

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

**CRI-2007-090-009186**

**THE CROWN**

v

**NICOLA LEANNE HENMAN**

Hearing: 23 October 2009

Appearances: J Shaw for Crown  
M Pecotic for Prisoner

Judgment: 23 October 2009

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**SENTENCING NOTES OF PRIESTLEY J**

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Solicitors/Counsel:  
Crown Solicitor, PO Box 2213, Auckland 1140

M N Pecotic, PO Box 6379, Wellesley Street, Auckland 1141

[1] Nicola Leanne Henman, you appear today for sentencing on one charge of being an accessory after the fact. The charge you face was that between 12 September and 28 September 2007, knowing that your then partner, Mr Richard Duthie, had committed a serious offence (using a firearm against a law enforcement officer), you assisted him to avoid arrest. You had pleaded not guilty to that charge and you were convicted by a jury.

[2] The same jury also had before it two serious charges under the Misuse of Drugs 1975 of possessing both lysergide and the precursor substance pseudoephedrine. The LSD count triggered the presumption for supply. On those counts you were acquitted.

[3] It is significant that you gave evidence at your trial. As I indicated to counsel a few minutes ago, the evidence which you gave at your trial which was, I think, in the large part truthful, was an effective admission of the count for which you were convicted. The charge you face carries a maximum sentence of five years imprisonment.

[4] You know as well as I do what the Crown case was against you. But for sentencing note purposes I need to say a little about that.

[5] Your partner, Mr Richard Duthie, who had been pursued by Police officers early in the morning on 3 September 2007, was cornered. He managed to escape. During the course of his escape he produced a pistol, firing several shots at the Police officers who were trying to apprehend him. You were aware of this, approximately a week later, because you were approached by the Police who were searching for Mr Duthie. You told them, and I think truthfully, as at that stage you had had no contact with him.

[6] Approximately a week after your interview with the Police officers, Mr Duthie found you at an address you were then staying at in Queen Street. Subsequently, on 21 September, you went to an apartment complex in Grafton. You rented an apartment under a false name and used cash to pay the bond and the initial rent. You indicated that future rental payments would be in cash. When you were

doing this, Mr Duthie was in a vehicle outside. It is quite apparent from surveillance footage of the apartment complex that you and he lived together in this apartment, lying low for approximately one week. It was you who was responsible for the shopping and other outdoors activity. You were eventually apprehended in the early hours of the morning of 28 September as Mr Duthie was moving substantial quantities of drugs into the apartment in bags which you were carrying. It is clear, however, from the jury's verdicts that they accepted your evidence that you had no knowledge of the contents of that luggage.

[7] What I find somewhat disturbing about that offending was, first, that you knew what Mr Duthie had done, the Police having told you. Secondly, the actions you took in acquiring the apartment tenancy and living there were pre-meditated, and thirdly, it was sustained over a period of some days. This was not offending which was impulsive or on a one-off basis.

[8] I now say something about your personal circumstances and I need to do this in some detail. You are a 38 year old woman, born in New Zealand. It appears that you have not had any permanent employment since you were a dental assistant approximately 19 years ago. You were in a former relationship with a Mr Rankin, which was an abusive relationship. I am satisfied from the evidence which I heard at trial and from other materials placed before me that, as a result of that abusive relationship, you suffer from post-traumatic stress disorder, your particular type of disorder being popularly classified as Battered Woman Syndrome.

[9] By your previous partner you have three children who are now aged between 13 and 11. Those children have for approximately the last eleven years lived with your mother, who is in Dannevirke.

[10] I have received a very helpful pre-sentence report. That report states that you are in good physical and mental health at the moment. You say you have not used alcohol or been involved in drug use since at least the beginning of this year. You openly admitted to the probation officer that you were a user of methamphetamine and had been involved on the "P" scene, as you called it, since your early 20s. Your drug addiction in part, so you say, was your reaction to try to blot out previous

abuse. Unfortunately – and again you have displayed some insight into admitting this – you have a propensity to gravitate towards unsuitable men who, in part, are prepared to exploit you and who also seem to expose you to drug use.

