

**PUBLICATION OF NAME OR IDENTIFYING PARTICULARS OF  
COMPLAINANT PROHIBITED BY S 139 CRIMINAL JUSTICE ACT 1985.**

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

**CRI 2008-044-5176**

**THE QUEEN**

v

**AMBER JANE DYSON**

Hearing: 21 April 2009

Counsel: L M Hamilton for the Crown  
M Goodwin for the Prisoner

Judgment: 21 April 2009

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**SENTENCE OF POTTER J**

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## **Introduction**

[1] Amber Dyson is before the Court today for sentence on one charge of blackmail. Blackmail is a serious criminal offence, which is indicated by the maximum term of imprisonment which applies of 14 years.

## **Background facts**

[2] The facts that give rise to this offending are that in January 2008 the complainant, who was a married man with children, contacted Ms Dyson through an advertisement and engaged her for sexual intercourse at his home. Ms Dyson was at that time, though she says no longer, practising as a prostitute. The complainant paid her a sum of money for her services. In the pre-sentence report Ms Dyson suggests that she was not paid but I understand she now accepts that her memory might have been hazy, and that some money was paid for her services.

[3] In July 2008, that is some six months later, Ms Dyson contacted the complainant on his mobile phone via a text message saying that she would tell his wife that he had sexual intercourse with her unless he paid her \$3,000 in cash. She followed up with a number of further text messages during the day. These messages gave a timeframe within which the complainant was to comply with Ms Dyson's demands. She went to his address and took a photograph which she transmitted to him by mobile phone. She also told him not to contact the police. Fortunately, the complainant did, and I say fortunately, because as I have indicated to Ms Dyson today, were there not to have been discovery of her offending and had she continued with such a course of action, possibly in relation to other clients, she would have placed herself in a very serious criminal situation.

[4] As a result of the contact with the police by the complainant, a meeting was arranged at St Luke's Mall in respect of which the police carried out surveillance. Ms Dyson was arrested.

[5] Ms Dyson admitted the facts as outlined in the summary of facts which I have summarised above. She subsequently entered an early guilty plea to the single charge of blackmail.

### **Personal circumstances**

[6] Ms Dyson is aged 21 years. She has a partner and states that she is assisting her partner to establish his own water blasting business. She expressed to the Probation Officer who prepared the pre-sentence report, some entitlement to the money she claimed was owing to her by the complainant, but I have said to her today I do not consider that works in her favour. It is no justifiable response to any obligation that someone might have to one, to resort to blackmail, which is serious criminal offending.

[7] Ms Dyson is assessed as being at low risk of offending. She has no relevant previous convictions, there being two minor traffic-related offences only.

[8] As well as the pre-sentence report, I have considered a victim impact statement in respect of the complainant. Unsurprisingly, such offending has serious repercussions for any victim, though here there were no threats to the safety of the victim. But there was the intrusion of photographs being taken of his home and references by Ms Dyson in a text to him to security men in her employ.

[9] The offending did not extend over a lengthy period of time but was persistent over three days, and it obviously raised serious concerns for the victim.

### **Aggravating factors**

[10] The aggravating factors of this offending are the premeditation although, compared with some offending of this nature, the premeditation was of a limited degree. But it required planning and deliberate action on the part of Ms Dyson. It involved the exploitation of her relationship with the victim which was that of prostitute and client, and in that there was an abuse of trust, a factor which the

Crown emphasised, the relationship of prostitute and client requiring, generally, confidentiality.

### **Mitigating factors**

[11] As to mitigating factors, the act of blackmail involved the threat of disclosure of information and not threats to the safety of the victim.

[12] Ms Dyson entered an early guilty plea, for which she is entitled to credit on sentencing.

[13] Her youth is a relevant factor. She is now 21, 20 at the time of offending. I take into account the lack of previous convictions. She has also expressed remorse but, in my view, her remorse is tempered by her continuing efforts to justify her offending. There is no justification for blackmail. It is criminal offending.

