

**IN THE HIGH COURT OF NEW ZEALAND  
NELSON REGISTRY**

**CRI 2008-042-1111**

**THE QUEEN**

v

**PAUL DAVID GARLICK**

Counsel: J C Bonifant and C P Stevenson for the Crown  
H W Riddoch and K R Starnes for the Accused

Date: 13 March 2009

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**SENTENCE OF WILD J**

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[1] Mr Garlick, you appear for sentence on four charges. They are:

<b>Date</b>	<b>Crime</b>	<b>Relevant provision</b>	<b>Maximum penalty</b>
15.3.08	Harassment	s8 Harassment Act 1997	2 years imprisonment
16.3.08	Harassment	Ditto	Ditto
18.3.08	Drink driving – a breath alcohol reading of 1004/400	s56(4) Land Transport Act 1998 – 3 <sup>rd</sup> conviction	2 years imprisonment or a fine not exceeding \$6,000 <b>and</b> mandatory 1 year disqualification
18.3.08	Attempted murder	s173 Crimes Act 1961	14 years imprisonment

[2] You pleaded guilty to the first three of those charges upon arraignment on the afternoon of 11 February.

[3] The jury found you guilty of the fourth and most serious charge – attempted murder - following a trial here in Nelson over the following five days 12-18 February.

[4] All the charges arise out of your conduct toward Ms Elizabeth Hampson. You and Ms Hampson worked together at Placemakers from about March 2007. Around about September or October the relationship between the two of you changed from friendship to an intimate relationship. Because of this, you transferred to a different branch of Placemakers.

[5] Toward the end of 2007 tensions arose in your relationship with Ms Hampson. She said that she indicated to you that she was not ready to enter into a new relationship, but needed more time and – to lapse into the vernacular – more ‘space’. You claim that then, and subsequently, you got mixed messages from Ms Hampson.

[6] Whatever the truth is, Ms Hampson did not contact you on Christmas Day to finalise arrangements you say you had with her, for you to call round and deliver Christmas presents for Ms Hampson and her two children.

[7] You went to her home at around 7 am on Boxing Day. You agree that, when she answered the door, you put down at the door the bags containing the Christmas presents and walked off in an angry way. You also accept that you then came back again and asked her if she wanted you to leave her alone. Again, your account and hers as to what then happened differ. She said that she told you that she did want you to leave her alone and that you then left. She told the jury that she was relieved that she had finally told you that, and you had left. On your account, she then invited you in and opened at least her own present while you were there, and you left after she had given you a hug and told you that she would be in touch with you.

[8] On New Year’s Eve you went to her home again, uninvited, at about 8 am. She rang her husband who came around with one of the Hampson children, on the pretext that they had come to get something. While this was occurring, Ms Hampson left the property, climbing over the back fence and carrying on through a

neighbour's property. Her husband collected her from an adjoining street and took her to work. You called in at Placemakers later in the day and made a sarcastic and angry remark to her about that to the effect "That was very clever, thanks very much Liz".

[9] These events upset Ms Hampson. She spoke to the Human Resources Manager at Placemakers who took her to the Police. The Police prepared Harassment and Trespass Notices which were served on you that afternoon. When you became aware of this, you sent Ms Hampson a text saying "See you in Court".

[10] What follows is a summary of the more significant events that followed.

[11] You sent flowers to Ms Hampson at Placemakers. You had a pair of tramping boots delivered to her home. You then had a friend, Mr Simon Tyler, deliver a letter and then (on Valentines Day) flowers to Ms Hampson at her home. You subsequently rang her to ask about the flowers, and she told you again to leave her alone. You did not. You tried to ring her at work and at home. You did speak to her once, apparently for about 13 minutes on 2 March. On 12 March, after seeing her in her car at the New World in Nelson, you followed her through Nelson. She was frightened to the point where she called out for help to a passing policeman.

