce the risk of reoffending and facilitate or promote rehabilitation and reintegration. The interim special conditions would do this by providing Community Corrections with the ability to effectively oversee Mr Amai's reintegration back into the community and closely monitor him to reduce the risk of him reoffending.

[10] The applicant is seeking an interim special condition that Mr Amai reside at an address as directed by a probation officer and not to move from that address without prior written approval of the probation officer. This special condition is also sought on an interim basis only, and may be removed once he has a suitable address within the community. The standard conditions do not allow Community Corrections to check whether a property is suitable prior to Mr Amai residing there and there is a risk that he will move, that the property will be unsuitable. This would require Community Corrections to direct him to find an alternative address which would not promote his reintegration into the community.

[11] The applicant is seeking an interim special condition that Mr Amai is not to travel outside of New Zealand without the prior written approval from a probation officer. This condition is sought on an interim basis to prevent Mr Amai from leaving New Zealand while Community Corrections is establishing contact with him and assisting with his reintegration back into the New Zealand community. It is unknown what level of support or familial ties, if any, Mr Amai has in the New Zealand community. Once initial contact is made and further information is received, the Department will evaluate its need for this condition. Without this condition it is considered that reintegration into the community may not occur and

there is an increased risk of reoffending or risk to public safety, should he choose to leave New Zealand.

[12] The applicant also seeks an interim condition requiring Mr Amai to undergo a rehabilitative assessment and programmes where appropriate. This condition is immediately necessary to facilitate rehabilitation.

[13] The applicant also seeks the imposition of a condition not to associate with, or contact a person under the age of 16 years, except under the supervision of an adult who has been approved in writing by a Probation Officer as suitable to undertake the role of supervision. The applicant considers the condition is necessary on an interim basis given the nature of the index offending.

[14] The applicant considers the condition is necessary on an interim basis until further information is received about the nature of the offending, the respondent's steps towards rehabilitation and any information about the concerns of victims.

[15] At this stage the applicant has only limited information about Mr Amai which has been provided by the Australian authorities. The applicant was only recently notified of his imminent travel. Further information is therefore being sought.

[16] The applicant has not filed applications for final special conditions at this stage. Once further information is obtained and Community Corrections have had the opportunity to meet with Mr Amai, a better risk assessment can be conducted. At a later date an application for final special conditions may be sought or interim conditions may be varied or withdrawn.

[17] Section 27(6) of the Act provides that interim special conditions imposed under this section expire after 30 working days after the returning prisoner returns to New Zealand, but a Court may extend the expiry of the conditions by a reasonable period to allow an application under s 26(1) to be finally determined.

[18] I am satisfied that the interim special conditions sought by Mr Farmer need to be imposed immediately from the time Mr Amai returns to New Zealand and meet the criteria set out in s 26(3) of the Act namely:

- Monitoring by the Probation Service is widely acknowledged as helpful in reducing the risk of reoffending; as well as rehabilitation and reintegration – that is especially so, considering that Mr Amai has returned to New Zealand from overseas.
- Attending assessment and engagement in rehabilitative programmes will, likewise, be of assistance to Mr Amai and deal with the concerns of victims; and
- Monitoring overseas travel will enable the Probation Service to properly provide for the interests of victims and prevent unlawful re-entry into Australia.

[19] For these reasons, there will be an order for interim special conditions to be imposed on Mr Amai from 16 February 2016 as follows:

- (a) To reside at an address as directed by a probation officer, and not to move from that address without the prior written approval of a probation officer.
- (b) Not to travel outside of New Zealand, unless with the prior written approval of the probation officer.
- (c) To attend and engage in a rehabilitative assessment, and any subsequent recommended treatment or programme, as directed by the probation officer and/or assessor/treatment provider.
- (d) Not to associate or otherwise have contact with any person under 16 years of age unless under the direct supervision of an adult who has been approved by a Probation Officer.

- (e) The above conditions are to remain in force for 30 working days following the respondent's arrival in New Zealand on 16 February 2016 and will therefore expire on 31 March 2016.

J H Lovell-Smith
District Court Judge