### **Purposes and principles**

[14] Counsel have helpfully referred me to the relevant purposes and principles of sentencing in ss 7 and 8 of the Sentencing Act and I take those into account.

### **Submissions**

[15] I have had the benefit of constructive and helpful written submissions by both the Crown and Mr Goodwin for Ms Dyson.

[16] The Crown submitted that a starting point of 2-3 years of imprisonment was appropriate and that because of the need for deterrence, which the Crown submitted was particularly important in this case, the appropriate sentence is imprisonment. Ms Hamilton, nevertheless, accepted that home detention would be an appropriate sentence in this case but expressed reservations about the availability of a suitable home detention address. I shall refer to that matter later.

[17] The Crown referred to a number of authorities and cited from Randerson J in *R v Booth* HC HAM T024112 4 February 2003, that:

Although there is no tariff for blackmail sentences, the Courts have consistently referred to the insidious nature of this kind of offending, the ease with which allegations of this kind can be made, and the seriousness of the consequences for the victim. Ordinarily, a term of imprisonment is imposed but that is not the inevitable outcome.

[18] I consider the reference to the insidious nature of this kind of offending to be particularly relevant in this case because of the exploitation that Ms Dyson developed to her advantage arising from her occupation as a prostitute and her relationship with the complainant through that occupation.

[19] Mr Goodwin submitted that a non-custodial sentence could be considered by the Court. I am not prepared to consider a non-custodial sentence because of the circumstances of this offending, to which I have already referred. It is necessary that the sentence clearly reflect the need for deterrence.

[20] Mr Goodwin emphasised the mitigating factors that apply in this case, particularly the early plea under s 153A of the Summary Proceedings Act on 25 February 2009, some two weeks prior to depositions. He also referred to the embarrassment and effective punishment of an article published in the *Sunday Star Times* on 20 July 2008 which referred to this offending. That will no doubt alert Ms Dyson to the fact that the news media are always ready to comment on such situations, and it might better be regarded by her, rather than as a mitigating factor, as a flow-on effect from the offending in which she chose to indulge.

[21] Mr Goodwin accepted, referring to the authority of *R v Patterson* CA228/96 22 August 1996, that blackmail has always been regarded as a particularly serious offence, but his submissions identified that *Patterson* was a more serious case of offending than this where the offender was aged 29 with a lengthy list of previous convictions, including both sexual and dishonesty charges and the offending had been committed when he was on supervision. The sentence of 12 months imprisonment was upheld on a Solicitor-General appeal, but the suspension that had been imposed by the sentencing Court was quashed.

[22] Mr Goodwin also referred to the case of *R v Thomas* CA138/05 6 July 2005, where a community-based sentence was considered appropriate. The appellant there was 18 years, immature, and the sum demanded was \$600. *Thomas* is at the bottom-end of the scale for sentencing for blackmail, and I have already stated that I do not consider in the circumstances of this case, a non-custodial sentence is appropriate.

[23] Another authority referred to by Mr Goodwin, and also highlighted by my own researches, is that of *R v Takao* HC ROT 29 April 2005, where Keane J helpfully identified relevant factors in blackmail cases. The relationship between blackmailer and victim: in this case, the relationship was of prostitute and client, not a family or close relationship. The threat underlying the demand: in this case, no risk to safety and no threats of violence. The sum demanded: in this case, \$3,000 which could be described as moderate. The persistence with which the demands were made: there is only one incident of blackmail in issue here, but demands were made over a period of three days. Whether the demand was successful: it was not successful. The vulnerability of the victim to the demand: there was certainly some vulnerability of the victim as there must always be with this type of offending, but I accept, in the circumstances of this case, it was not extreme vulnerability. The effect on the victim of the demand, to which I have already referred.