[12] On the evening of Saturday 15 March you went to Ms Hampson's home. She had a friend there, it seems out of concern about being home alone. She thought she heard a noise outside and saw you on your hands and knees by a back corner of the house. She screamed. Neighbours came running and you eventually left down the driveway, but not before you had said to Ms Hampson, or her friend "Why didn't you tell me there was somebody else?".

[13] It is not clear whether you went home or not that night, because you were again at Ms Hampson's home the following morning, Sunday 16 March. Because she was now really frightened of you, Ms Hampson had spent the night at the home of her neighbours, Mr and Mrs Young. That morning, while Ms Hampson and Mr Young were discussing what needed to be done to fit a security light to Ms Hampson's garage, you appeared round the side of the garage. Ms Hampson saw

you coming and screamed. Mr Young turned round to find you almost upon him, and advancing. He said that he instinctively swung at you with the heavy Maglite torch he was holding, hitting you in the chest. He said you kept on advancing so he hit you several more times. It seems that he fractured one or more of your ribs and he broke your wrist watch. He said that you “completely stank of alcohol”. You retreated down the driveway.

[14] It is clear from the evidence given by other witnesses in your trial, that you were in a fairly bad way by that Sunday, 16 March. You rang the owner of the outdoor equipment store you worked at and said you were not well but he told you that there was no-one else to look after the store that day, so that you had to do it as arranged. That Sunday night the manager of the store was rung by the security patrol to say that the store alarm had not been set, and that the tills had not been cashed up – they were still running. That day you also rang your former partner in Auckland, and pleaded with her to let you come back and live with her in Auckland. She said no – you had to “move on”.

[15] You also tried to ring Ms Hampson again that Sunday evening, and you did ring her again the following day, Monday 17 March, at Placemakers. When she answered the phone and she recognised your voice you said “Broken ribs – hope you’re happy”.

[16] Evidence from other witnesses indicates that you were not in good shape on that Monday. At about 12.20 pm that day you were arrested at your home and charged with trespass, then released on bail. Constable Gardiner smelt alcohol on your breath.

[17] The two charges of harassment, to which you pleaded guilty, arise out of those events: your going to, or being at, Ms Hampson’s home on the Saturday evening and again on the Sunday morning.

[18] On the evening of Monday 17 March you drove to Murchison and borrowed a .22 rifle and a loaded magazine from a friend of yours, Mr Lee Bradley. You knew

him because the two of you had done part of an NMIT outdoor adventure tourism course in Murchison together.

[19] You claimed you stole the rifle from Mr Bradley's home, taking it without asking him, and leaving immediately in your car. I reject that, and accept Mr Bradley's evidence that you asked to borrow a firearm because you had a problem with a couple of dogs. Initially you asked for a pistol, but Mr Bradley only had the .22 rifle he lent you.

[20] That evening in Murchison you also called to see the NMIT course coordinator, Mr Toby Wild. You told him that you had fractured ribs, and had a "female issue". He told you that you could not do the kayaking part of the course with fractured ribs.

[21] You must have driven back to Nelson on Monday night because, when your male flatmate arrived home at around 9 am on Tuesday 18 March, you were at home. He said that you appeared to be your normal self. A little later you rang the manager of the sports store you worked at to let her know you were OK, and to thank her for her help over the preceding few days. Later in the morning you again rang your former partner in Auckland. You asked her to give you some inspiration to live and said that if she had not heard from you in a couple of days she should call Simon (a reference to your friend Simon Tyler) and ask him to collect your stuff. Although she realised you were threatening to commit suicide, she did not take your threat seriously, because you had made the same threat once or twice before during your relationship with her.

[22] You said that that Tuesday morning you took the telescopic sight and wooden stock off the rifle you had borrowed from Mr Bradley, so that there was just the metal barrel, bolt action and unguarded trigger.

[23] At about 12.30 pm you drove in your car to the Port Nelson branch of Placemakers where Ms Hampson worked. You drove into the drive through section and parked there. As you drove in, you could see Ms Hampson sitting alone in the outdoor smoko area, having her lunch. You got out of the car and walked briskly the

short distance from your car to the smoko area. As you walked, you began raising the rifle from waist height, so that it was almost pointing at Ms Hampson's head, or at least at the upper part of her body.

