IN THE HIGH COURT OF NEW ZEALAND
TIMARU REGISTRY

CRI 2009-045-000631

REGINA

v

CHRISTOPHER DANIEL SHAW
STACEY ESTELLE SNELLEKSZ

Hearing: 16 December 2009

Counsel: T M Gresson and K Cotton for Crown
B Farnan for Prisoner Shaw
J Westgate for Prisoner Snelleksz

Judgment: 16 December 2009

SENTENCING REMARKS OF FOGARTY J

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[1] Christopher David Shaw and Stacey Estelle Snelleksz you appear for sentencing this afternoon. At the end of the Crown case I made findings of fact as to the offending in this case for the purpose of s 347 argument. They were made carefully and I think it is appropriate that I use the same findings for sentencing today and paras [6], [8], [9], [10], [11] and [12] of that ruling will be used. For the benefit of you and the people in the Court I will read them out:

> [6] This young couple apprehended that there was a real risk that Ms Snelleksz's two children would be removed from her by CYPS. As a result they decided to go bush in the South Island and have pleaded guilty to a very large number of offences between 30 January and 2 February when in the course of running away from the CYPS people, which I refer to commonly as "going bush" as the language used in this trial, the couple

> committed numerous offences of dishonesty, including: stealing or obtaining by fraud a Land Rover car, clothing, kitchenware, petrol, groceries, a trailer, camping equipment, food and so on.
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> …
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> [8] On 2 February police caught up with them. By this stage they were in the stolen Land Rover, to which was attached the trailer. Both the Land Rover and the trailer were packed with stolen goods, which included a .22 rifle, a shotgun, and ammunition. A police chase commenced. Ms Snelleksz was at one point driving before the police chase commenced, but while they apprehended the police were on to them. The car stopped. Mr Shaw got into drive. The explanation was that Ms Snelleksz had stopped driving so she could endeavour to activate a police scanner that the couple had acquired. The car stopped again. They swapped drivers and she drove off doing a u-turn. Thereafter she drove off at high speed being pursued by a marked police car and other unmarked cars, the marked police car having activated its lights and activated its siren. At that point she was behaving unlawfully, as the law required her to stop.
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> [9] She was driving at high speed. In an attempt to stop them another marked police car with two police officers, Constables Low and Witehira, stopped on the side of the northbound highway and deployed road spikes across the northbound and part of the southbound highway. The two constables stayed near the car, one, Constable Witehira, was stopping the northbound traffic, and Constable Low was standing at the rear of the car. They were several metres apart.
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> [10] Ms Snelleksz drove the Land Rover at high speed, estimated by the police officers to be about 100 kilometres per hour at this point as she was going uphill, swerving to avoid the road spikes. In the lead up to that event police officers in the following cars had identified a rifle being pointed from the front passenger side of the car back at them and then the evidence is that the rifle was swung 90° and as the vehicle went past the police car the rifle was discharged, the two police independently diving for cover.
>
> [11] Ms Snelleksz continued to drive the car at high speed and shortly thereafter swerved to avoid some road workers. She lost control of the Land Rover, smashing into a tree; a crash from which some of the experienced police witnesses were surprised that anybody walked away from.
>
> [12] After the crash the couple retrieved the two children from the rear of the car and moved away, walking over a period of time a distance of five to six kilometres, shadowed by police officers. The police officers were shadowing them because Shaw also took the .22 rifle with him. Right from the outset and periodically he stopped carrying the child and the rifle, putting the child down, and then aimed quite deliberately the rifle at the shadowing police officers. Within the hearing of both the man and the woman, both accused, the police ordered them to stop and to put down the rifle.

[2] The most serious of this offending is the use by you Mr Shaw of the rifle against the police. The second serious offending was the neglect by both of you of the two children of Ms Snelleksz: two young children were exposed to the risk of

their lives by the speed at which the vehicle was driven and also by the rifle being used against the police by Mr Shaw when he was carrying one of the children. The third category of offending is the numerous dishonesty offences. I have summarised them before. The police are claiming a total of about $45,000 in reparation. That is the amount of loss that you have inflicted on the owners of these goods: who range from the very poor (a solo Mum whose children's clothing was stolen), to the quite wealthy (a couple with a holiday home in Queenstown with a Landrover parked in the garage).