### **Sentence**

[24] Having considered a number of relevant authorities, including those to which I have already referred, I take a starting point of 12 months imprisonment. From that I allow a discount of one-third to reflect the early guilty plea and other mitigating factors. The resultant sentence would be eight months' imprisonment.

### **Home detention**

[25] I turn now to consider the issue of home detention. The sentence of imprisonment I would impose, being a short-term sentence, enables the Court to give consideration to a sentence of home detention. In all the circumstances of this case, I consider that home detention is an appropriate sentence and Ms Hamilton, for the

Crown, did not dispute that. Her concerns were rather with the suitability of a home detention address.

[26] The proposed address, 4/317 Triangle Road, Massey, is a property owned by Ms Dyson's mother and her husband. It is occupied by Ms Dyson's brother aged 23 who suffers from schizophrenia and requires regular medication and supervision in taking that medication. Ms Dyson's mother has filed an affidavit in which she attests that Ms Dyson's assistance to her brother, who has been admitted to the Buchanan Centre for treatment, is important. Also resident at the address are Ms Dyson and, I understand, Ms Dyson's partner.

[27] Ms Dyson's brother faces active charges of possessing cannabis and, in the alternative, of receiving or unlawfully taking a motor vehicle. Mr Goodwin explained that having discussed those charges with the officer-in-charge yesterday (and by "those charges" I refer to the receiving and unlawful taking charges which are in the alternative), whether the charges proceed depends on fingerprint evidence which the police are in the course of obtaining.

[28] There had been Police concerns that Ms Dyson's brother had been involved in methamphetamine offending at the property, but further enquiries, which I do not need to detail as explained in Court this morning by Ms Hamilton, Ms Dyson's mother and Mr Goodwin, have confirmed that Ms Dyson's brother was not involved in any such methamphetamine-related activities.

[29] Another concern expressed by the Crown is that Ms Dyson's brother has a history of Youth Court offending. On that I accept Mr Goodwin's submission, that it needs to be put in perspective. He is now 23 and has not offended since 2001. The offending was in the Youth Court jurisdiction, for which he was admonished.

[30] Ms Dyson's mother, who was in Court this morning, has confirmed that she regularly visits the address not only to assist her son but also to ensure that conduct at the address is appropriate. She has accepted that if Ms Dyson is sentenced to a sentence of home detention at that address, it will be subject to very restrictive conditions and that Ms Dyson will need help and support in complying with those

conditions and in meeting the requirements of the sentence. I take particular note of the presence in Court today of Ms Dyson's mother and her expressed readiness to be part of the responsibility that is inherent in the situation regarding her adult children.

[31] Other alternative addresses have been investigated, but are not satisfactory. In all the circumstances and with some hesitation, I accept the address of 4/317 Triangle Road, Massey as suitable for a home detention sentence.

[32] Counsel, I want your assistance in relation to the length of the sentence of home detention. Having reached an end sentence of eight months imprisonment, I consider the appropriate home detention sentence to be four months. Do you want to make any submissions about that?

[33] COUNSEL: No thank you, Ma'am.

[34] As to conditions, they are set out I think at page 2 of 3 of the appendix to which you earlier referred me, Ms Hamilton. I will list them and if counsel consider there needs to be any adjustment or correction, would you please assist me.

[35] I therefore impose a sentence of home detention of four months. The home detention address is 4/317 Triangle Road. The usual conditions will apply. In addition:

- a) You are to travel directly to 4/317 Triangle Road, Massey and await the arrival of the probation officer and the representative from the electronic monitoring company.
- b) You are to reside at that address and not to change the address without prior approval from the supervising probation officer.
- c) You are not to consume alcohol or non-prescribed drugs for the duration of your sentence; and
- d) You are to undertake any assessment, treatment or counselling that may be directed by the probation officer.



## **Non-publication order**

[36] The non-publication order in relation to the complainant remains in force. There is to be no publication of the name or any details that might lead to his identification.