

MINISTRY OF SOCIAL DEVELOPMENT
Informant

v

N [REDACTED] M [REDACTED] H [REDACTED]
Defendant

Benefit Fraud.

Counsel: A Robles for the Chief Executive
J Fraser for the Defendant

Judgment: 8 February 2011

NOTES OF JUDGE D FLATLEY ON SENTENCING

[1] Ms H [REDACTED], I have read all the documents that have been file, the probation report, the very helpful submissions from Ms Bunt the solicitor for the Ministry of Social Development. She has referred to relevant cases and I have had a look at those cases.

[2] You are facing four charges of what is commonly referred to as benefit fraud, each carrying a maximum of seven years imprisonment. The offending occurred between August 2004 and August 2005 and then again between November 2008 and May 2010. You received benefit monies, being DPB, temporary additional support, and accommodation supplement. At the times you received these different benefits you were in a relationship, but claim that you could not rely on your partner to provide an income and that you had children whom you needed to provide for. When specifically asked when you were receiving these benefits you said that you

were single. You gave different information at different times about your domestic situation.

[3] The total amount that you received in relation to these charges before the Court was \$40,659.61. You do have previous convictions along the same times relating to over-payments of \$8,395.10 and \$5,362.79 in 1998 and 2002 respectively. You received a warning and community work in relation to that offending. You will be aware that that offending directly impacts on this. It is an aggravating feature, as Mr Fraser has said.

[4] As I have already indicated I have read the probation report. It does not really raise anything of real note. I have read the helpful submissions from The Ministry as well. In sentencing you I have to have regard to the purposes and principles of the Sentencing Act at s 7 and s 8, which I have had regard to. Any sentence I impose on you must be designed to hold you accountable for what you have done. What you have done here harms every single person in the community who pays tax. You have taken money away from the community that could be used for better things. There is an awful amount of money that gets lost to the community in this way. The community expects an appropriate response. The sentence must also be designed to promote a sense of responsibility for your offending. It must denounce your conduct and it must be a deterrent from future offending on your part, but also on the part of others.

[5] In the submissions filed by the Ministry's solicitor she refers to relevant cases; the High Court decision of *Hogan* which indicates that a deterrent penalty does not necessarily require imprisonment. She refers also to the case of *Ranson*, which Mr Fraser referred to. That case demonstrated that there is some benefit fraud cases where home detention will be considered as an appropriate sentence. Home detention could have been considered by me today. I have had that discussion with Mr Fraser. You have heard that. However, it has not been able to be properly traversed in the probation report because for some reason not clear to me you did not provide all of the necessary details required to enable that assessment to be completed. I do not know what that is about, but I would have thought somebody in your situation would have taken things very very seriously and made sure that the

Probation Service had what it needed and that it was able to consider home detention. You would have known presumably through discussions with your lawyer that home detention was a possibility here. I cannot for the life of me understand why you would not have attended to everything to ensure that that could have been before the Court today. However, it is not and I am left therefore with only one alternative and that is to impose a sentence of imprisonment. Mr Fraser has acknowledged that in discussions.

[6] I am able to grant leave for home detention to be substituted if an appropriate address can be obtained. I am comfortable in doing that but I am not going to put the sentencing exercise off. That would require another three or four weeks for the Probation Service to conduct its enquiries and if I was to put the matter back into a sentencing list it would not be until April. Matters need to be dealt with now. You have had ample opportunity and I am not, as I say, going to put this off.

[7] It is a question of the appropriate length of a sentence of imprisonment. I have to have regard to the aggravating feature of your offending, and they are well set out in the submissions from the Ministry's solicitor, including breach of trust; the length of time over which the offending occurred - she has calculated that to be 2.5 years in total; the amount received, which I have already noted at \$40,659.61; the fact that on several occasions you declared that you were single; you declared also that you had stopped living with your partner; you then resumed your de facto relationship but omitted to advise the Ministry. The Ministry takes the view that your offending involved a significant amount of intent; you have previously been prosecuted; I have referred to that. They are the aggravating feature. The mitigating factors here are you pleaded guilty early and you admitted the offending when confronted by an investigating officer.

[8] So to a sentence of imprisonment. I take the view that the appropriate starting point having regard to all relevant factors, including your previous offending which results in an uplift effect, is 12 months imprisonment. You get credit for those mitigating factors I have referred to, particularly your guilty plea and your willingness to be up-front about matters and co-operate. I deduct three months

(25%) resulting in a nine month imprisonment sentence. If you were to be sentenced to home detention it is likely that you would have received a sentence of around four or five months. The submission from the Ministry's solicitor was a starting point of five months. Mr Fraser said today when I asked him, that he would probably struggle to argue against a sentence of home detention of around four months. With a sentence of nine months imprisonment you serve half, so what I have sentenced you today by way of imprisonment is very much in line with any sentence of home detention that might have been otherwise imposed, and could still be imposed if an address can be obtained.

[9] I need to say also, having regard to the *Hogan* decision that a sentence of nine months imprisonment is very much in line with sentences imposed in cases considered in that decision, with leave to apply for home detention.

[10] You will therefore be sentenced to nine months imprisonment on each charge, to be served concurrently. Leave is granted for you to apply for home detention. There will be standard release conditions imposed for a period of six months beyond sentence end date. No special conditions are required. There is no reparation sought. Stand down.

D Flatley
District Court Judge