[3] Christopher Shaw, you are the main offender. You have a deplorable criminal record. You had only recently been out of prison. You clearly have the greatest responsibility for this offending. Ms Snelleksz, you have no previous convictions and up to this point in time, you had made a very good fist of life, particularly when one knows, as I do, the very unfortunate early beginnings of your life. Ms Snelleksz, I have discharged you under s 347 and so you have been acquitted of all the charges involving the firearm.

[4] There were a large number of offences committed during this spree of offending. The Crown have helpfully prepared schedules of offending, which both the Crown and defence counsel have used. The schedules prepared by the Crown are going to be attached to this decision. Can I say, before I go on to the detail of the sentencing, that I have been greatly helped by the quality of the submissions prepared by the Crown and by defence counsel, which have enabled me to identify the issues, and in due course to resolve them.

Note:

There are four sets of schedules attached. The two original detailed schedules in respect of Mr Shaw and Ms Snelleksz respectively. Then the one page 'Summary' schedules for each. These have been amended to reflect the final decision.

Christopher Shaw

[5] I am going to start by sentencing you first, Christopher Shaw, and taking as the lead sentencing the six firearm charges. Then I will go on to the other charges, and finally, and most importantly, I will stand back and consider the totality principle, which you have heard me discuss with counsel this morning.

[6] I intend to find one sentence for all six firearm charges, although they were at separate periods. One could say that the pointing of the rifle towards the two policemen standing by the road spikes, and the discharge of that rifle in their vicinity is the most serious of the charges. Certainly, you put those two officers' lives at risk. They both sensibly, and in automatic reaction, dived for cover. You are not charged with attempting to kill them, but the fact of the matter is that at a speed of 100 kilometres per hour the discharging of the rifle only a few metres away from them was an extremely serious offence.

[7] The second aspect in the remaining charges was the various times that you pointed the rifle at the police officers shadowing you as you walked away from the crash, and on one occasion, firing a shot at the helicopter. Here, there can be no argument that you had time to consider what you were doing, as I found in the facts that I read out before. This was quite deliberate conduct.

[8] Parliament has made it clear that the use of firearms against the police is an extremely serious offence. It is obvious why this is so. The police in New Zealand are largely unarmed, and in any event, whether armed or not, should not be exposed to the danger of any firearms being used against them. Parliament has imposed a maximum sentence of 14 years for this offence. That is the same maximum sentence for the charge of attempted murder. As the Court of Appeal had occasion to explain in the case of *R v Samuels* [2009] NZCA 153, this does not mean that these cases are treated as cases of attempted murder. You have not been charged with that. But the important thing is that the Court pays close regard to the maximum sentence, as it is required to do by s 8 of the Sentencing Act 2002.

[9] It is obvious, as the Court of Appeal has emphasised in *Samuels*, and has been earlier emphasised in other Court of Appeal cases such as: *R v Taylor* CA407/88 9 May 1989, that deterrence is the most important factor which determines the sentence of any person who is convicted of using firearms against the police. That means that very little consideration is given to your personal motivation.

[10] However, you are entitled, nonetheless, to the basic principle of justice that like is treated alike. Accordingly, it is necessary for me to consider other similar cases. Unfortunately, and to a degree, believe it or not, there are similar cases like this in New Zealand. The lead decision, on which both counsel agree, is the recent decision of the Court of Appeal in *Samuels*. I am going to read out the key facts in *Samuels* from paragraphs [3] and [4] of the Court of Appeal decision:

> [3] All these charges arose from the burglary of a private home from which the appellant and his partner stole a .22 rifle, ammunition, and a motor vehicle. They left the scene and were then pursued in an extended police chase, over a period of half an hour or more, for a distance of 50 to 60 kilometres.
>
> [4] During the pursuit Mr Samuels aimed the rifle at the pursuing vehicles. On four occasions he fired shots. The chase ended with Mr Samuels emerging from the vehicle, with the rifle in hand and his finger on the trigger. He failed to comply with police instructions to put the rifle down. Instead he walked towards the police. In the face of repeated instructions to disarm he raised the rifle and aimed directly at a constable. He was shot. He was struck in the chest and seriously wounded. He is now confined to a wheelchair. He was 19 years old at the time.