[24] Fortunately, you had been seen by Mr Ben Main, one of Ms Hampson's workmates at Placemakers. He came up behind you just as you were about to step into the smoko area and managed to grab the rifle barrel and force it down. As he did this a shot was fired but, again fortunately, it went harmlessly into the barked area near the foot of the fence enclosing the smoko area.

[25] When Ms Hampson saw you coming, she screamed and activated her personal alarm, and escaped out through the gap between the building and the end of the fence.

[26] Other Placemakers employees responded, coming to Mr Main's assistance and restraining you on the ground until the Police arrived shortly afterwards.

[27] It is on the basis of that, that the jury found you guilty of attempting to murder Ms Hampson by shooting her from close range with the .22 rifle you had. You also pleaded guilty to drink driving upon arraignment on 11 February. Following your arrest, you were tested at the Nelson Police Station and found to have a breath alcohol reading of 1004 against the legal maximum of 400 micrograms of alcohol per litre of breath i.e. a fraction over 2½ times the legal limit.

[28] Mr Garlick, I am not sure whether you have read the victim impact statement by Ms Hampson. I have. It is clear from that statement that this incident – series of incidents really – has had a huge and lasting impact on her life. Financially, but an even bigger impact on her confidence, on her ability to enjoy life.

[29] The most serious charge you face is that of attempted murder. On that charge I intend imposing a lead sentence of imprisonment that will reflect the totality of your offending. I take that approach because the four charges arise out of a connected series of events which happened over a short period of time – just four days.

[30] I take as my starting point in sentencing you this morning a term of 6 years imprisonment. I have arrived at that by taking 5½ years imprisonment for the attempted murder, and then adding to that 6 months imprisonment to reflect the other three charges for which I am sentencing you. That increases my total sentencing starting point to 6 years imprisonment.

[31] In case it should be relevant, I record that the Crown sought a sentencing starting point of 8 years imprisonment, while Mr Riddoch for the prisoner said it should be 5 years. Mr Riddoch put it to me that this case is at the bottom end of band 2 referred to by the Court of Appeal in *R v Taueki* [2005] 3 NZLR 372, which establishes sentencing guidelines for offences of serious violence. I do not find *Taueki* relevant here, because it applies to offences where there was both an intent to cause serious injury, and the infliction of serious injury.

[32] For the benefit of counsel, I record that I have fixed my sentencing starting point on the attempted murder charge with reference to the Court of Appeal's comments in *R v Allen & Jannings* CA4/88, 23 June 1988, which the Court reiterated in *R v Unsworth* CA151/89, 18 October 1989. I have considered the following cases referred to by the Crown: *R v Shaw* CA308/97, 5 March 1998; *R v Murray* CA272/96 28 February 1997, *R v Brown* CA238/02, 25 September 2002. Also the following additional cases referred to by Mr Riddoch: *R v Kitchen* CA183/02, 17 December 2002; *R v Hone* HC NAP CRI 2007-020-001518, 30 July 2008, Andrews J; *R v Nelson* HC ROT CRI 2004-077-015577, 16 August 2005, MacKenzie J and *R v Fotuaika* HC WAN CRI 2008-083-000073, 22 October 2008, Miller J. I have also looked at the sentencing decisions in *R v Butler* HC CHCH CRI 2008-009-003105, 15 May 2008, Panckhurst J and *R v Jackson* HC WAN CRI 2006-083-001891, 7 February 2007, MacKenzie J.

[33] The Crown rightly pointed to the aggravating factors of premeditation (e.g. your travelling to Murchison to borrow the rifle the previous evening) and then your use of that rifle with the intention of shooting Ms Hampson. Both those matters are amongst those I have factored in in arriving at my 5½ year sentencing starting point for the attempted murder.