[11] Dealing with your offending, it is clear, and you said as much in evidence, that although Mr Duthie did not try to assault you or threaten you, you were concerned by his somewhat aggressive paranoid and suspicious conduct at the time when he was on the run. In particular, you were concerned with what you took to be a serious threat that, if the Police found him, he would take as many Police officers out as he could. He also extended to you the promise that if you co-operated with him, he would go quietly if he was arrested. You took these threats of his seriously, and understandably so, I think, because he was in possession of loaded firearms at the time.

[12] I also accept that you are genuinely remorseful for what you did and that at the time of your dealings with Mr Duthie in mid-September, you were fearful.

[13] The pre-sentence report identifies certain key factors of your offending, being your use of drugs. It also, however, points out that in the past when community-based sentences have been extended to you, you have not complied. For instance, in 2005 you have two convictions for breach of community work.

[14] The probation service, having assessed you, consider that you are currently at low risk of re-offending. That is something on which I intend to build. The report writer, however, realistically says that if you continue to associate with drug-offending men or continue with the use of illicit drugs yourself, or get into relationships with unsuitable individuals, then the current level risk may increase. And what that means, Ms Henman, is that if you wander around through life, as you clearly have for the last fifteen years or so, associating with these loser-type of men who feed your drug habit and who lead you into temptation, you will go right back to square one and you will continue to appear before the courts. So, for a woman of 38, this is really your last chance to get it all together. I hope you understand that.

[15] The probation officer has made a number of recommendations which I will refer to later when I impose conditions. It is noted, however, that you are very keen to attend the Departmental Women's Programme.

[16] The pre-sentence report sensibly suggests that, given the serious nature of the charge, a term of imprisonment is likely. However, it goes on to say that because of your current level of insight into your offending, your motivation to change and your general rehabilitative needs, a sentence of home detention is recommended.

[17] I turn now to your previous convictions. You have some 32 previous convictions. You have five convictions for dishonesty offences, the last being in May 2005. You have two traffic-related convictions. You have four convictions for breach of community work, which must tell against you. You have ten drug-related convictions, the last being in October 2005. You have one for breach of bail. Alarming for a woman, you have nine convictions for assaults on Police officers or resisting Police officers and the last of those was almost eight years ago. You have one minor conviction for disorderly conduct.

[18] I turn now to aggravating and mitigating factors. The aggravating factors relating to the offence are clearly the degree of premeditation and its sustained nature, and I consider that those can properly be taken into account when assessing your overall culpability under s 9(4) of the Sentencing Act. Aggravating factors relating to you are the list of convictions which I have just specified. Regrettably, the convictions show a pattern of general disregard or unhelpfulness towards law enforcement in general and obligations which might have been imposed on you by law, and to that extent, helping Mr Duthie, when you knew he was on the run, is a continuation of that pattern you have displayed in the past to defy law enforcement officers and mechanisms.

[19] There are, in my judgment, a number of mitigating factors for which you should be given credit. The first mitigating factor is your remorse, and secondly, to some extent, I am going to factor in the undisputed evidence that you are a victim of post-traumatic stress disorder and Battered Woman Syndrome, being the product of unsatisfactory relationships you have been in in the past.

[20] Counsel have assisted me with their submissions. The Crown submits that a start point of 12 months imprisonment is justified. Mr Shaw points to the gravity of Mr Duthie's offending in respect of which you did your best to help him avoid detention. The Crown has helpfully gone through relevant authorities. Having fixed on a start point of 12 months imprisonment, the Crown fairly states that whether or not a sentence of home detention or community-based sentence is appropriate will ultimately be a matter for me.

[21] Ms Pecotic does not resist strenuously a home detention sentence. She does, however, point out that there are alternative options available, such as intensive supervision or some form of community-based sentence structured in such a way as to give you the full benefit of programmes which might be available. Ms Pecotic points to effective mitigating factors, including your remorse, your post-traumatic stress disorder, your emotional involvement with Mr Duthie and the fact that it would appear you have some degree of support from your mother.

[22] I do not intend to traverse in any close detail the authorities which counsel have put before me. I record that I have, however, read and considered them. These include *R v Everitt* HC WHA 28 February 2007, Randerson J, *R v Brett* HC AK 8 August 2007, Priestley J, *R v Smith* HC ROT 3 February 2009, Asher J, and a recent judgment of Ronald Young J, *R v Tavita* HC AK CRI-2009-092-5263 15 September 2009.