[11] In that case the District Court Judge took as a starting point for sentencing, 12 years. That starting point was affirmed by the Court of Appeal.

[12] The next case that I compare is the case of *R v Wells* HC AK CRI 2003-092-026964, 30 April 2004, Harrison J. I read out the facts from that judgment from paragraphs [6] and [7]:

> [6] On Chatsworth Road you put your hand out of the driver's window which was half way down. You had in your hand a .22 calibre sawn off rifle. It was covered with an orange bandanna. You fired at least two shots backwards in the direction of Constable Mangles and his vehicle. You continued with your dangerous driving.

> [7] Eventually your vehicle and the vehicle driven by Constable Mangles found their way into Reeves Road. At that point you again put your hand and the firearm out of the window. You fired two further shots at Constable Mangles and his vehicle. You then stopped your vehicle in Rotoiti Avenue. Constable Mangles drove past your vehicle and stopped further down the road. You removed a black bag from the back seat of the vehicle and ran away. Later you threw the bag into the rear of a property down a nearby alleyway. You were pursued but you escaped. …

The rest of the paragraph deals with the drugs that were in the bag.

[13] In the decision of *Wells*, Harrison J examined other cases, including guidance from the Court of Appeal in the case of *R v Taylor* CA407/88, 9 May 1989. *Taylor* held that deterrence is the major consideration in sentencing. Harrison J went on:

> [9] … In one case the Court upheld an effective sentence of six years imprisonment for using a firearm against police where one of two offenders, being pursued from the scene of a burglary, raised his arm into the air and fired a shot as a warning; there was no plea of guilty (*R v Atkinson* [1990] 2 NZLR 513). In the other case the Court reduced from eight years to six years a sentence of imprisonment imposed for the same offence where there was insufficient evidence to establish that the firearm was actually directed at the traffic officer (*R v Collier* (CA27/92, 31 May 1992)).

Those two cases, *Atkinson*, 1990, and *Collier*, 1992, follow the decision of *Taylor* in the Court of Appeal in 1989.

[14] Recently Harrison J gave judgment in another firearms against the police case *R v McDonald* HC AK CRI 2009-004-16897, 22 September 2009. The facts of that case are far more serious than here and I do not need to go into them. But in the course of that judgment Harrison J recognised that trial Judges and sentencing Judges, such as he and I, are now to be guided by the Court of Appeal decision in *Samuels*.

[15] I have concluded, therefore that the sentences to be found in the analysis of Harrison J in his earlier decision in *Wells* are now out of date; that the Courts are now imposing tougher sentences in the case of use of firearms against the police.

[16] That analysis completed, I have then gone back and looked at the Crown's suggestion of 11 years starting point. That is one year less than *Samuels* plus a six month uplift for the fact that this offending occurred on bail. I agree with the Crown

that *Samuels*' set of facts is more serious than these by some margin. It is always difficult because each set of facts is appropriate. I also agree that *Wells* and the cases cited in it are now out of date. Nonetheless, they are not so out of date that the reasoning in *Wells* is not relevant.

[17] Having given the matter consideration, I have decided that the starting point for offending in your case for the use of firearms is ten years, and I agree with the Crown that there should be an uplift of six months on breach of bail.

[18] In respect of the remaining offences I agree with the analysis by the Crown, in the schedule, and I do not need to go through them. They are not seriously disputed, if at all, by Ms Farnan. Working back from that analysis, I have taken into account the discounts for pleas of guilty in accordance with the latest schedule prepared by the Crown. In respect of the pleas of guilty for the firearms, you get a discount of 20%. In respect of the other offences the discount is of 33%.

