

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

CRI-2009-441-000014

HEMI JAMES TAMATI
Appellant

v

NEW ZEALAND POLICE
Respondent

Hearing: 3 June 2009 (Napier) and
24 June 2009 (Auckland via Telephone Conference)

Appearances: R D Stone for the Appellant
C R Walker for the Respondent

Judgment: 24 June 2009

(ORAL) JUDGMENT OF DUFFY J

Solicitors: Souness Stone P O Box 975 Hastings 4156 for the Appellant
Elvidge and Partners P O Box 609 Napier 4140 for the Respondent

[1] This is a matter in which I delivered an oral judgment on 3 June 2009 allowing Mr Tamati's sentence appeal. I concluded that the appropriate sentence would have been two years' imprisonment. This led to me giving consideration to whether or not home detention would be a more appropriate sentence. I directed, therefore, that a home detention report be obtained.

[2] I then received a home detention report, which clearly shows that Mr Tamati is a suitable candidate for a sentence of home detention. I also received a joint memorandum from the Crown and Mr Tamati's counsel which recorded their agreement that home detention is a suitable sentence. In these circumstances, and for the reasons outlined in the oral judgment of 3 June 2009, I have no doubt that this is the appropriate sentence for Mr Tamati.

[3] All that was then left to conclude the appeal was for the Court to determine the length of the term of home detention and the imposition of any special release conditions. As I was unlikely to be at the Napier Registry of this Court in the near future, a telephone conference was convened today for the purpose of hearing submissions from counsel on the remaining matters for determination. The co-operation and responsible attitude of both counsel throughout this appeal has been very helpful to the Court.

[4] Mr Tamati has served approximately four and a half months of the sentence of imprisonment. I consider that this is something that should be taken into account when setting the term of the sentence of home detention sentence. Both counsel agree with this approach. The writer of the home detention report has also recommended certain special conditions to assist further with Mr Tamati's rehabilitation. It is to Mr Tamati's credit that while he been serving the sentence of imprisonment, he has participated in a number of programmes designed to help him on his release into the community. This is to be encouraged. But it also needs to be recognised that the imposition of special conditions will to some extent impinge on Mr Tamati's liberty. Consequently, the term of home detention needs to take this into account.

[5] I consider that when all of the relevant factors are taken into account, an appropriate term of home detention is six months. It is also appropriate that the following special conditions be imposed on Mr Tamati:

- a) On his release from prison, he is to travel directly to 33 Maraekakaho Road, Bridge Pa, Hastings, and to remain there until the arrival of a representative of the monitoring company and the home detention probation officer;
- b) He is to abide by all the conditions and requirements of the sentence of home detention;
- c) He is to reside at 33 Maraekakaho Road, Bridge Pa, Hastings, and not to move address without the prior approval of the probation officer;
- d) He is not to have or consume illicit drugs in his possession for the duration of the sentence of home detention;
- e) He is to notify his probation officer prior to starting, terminating or changing his position or place of employment;
- f) He is to attend an assessment with the CPPS Kaiwhakahaere, and to work alongside the probation officer and Kaiwhakahaere to address offending behaviour from a cultural perspective; and
- g) He is to attend and complete any other counselling/education/programmes as directed to address offending behaviour.

[6] Because certain steps need to be taken to put in place the electronic monitoring that is part of a sentence of home detention, the effect of this sentence will have to be delayed to allow those steps to be completed. The sentence of home detention will not, therefore, take effect until Friday, 26 June 2009.

Result

[7] The term of imprisonment of two years and eight months will be set aside; this is to take effect from Friday, 26 June 2009. On that day, a substitute sentence of six months' home detention, with the special conditions set out in [5], will come into effect.

Duffy J