[34] Were I sentencing you only for the harassment and drinking driving charges, I would sentence you to concurrent terms of 6 months imprisonment for each of the two harassment charges. Those sentences are arrived at by allowing you a discount of 3 months off a sentencing start point of 9 months imprisonment. There is little sentencing guidance for criminal harassment. The only sentence offering any guidance is *D v Police* HC AK AP106/99, 8 September 1999, Hugh Williams J, which is of little help because of factual differences and the fact that it involved a suspended sentence of imprisonment. That is no longer a sentencing option. I note that s 8 of the Harassment Act 1997 provides only for a sentence of imprisonment. While that does not rule out a non-custodial sentence, it does underline the seriousness with which Parliament views criminal harassment.

[35] Then I would have imposed an additional – or cumulative – sentence of 4 months imprisonment on the drink driving offence. The sentencing guidance there, in general terms, is *Clotworthy v Police* (2003) 20 CRNZ 439 (HC). Specifically, I have been guided by this Court's sentencing decisions in *Buchanan v Police* HC ROT CRI 2008-470-000026, 27 August 2008, Gendall J; *Morgan v Police* HC HAM CRI 2007-419-17, 22 February 2007, Priestley J; *Bennett v Police* HC PMN CRI 2004-454-20, 31 March 2004, Gendall J and *Campbell v Police* HC CHCH A26/02, 17 April 2002, Panckhurst J.

[36] In short, I would have imposed a total sentence of 10 months imprisonment if sentencing you for the harassment and drink driving charges only. That is not the position. I need to look at the totality of your offending.

[37] I look now at you, Mr Garlick, as the man I am sentencing. Is there anything about you suggesting that I should either increase or reduce your sentence from my starting point of 6 years imprisonment?

[38] You are an Australian by birth. There is nothing noteworthy in your upbringing. After leaving school, rather early and without any real educational qualifications, you worked in the mines and then the car business. You transferred to New Zealand about seven years ago and worked for several years in Auckland, before moving to Nelson in 2007. You have convictions in Australia, but they are



substantially for dishonesty, and seemingly comparatively minor dishonesty at that. I largely put them to one side. The relevant point is that you have no previous convictions for violent offending.

[39] From the reports I have, I see that you accept, Mr Garlick, that you resort to alcohol when faced with stressful situations or difficult issues. Your 2003 and 2006 convictions in Auckland for drink driving bear that out. So also does the heavy drinking that you indulged in during the events that featured in your trial.

[40] You are obviously a hard worker and a reliable and trusted employee.

[41] It seems you are one of those many people who have depressive episodes. They manifest themselves in your obsessive nature (your inability to let things go, and to move on), your taking refuge by drinking heavily, and your inability to strike a balance between work and the more enjoyable aspects of life – leisure, time out with friends, relaxation and sporting activities.

[42] There is nothing in any of this that I think should lead to either an increase or a decrease in the 6 year sentence I have taken as a starting point.

[43] Accordingly, I impose the following sentences on you:

- On the charge of attempted murder, a sentence of 6 years imprisonment.
- On each of the two charges of harassment, a sentence of 6 months imprisonment. Those sentences are concurrent sentences, in other words they run along together, and at the same time as the 6 year term.
- On the drink driving charge a sentence of 4 months imprisonment. Again, that is a concurrent sentence.

[44] Your total effective sentence is 6 years imprisonment.

[45] The Crown asks me to impose a minimum prison sentence. The circumstances I have outlined do not take this offending out of the ordinary range of offending of this kind. Accordingly, this is not a case calling for the imposition of a minimum non-parole period. The timing of your release from prison is appropriately left to the Parole Board.

[46] I also disqualify you from holding or obtaining a driver's licence for one year. As I am sending you to prison, pursuant to s 85(1) Land Transport Act 1998 I direct that that period of disqualification will start on and including the day you are released from prison

[47] You may stand down.

Solicitors:  
Crown Solicitor, Tasman for the Crown