[19] The result of that analysis is that I have taken your indicative sentence of ten and a half years, subtracted two years one month from that, and reached a period of eight years five months. I have then taken the remaining sentences suggested by the Crown of eight months, two months, six months, and two months, a total of one year six months, and reached an end sentence of nine years 11 months.

[20] I then have stepped back and looked at the totality of this offending in the light of s 85 and considering whether or not imposing a sentence of nine years 11 months would be disproportionate to the total gravity of the offending. In the course of this analysis, which is judgmental, before I had done these calculations, I had been thinking that the total gravity of this offending ought to be around a ten year sentence. As it happens, the analysis that I have undertaken, particularly the discounting from *Samuels*, and with some weight to be given to *Wells*, has produced a sentence very close to that. For these reasons I do not think there should be any change in the sentence.

[21] Accordingly, you are sentenced to a total sentence of nine years 11 months.

[22] The summary schedule attached for you will be amended to reflect the compilation of those figures as I have just set out.

Stacey Snelleksz

[23] I now turn to the sentencing of you Ms Snelleksz.

[24] The Crown have similarly prepared a schedule to which there has been no significant challenge from Mr Westgate, and I know that is not because Mr Westgate has not looked at these matters very carefully.

[25] [Judge confers with counsel] Taking the higher discount and adjusted up, (counsel conferred and applied *R v Hessell* [2009] NZCA 450), the Crown is suggesting an end sentence of 24 months for all your offending, taking as the lead offending the neglect of your children. I agree with that sentence. I had independently, working from the submissions, but without the benefit of the summary table been thinking that the sentence would be around two years or something over, on the authorities.

[26] There are two issues, therefore, for me to decide. The first is whether or not you should get any allowance for the four and a half months where you have been on bail, on a 24 hour curfew. The Courts have recognised that bail on a 24 hour curfew is essentially the same as home detention. For practical purposes you are confined to a house.

[27] As the Court of Appeal has done in *R v Iosefa* [2008] NZCA 453, and I think in other cases, it is appropriate therefore to recognise that form of detention. That form of detention is not recognised, as yet, in the Sentencing Act, whereas, for example, the seven months you have already served in prison while on remand is already recognised by the Parole Board in the calculation of your release date.

[28] I have decided that it is appropriate to reflect the four and a half months you have spent on 24 hour curfew bail by adjusting your end sentence by two months. That reduces your end sentence to 22 months.

[29] I then am required by the Sentencing Act to consider whether or not you should be sentenced to home detention. You have heard the exchange between counsel who argued for a sentence of home detention of 23 months which would reflect the time you have already spent in prison and the argument by Mr Gresson who argued, if I may say so, cogently, that for offending of this seriousness, home detention was not an appropriate response to the harm done to the community. I refer to the $45,000 worth of offending, and more particularly, to the very serious life threatening risks to which you exposed your two children.

[30] For these reasons I reject home detention and I sentence you to 22 months imprisonment.

Reparation

[31] I now turn to the question of reparation. Mr Gresson has filed a schedule of reparation orders. I have not had a chance to discuss that schedule with counsel for the defence and I will ask Ms Farnan and Mr Westgate for their comments in respect of reparation.

[Judge has discussion with counsel]

[32] Having heard submissions on reparation I am not going to make any orders for reparation against you, Mr Shaw, because of the time you are going to spend in prison and the fact you already owe the community, both as taxpayers and individuals, the sum of over $9,000.

[33] In the case of you Ms Snelleksz, you are a woman of talent. You are going back into the community soon. You had a business before this offending occurred. I think it is appropriate that you should make significant amends and I am going to order for reparation in your case of $15,000.

