

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

**ORDER PROHIBITING PUBLICATION OF NAME(S), ADDRESS(ES),  
OCCUPATION(S) OR IDENTIFYING PARTICULARS OF  
APPELLANT(S)/RESPONDENT(S)/ACCUSED/DEFENDANT(S) PURSUANT  
TO S 200 CRIMINAL PROCEDURE ACT 2011. SEE  
<http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360346.html>**

**IN THE DISTRICT COURT  
AT AUCKLAND**

**I TE KŌTI-Ā-ROHE  
KI TĀMAKI MAKĀURAU**

**CRI-2020-019-004088  
[2020] NZDC 17361**

**NEW ZEALAND POLICE**  
Prosecutor

v

**[ELICIA HUBER]**  
Defendant

Hearing: 27 August 2020  
Appearances: T Veikune for the Prosecutor  
J Hamblett for the Defendant  
Judgment: 27 August 2020

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**NOTES OF JUDGE N J SAINSBURY ON SENTENCING**

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[1] Ms [Huber] is for sentence on a charge of breach of the COVID-19 Public Health Response Act 2020. Namely she, along with others, intentionally failed to comply with s 11 of the Act by leaving a managed isolation facility. In other words, escaping quarantine.

[2] The events surrounding this are as follows. The former partner and father of her children died in July this year. Soon after, Ms [Huber] and her children arrived in

New Zealand wishing to attend the funeral. They arrived on 20 July 2020. It was anticipated the funeral would be held on 25 July. They were then placed in quarantine. The quarantine or managed isolation meant that they would miss the funeral. Accordingly, an application was made for compassionate leave to attend the funeral. That was denied.

[3] On 24 July a second appeal was made with an alternative arrangement proposed. The logistical arrangements for the managed isolation had meant that the family were being quarantined in Hamilton. The tangi was to be held in Auckland. It was proposed that the body could be brought to Hamilton, there would be able to be a short visit by the family to say goodbye to the deceased and then a return to managed isolation. On 24 July, an answer to this application was expected. It seems that the answer was delayed throughout the day.

[4] At about 7 pm that evening, the defendant, along with her children, decided to leave the isolation facility with a view to travelling to Auckland. I understand the proposal was either that they would go to the funeral in Auckland or perhaps visit where the body was lying to pay their respects, say goodbye and return.

[5] The summary of facts, to which the defendant has pleaded and which is the basis on which I am sentencing, notes that the youngest child managed to get to Auckland and indeed surrendered to the police at an Auckland address in the early hours of 25 July. Ms [Huber] and the other children were found by police relatively soon after leaving, certainly around within an hour. The explanation that was provided to the police by the defendant was that an arrangement had been made for friends to come and pick them up and take them to Auckland.

[6] I need to assess the gravity of the offending to set a sentence start point. I then need to take into account whether there are other factors that may add to that sentence. I then need to consider mitigating features before reaching what is an appropriate end sentence. Insofar as they exist, and there are not many other cases, I need to take into account the way similar offending has been dealt with by the courts.

[7] Ms [Huber] has been living in Australia in more recent times after leaving New Zealand in around 2018. I note that there is some previous criminal history. It is not at the highest level at all. The matters that are there of more recent times include driving while suspended, breach of community work, giving false particulars, failing to comply with a prohibition to drive, driving vehicles that had non-operational orders and some theft and dishonesty matters including unlawfully taking a vehicle. The main concern that that raises in the context of this offending is that there is something of an indication of a level of self-entitlement. In other words, when you want to do something you do it, as if the rules do not apply to you.

[8] In terms of this offending it has been argued that this was very much a spur of the moment decision, that there was no premeditation. I have to say that that does not fit well with what is in the summary of facts. The indication that there was an arrangement for family to come from Auckland in order to pick up you and the other children indicates a degree of planning. The fact that one of the number managed to get to Auckland during this period of time, in terms of lockdown and the like, indicates that that plan, at least in part, had been put in place. So it may well be that the preference was to hope that you would be given permission to go and view the body, and it is to your credit that that is what you did try to put in place, but it is difficult to avoid the inference that there was a backup plan there and the backup plan involved breaching the quarantine.