[23] Ms Pecotic considers, and she is correct, that there are some outward similarities between your case and a previous sentence of mine, that of *R v Brett*. However, I do note that in imposing a suspended sentence I was concerned with logistic difficulties which might attach to any community work sentence. I see in overall culpability terms the sentence imposed by Asher J in *R v Smith*, one of six months home detention, as vaguely comparable, although there are some marked differences between your position and that of Ms Smith.

[24] So what I am going to do is this. I am going to impose on you a lenient sentence and the reason why I am imposing a lenient sentence on you is quite simply because I want to get as much assistance to you as possible to reinforce your resolve

to rehabilitate yourself and turn your life around. The sentence is going to be one of home detention which will have attached to it various conditions and I need to stress to you that a sentence of home detention is not an easy sentence because you will effectively be confined in your home except for such purposes as you are allowed by your probation officer to leave it. I hope the conditions I am going to attach will help you turn your life around and, for a woman of 38, you need to be under no illusion that if you come back to Court on any serious criminal offending, and particularly offending under the Misuse of Drugs Act, it is almost inevitable that you will be sent to prison.

[25] Looking at your overall culpability, the start point which I would normally adopt were I to send you to jail would be one of 12 months imprisonment. That is what the Crown contends. To some extent, I think a start point of 12 months is slightly on the light side because your being an accessory after the fact offending was not impulsive. It was premeditated, planned and sustained. However, 12 months imprisonment would be, I think, a fair start point in all the circumstances. I would then deduct from that a period of two months to reflect in assessing your overall culpability the psychiatric reaction which you had to Mr Duthie's pressure and requests. In other words, in assessing your overall culpability, I consider that a two month reduction from what would otherwise be the start point would be justified, which would get me to ten months. However, I would immediately add to that a two month uplift to reflect your past offending and the fact that this offending, designed to frustrate the Police, was the continuation of an historic pattern which one can see threading through many of your previous convictions. So that would bring me to an end sentence of 12 months imprisonment.

[26] For the reasons, however, I have stated a few minutes ago, I think that for you a sentence of home detention is appropriate. The sentence I intend to impose on you is one of seven months home detention. I attach to that various specific conditions, as I am entitled to do under s 80N of the Sentencing Act 2002. In effect, I am adopting without alteration the helpful suggestions and conditions recommended in this situation by the probation officer.

[27] The conditions I attach are as follows. First, you are to travel directly from here to 170 High Street, Dannevirke, and await the arrival at that address of the probation officer and a representative from the monitoring company. Secondly, you are to reside at 170 High Street, Dannevirke, for the duration of the seven month home detention sentence. Thirdly, you are not to consume or possess or keep at the residence any alcohol and/or illicit drugs for the duration of your sentence. Fourthly, you are to attend an assessment for drug counselling and, if found suitable, complete drug counselling as directed by the probation officer. Fifthly, you are to attend and complete an appropriate Departmental programme to the satisfaction of your probation officer and programme provider. Details of that will be determined by your probation officer and in that regard I specifically recommend that you be exposed to the Women's Departmental Programme.

[28] I impose on you the standard conditions on release which are set out in s 80(o) of the Sentencing Act and I also impose on you special conditions under s 80(p) as s 80N(2)(b) authorises me to do. I do so because it seems to me that sustained assistance to you after your release is necessary. Those post-detention conditions I specify as being, first, to attend an assessment for drug counselling and, if found suitable, complete any further drug counselling as directed; and secondly, to attend and complete an appropriate Departmental programme, again the Women's Departmental Programme, to the satisfaction of your probation officer and programme provider. These post-detention conditions are to expire six months after your home detention sentence ends.

[29] I specifically recommend to your probation officer that the programmes he or she have in mind, particularly the Women's Departmental Programme, should be made available to you during your seven months home detention sentence, and part at least rather than at its completion.

[30] I also direct that steps are to be taken to ensure that the narration in your criminal history correctly records the fact that your conviction was for being an accessory after the fact and was not in itself a firearms offence.

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**Priestley J**