Minimum non-parole period – Shaw

[34] I have considered the minimum non-parole period in the case of Mr Shaw. In my view the sentence that I have imposed does provide appropriate accountability to the community and I am just simply not satisfied that I should impose on that a minimum period. The period that you, Mr Shaw, will stay in jail will be a judgment made by the Parole Board, and an important aspect of that decision, as you will know, will depend on their appreciation of your reaction to this offending, the degree to which you are remorseful, and the degree to which you make efforts to prepare yourself to return to society and try to put your criminal past behind you.

Disqualifications

[35] On the question of disqualifications, I am inclined to accept the proposed periods of disqualifications suggested by the Crown. [Discussion with counsel] Mr Shaw you are disqualified from driving for 12 months. Ms Snelleksz you are disqualified from driving for 18 months.

Destruction

[36] There will be an order for destruction of the weapons being the hockey stick and the metal baton, as well as the cannabis and drug paraphernalia.

Solicitors:
Gresson Dorman & Co, Timaru, for Crown
J Westgate, Dunedin, for Accused Snelleksz
Farnan Garthwaite Law, Dunedin, for Accused Shaw

Schedule of Offending – Christopher Daniel Shaw **Total offences: 60**

Group A: Offending related to arrest – 2 February 2009

Charge	Maximum penalty	Proposed starting Point – includes aggravating & mitigating features of the offending	Uplift for the aggravating features of the offender	Cumulative or concurrent	Final Sentence
Use firearm against law enforcement officer **x 6**	14 years Crimes Act 1961 s.198A(1)	lead offence - 10 years imprisonment; Five remaining offences 8 years imprisonment each	6 months	Lead offence Five remaining sentences concurrent	8 years 5 months 7 years (Scott, Mitchell & Wills) 7 years 6 months (Alden) 7 years 6 months (Low)
Cruelty to a child **x 3**	5 years Crimes Act 1961 s.195	18 months imprisonment	Not applicable because of the lead sentence	Concurrent	16 months
Dangerous driving causing injury	5 years or $20,000 fine and minimum 1 year disqualification Land Transport Act 1998 s.36(1)(b)	18 months imprisonment; 12 months driving disqualification	Not applicable because of the lead sentence	Concurrent	16 months 12 months driving disqualification

Group B: South Island Spree offending - 30 January to 2 February 2009

Charge	Maximum penalty	Proposed starting Point – includes aggravating & mitigating features of the offending	Uplift for the aggravating features of the offender	Cumulative or concurrent	Sentence
Use Document **x 37**	7 years Crimes Act 1961 s.228(b)	9 months imprisonment	3 months	**Cumulative**	8 months
Burglary **x 3**	10 years Crimes Act 1961 s.231	9 months imprisonment	3 months	Concurrent	8 months
Theft (value over $1000)	7 years Crimes Act 1961 ss.219 & 223	2 months imprisonment	Not applicable because of the lead sentence	Concurrent	8 months

Group C: 28 January 2009 – Christchurch

Charge	Maximum penalty	Proposed starting Point – includes aggravating & mitigating features of the offending	Uplift for the aggravating features of the offender	Cumulative or concurrent	Sentence
Unlawful interference with motor vehicle	2 years Crimes Act 1961 s226(2)	3 months imprisonment	Not applicable	**Cumulative**	2 months
Theft ex car (value under $500)	3 months Crimes Act 1961 ss.219 & 223(d)	1 month imprisonment	1 month	Concurrent	2 months

Group D: Palmerston North offending - 1 December to 31 January 2009

Charge	Maximum penalty	Proposed starting Point – includes aggravating & mitigating features of the offending	Uplift for the aggravating features of the offender	Cumulative or concurrent	Sentence
Burglary **x 3**	10 years (s.231(1)(a) Crimes Act 1961)	9 months imprisonment	Not applicable; previously allowed for in group B.	**Cumulative**	6 months
Cultivation of Cannabis	7 years Misuse of Drugs Act 1975 ss.9(1)&(2)	6 months imprisonment	Not applicable because of the lead sentence	Concurrent	6 months
Receiving **x 2** (value over $1000)	7 years Crimes Act 1961 ss.246 & 247)	3 months imprisonment	Not applicable because of the lead sentence	Concurrent	6 months