[9] The danger of that is it meant that you and the children would leave the quarantine and then be in the company of others, ie whoever it was that was driving down. You would be in their company while they drove you back up to Auckland. There was the potential to meet other family where the body was lying. Even if there was scrupulous distancing kept, there was still the danger of infection being spread because of contamination in the house where the body is lying. There is then the potential of further spread as someone drives you back to Hamilton and through the car that was used, and the like.

[10] On one hand the risk of you spreading COVID may seem to be an unlikely scenario and perhaps speculative. Except we have seen what happens in Victoria where with only, it seems, a couple of people coming back into that community there

is the COVID virus spreading again. That is why it is so important that these protections are adhered to and that is why compliance with quarantine, even in the face of personal hardship, is vital. The reality is that COVID in our community will lead to serious illness, long term health consequences and in a small but significant number of cases, death. It is death of others' loved ones. Of course, the families of those deceased will not attend the funeral or tangi, as others have not been doing so up until now. They will be asked to put the wider community first, something that the vast majority of New Zealanders have done.

[11] I appreciate that having the opportunity to see the deceased and say goodbye is important. I understand that it is something that great weight is put on in terms of Māoridom, but we need to strike a balance between those factors and protection of the wider community. Putting self before protection of the community does not accord with tikanga.

[12] So where does this fit. It is not the worst level of this offending. It is not the situation of someone who knows they are infectious going out into the community. However, you were the decision maker in this and the leader in it. Your actions pulled your children into this offending and the greater the numbers magnified the risk. There was planning. There had to be arrangements made for the family to come down.

[13] In terms of other cases there is nothing in terms of this particular section. But there are cases relating to those who were out during lockdown when they were not supposed to be. Where there had been persistent offending in those instances, ie people driving out when they should not, starting points of imprisonment have routinely been considered appropriate.

[14] Perhaps a high watermark is *Abdullah v Police*.<sup>1</sup> Mr Abdullah had been warned about being out when he should not and eventually was charged. There was a starting point of five months' imprisonment, from a maximum penalty of six months. An end sentence of three months' imprisonment was imposed.

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<sup>1</sup> *Abdullah v Police* [2020] NZDC 7240.

[15] In other cases where there had been those out when they were supposed to be in lockdown, lesser starting points but, nevertheless, starting points of imprisonment were imposed.<sup>2</sup>

[16] In this case however, this is someone coming from overseas where it was important that there was quarantining and that the quarantine was observed and respected. I consider a starting point of imprisonment is appropriate. It is not at the higher end of what this is, but it is nevertheless serious. I would consider a starting point around the two to three month mark is appropriate.

[17] In mitigation, it can be said that grief is likely to have clouded better judgement. It may also be that the negative tests that had been received gave a false sense of safety and caused a decision to be made that would have been better to have been avoided. It is to your credit that attempts were made to do things properly, to seek compassionate leave as an alternative. Those matters certainly reduce that culpability and I would deduct 50 per cent for that. Then there is the guilty plea, to which you are also entitled to discount.

[18] That still leaves at this point an end sentence of imprisonment. So the issue now is whether there are community-based sentences that would be appropriate. The most appropriate is an electronically monitored sentence. However, as things stand that is not available. The position as to alternative sentences really is summarised in this way, as your counsel has said. There is not an address for an electronically monitored sentence. You are not in a financial position to pay a fine. Community work cannot be done at present and, in any event, you wish to get back to [Australia] and get on with your lives. That position, set out both in the submissions and in the pre-sentence report, in essence excludes alternative sentences. So what is proposed by your counsel is a sentence of come up if called upon.

[19] I agree with the police. This is a situation where general deterrence is important. We have a crisis which threatens our entire community and without the

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<sup>2</sup> *Police v Tui* [2020] NZDC 7175; *Police v Cooper* [2020] NZDC 6922; *Police v Te Tau* [2020] NZDC 9268; *Police v Tahuri* [2020] NZDC 8424; *Police v Matangi* [2020] NZDC 8358 and *Police v Scott* [2020] NZDC 6514.

entire community putting self-interest second and community interest first, we are all at risk. I cannot see how a sentence of come up if called upon, given the seriousness of this, is appropriate. So the position I am now in is that from that starting point of imprisonment all other options have been excluded.

[20] What I consider appropriate in terms of deterrence and in terms of the circumstances you are at, taking into account the guilty plea and the other circumstances is 14 days' imprisonment and that is the sentence.

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Judge NJ Sainsbury  
District Court Judge

Date of authentication: 31/08/2020

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