

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

**CRI-2008-035-1764**

**THE QUEEN**

v

**NATHAN PIERRE MATIAHA-SMITH**

Hearing: 29 April 2009  
Counsel: J M Webber for Crown  
C L Elder for Defendant  
Sentence: 29 April 2009

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**NOTES OF DOBSON J ON RE-SENTENCING  
(under s 80F of the Sentencing Act 2002)**

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[1] Mr Matiaha-Smith, on 27 March 2009, I sentenced you to 11 months' home detention after you had pleaded guilty to one charge each of possession of methamphetamine for the purpose of supply and possession of cannabis. The applicant on the present application today, the Probation Service, now applies to this Court under s 80F(1)(a) and (4) of the Sentencing Act 2002 for cancellation of your sentence, which would lead to the substitution of another sentence.

[2] It is alleged by the Probation Service that you breached s 80T of the Sentencing Act by failing, without reasonable excuse, to allow an authorised person to enter into your residence for the purpose of servicing your electronic monitoring

equipment. Accordingly, the Probation Officer involved submits that the circumstances in which your original sentence was imposed have changed to the extent that the sentence of home detention is no longer appropriate. Section 80F(4) of the Sentencing Act gives the Court the power to cancel an existing sentence of home detention and substitute a sentence of imprisonment.

[3] The background to this alleged breach of s 80T is easily summarised. On 12 March 2009, the flow of electricity to your electronic monitoring unit was disrupted. A security guard was dispatched to ascertain the problem. On arrival at your address, the guard was confronted and abused by a group of intoxicated associates of yours and, fearing for his safety, he left the address. Police were subjected to the same treatment when they arrived, but retrieved the monitoring unit. Upon inspection, it appears that the power cord attached to the unit had been forcibly torn from it. Ms Elder says that the four younger and unruly visitors were in effect uninvited at the time and she says that you would place blame solely on them for what occurred. I cannot resolve which version is the correct one today, but I must sentence you on the basis of a breach of the terms of your sentence and in the immediate sense just as importantly the unavailability of the address to which you were sentenced for home detention.

[4] I have got to say on any view it is folly for you to have obviously forgotten so quickly the comments I made when I sentenced you just one month and two days ago. I said then:

[22] Having regard to the matters raised by Ms Elder on your behalf, I am prepared to see the prospects of rehabilitation as sufficient to warrant the substitution of home detention. You get across that line, Mr Matiaha-Smith, by just a small fraction, and you are being given a chance. You should appreciate that this is an option that would not be given again should you not strictly comply with the terms of the home detention sentence, or indeed if you are foolish enough to re-offend.

[5] I am very disappointed that you did not heed my warning and appear to have allowed a serious breach of the terms of your sentence of home detention. I gave you a chance by imposing such a sentence and as I am informed today I find that you have wasted that opportunity.

[6] Having recourse to a very similar case of *R v Williams* HC WHA CIV-2007-092-005673 18 February 2009 Andrews J and the terms of s 80F of the Sentencing Act, I am satisfied that the circumstances have sufficiently changed to make the sentence I imposed on 27 March this year inappropriate. In particular, the address obviously is no longer available. Therefore that sentence is cancelled. I am also satisfied that a substituted sentence of imprisonment is appropriate, at least in the short term until further developments play out. If the Probation Service version of events on 12 March 2009 is borne out as a result of the contested hearing in the Masterton District Court, then I would be of the view that the prospects of your rehabilitation are no longer sufficient to justify substituting home detention.

[7] I am, however, conscious that your version may be accepted by the Court, and if that was the case then I would consider your position was still sufficiently close to that confronting me on the original sentencing for your prospects of rehabilitation to warrant consideration of a sentence of home detention again. But you need to have your version accepted, and you need to have a prospect of an alternative residence that you can persuade the Probation Service is appropriate. You probably heard my dialogue with counsel and I think in granting you leave to apply in those circumstances to substitute a further term of home detention I have to be satisfied, under s 80I of the Sentencing Act, that at the time of sentencing the Court would have sentenced you to a sentence of home detention if a suitable residence had been available. Now in your case I can only have a conditional view on whether I would be satisfied and that, in these particular circumstances, depends on the outcome of the case in the District Court in Masterton. But I will formally order that you be granted leave under s 80I of the Sentencing Act to cancel the sentence of imprisonment I am about to substitute.

[8] So, the question is the length of that sentence. Your sentence of home detention was due to end on 26 February 2010; you have so far served one month of your 11-month sentence. In my 27 March 2009 decision, I would have sentenced you to one year, nine months' imprisonment. I have concluded that an equivalent sentence to impose at this juncture amounts to one year and seven months' imprisonment.

[9] So, for the most serious conviction on possession of methamphetamine for supply for which you were sentenced to 11 months' home detention on 27 March, you are now sentenced to one year, seven months' imprisonment. On the lesser convictions for possession of a pipe and possession of cannabis seeds, your original sentences were two and one month's home detention respectively. Those sentences are also cancelled and substituted with prison sentences of one month on each conviction. All the prison terms are to be served concurrently, that is at the same time. Those sentences are imposed subject to the leave under s 80I of the Sentencing Act I have already referred to.

[10] Had I originally sentenced you to imprisonment, the recommendation of the Probation Service was to impose a special condition, and I consider that is still appropriate. Therefore the sentence of imprisonment I have imposed is with a release condition that you are to attend and complete alcohol and drug counselling to the satisfaction of the service provider and the Probation Officer. This condition is imposed for a period of six months following your release.

[11] You may stand down.

**Dobson J**

Solicitors:  
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