Group E: Palmerston North Offending 26 – 30 June 2008

Charge	Maximum penalty	Proposed starting Point – includes aggravating & mitigating features of the offending	Uplift for the aggravating features of the offender	Cumulative or concurrent	Sentence
Receiving (value over $1000)	7 years Crimes Act 1961 ss.246 & 247	3 months imprisonment	Not applicable; previously allowed for in group D.	**Cumulative**	2 months

Schedule of Offending – Stacey Estelle Snelleksz **Total offences: 51**

Group A: Offending related to arrest – 2 February 2009

Charge	**Maximum penalty**	**Proposed starting Point – includes aggravating & mitigating features of the offending**	**Uplift for the aggravating features of the offender**	**Cumulative or concurrent**	**Sentence**
Cruelty to a child **x 2**	5 years Crimes Act 1961: s.195	18 months imprisonment	2 months	**LEAD SENTENCE**	15 months
Dangerous driving causing injury	5 years or $20,000 fine; minimum 1 year disqualification Land Transport Act 1998: s.36(1)(b)	18 months imprisonment	2 months	Concurrent	15 months 18 months driving disqualification

Group B: South Island Spree offending – 30 January to 2 February 2009

Charge	**Maximum penalty**	**Proposed starting Point**	**Uplift for the aggravating features of the offender**	**Cumulative or concurrent**	**Sentence**
Burglary **x 2**	10 years Crimes Act 1961: s.231	9 months imprisonment	1 month	**Cumulative**	5 months
Use Document **x 37**	7 years Crimes Act 1961: s.228(b)	9 months imprisonment	1 month	Concurrent	5 months
Theft *value over $1000*	7 years Crimes Act 1961: ss.219 & 223	2 months imprisonment	Not applicable	Concurrent	5 months

Group C: 28 January 2009 – Christchurch

Charge	**Maximum penalty**	**Proposed starting Point**	**Uplift for the aggravating features of the offender**	**Cumulative or concurrent**	**Sentence**
Possession of offensive weapon in a public place	2 years Crimes Act 1961: s.202A(4)(a)	1 month imprisonment	Not applicable	**Cumulative**	1 month
Theft *value under $500*	3 months Crimes Act 1961: ss.219 & 223(d)	1 month imprisonment	Not applicable	Concurrent	1 month

Group D: Palmerston North offending – 9 to 31 January 2009

Charge	**Maximum penalty**	**Proposed starting Point**	**Uplift for the aggravating features of the offender**	**Cumulative or concurrent**	**Sentence**
Receiving **x 4** *value over $1000*	7 years Crimes Act 1961: ss.246 & 247	3 months imprisonment	Not applicable	**Cumulative**	1 month
Permit premises to be used for Cannabis Offence	3 years Misuse of Drugs Act 1975: ss.12(1)&(2)	3 months imprisonment	Not applicable	Concurrent	1 month
Receiving *value between $500 and $1000*	1 year Crimes Act 1961: s.231(1)(a)	3 months imprisonment	Not applicable	Concurrent	1 month

SHAW

	Starting Point	Uplift	Total	
GROUP A Lead Offence	10 years +	6 months	= 10½ years	8 years 5 months
GROUP B Lead Offence	9 months +	3 months	= 12 months	8 months
GROUP C Lead Offence	3 months +	0	= 3 months	2 months
GROUP D Lead Offence	9 months +	0	= 9 months	6 months
GROUP E Lead Offence	3 months +	0	= 3 months	2 months

SNELLEKSZ

	Starting Point	Uplift	Total	Final Sentence
GROUP A **Lead Offence**	18 months +	2 months	= 20 months	15 months
GROUP B **Lead Offence** (Concurrent)	9 months +	1 month	= 10 months	5 months
GROUP C **Lead Offence**	1 month +	0	= 1 month	1 month
GROUP D **Lead Offence**	3 months +	0	= 3 months	1 month