NOTE: PUBLICATION OF NAME OR IDENTIFYING PARTICULARS OF COMPLAINANT PROHIBITED BY S 139 CRIMINAL JUSTICE ACT 1985

ORDER SUPPRESSING PUBLICATION OF ANY REFERENCE TO COMPLAINANT'S PARTNER

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

CRI-2008-409-014401

REGINA

v

NATHAN THOROSE CONNOLLY

Hearing: 17 December 2009

Appearances: M N Zarifeh for Crown
JHM Eaton for Prisoner

Judgment: 17 December 2009

SENTENCE OF HON. JUSTICE FRENCH

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[1] Nathan Thorose Connolly, you appear for sentence on one count under s 129A of the Crimes Act 1961 of inducing consent to sexual connection by threat, a jury having found you guilty of that offence.

[2] It is a serious offence, as is reflected in the maximum penalty of 14 years' imprisonment.

[3] The background facts of your offending are as follows.

[4] You were a sworn police officer and a regular fee-paying client of the complainant, who is a prostitute. She was unaware you were a police officer until a chance visit to the police station in June 2005 when she saw you in uniform in the reception area.

[5] Notwithstanding the discovery that you were a police officer, the arrangement whereby you paid her for sexual services continued as before. On each occasion you were in civilian clothes and driving your private vehicle.

[6] Things changed, however, following an incident one night when you pulled her car over on Bealey Avenue while you were on duty, using the police red and blue flashing lights. The victim's car was neither warranted nor registered, and there was a problem with her licence. You told her you could issue her with $1000-worth of tickets, and mentioned the possibility of the car being towed away. You did not, however, issue any tickets. Instead you drove her in your patrol car to a remote location near Belfast Cemetery, where sexual intercourse took place. For the first time ever, you did not pay for the sex. Thereafter, any sex between the two of you was always free, with the issue of payment never being raised by either of you.

[7] At trial there was evidence of you having searched the police computer database for information about the complainant, and of having told her that you would have to arrest her and take her to the police station if you were ever seen with her in a police car.

[8] After the Bealey Avenue tickets incident the complainant said there were two further incidents of your asking her for sex while she understood you were on duty. The jury found you guilty of the first of these. They acquitted you of the second, and they also acquitted you of a count of corruptly obtaining a bribe in relation to the Bealey Avenue tickets incident.

[9] What happened on the occasion that the jury found proved beyond reasonable doubt was that the complainant was standing on her street corner. You drove past her a few times in the patrol car and then pulled up to tell her to meet you around the corner. She did so. You told her to get into the patrol car and took her back to

Belfast Cemetery, where you had sex in the patrol car. This took the complainant away from her street corner for an hour. Payment was never mentioned. She testified that she was too scared to ask for payment.

[10] The Crown case at trial was that your culpability with respect to this count, count 2, arose from a course of conduct commencing on the evening you pulled her over on Bealey Avenue, and continued on the second occasion when you took her in the patrol car to the same location. The Crown relied on aspects of your conduct, either alone or in combination, as amounting to an implied threat. Those aspects were telling her you would have to arrest her if seen with her in a patrol car, using the red and blue flashing lights on Bealey Avenue, asking her for sex while in a police vehicle, and asking her for sex while in a police uniform. To have found you guilty the jury must have been satisfied that by your conduct you impliedly threatened to make improper use of your police powers and knew that the complainant's consent to the free sex that night had been induced by the threat to use your police powers to her detriment.

[11] I have read the victim impact report. The victim says she was fearful and felt trapped. She says you made it clear you were prepared to use your police powers if she did not do what you wanted. She also talks about the effect of what happened on her relationship with her partner and other street workers.

[12] In addition to the victim impact report I have read the pre-sentence report. The pre-sentence report tells me you are 31 years of age, currently unemployed without any income, and have no previous convictions. It also tells me that, while you have sympathy for the complainant, you maintain your innocence and therefore do not feel or show remorse. You are, however, assessed as being at very low risk of reoffending. Your conduct has cost you your marriage, your career, ruined you financially and resulted in a very public disgrace. It has also, Mr Eaton told me this morning, damaged your relationship with your two young children.

[13] It is clear from the probation report and the references that you have extremely strong family support and that you are held in high regard by a significant number of people. A recurring theme in the references is your devotion to your two

small children and your care and concern for others. Several writers do not accept the jury's verdict, and that obviously colours their perception. Significantly, your most recent employer rates you very highly. It is also obvious to me that you did do some very good work in the police, although I have to temper that by a finding in the civil jurisdiction that you elbowed a man in the face three times while he was handcuffed in the back of a patrol car. That incident resulted in an award of exemplary damages against the police.

[14] I turn now to explain the sentencing decisions I have to make today.

[15] First and foremost I am required to apply the purposes and principles of sentencing under the Sentencing Act 2002.

[16] In terms of the purposes of sentencing, there is a need to make you accountable for the harm you have done to your victim and to the community, to denounce your conduct, to try to promote a sense of responsibility in you and an acknowledgement of harm, and to deter you and others who may be like-minded.

[17] I am also required to have regard to the principles of sentencing. Of particular relevance in this case is the seriousness of the offending, the desirability of consistence with other cases, and the principle emphasised to me by Mr Eaton, namely my obligation to impose the least restrictive outcome appropriate in the circumstances.

[18] I need also to explain to you that in coming to a decision I am required to follow what can be loosely called a two-stage approach.

[19] In the first stage I have to fix what is known as the starting point. That means the sentence which reflects the culpability or blameworthiness associated with your offending.

[20] The second stage is that, having fixed that starting point, I am then required to consider whether your personal circumstances, as opposed to the circumstances associated with the offending, warrant any adjustment to the starting point.

[21] Counsel disagree very strongly on what is the appropriate starting point.

[22] The Crown, in their written submissions, say eight to nine years' imprisonment is the correct starting point. In support of that submission the Crown has identified aggravating features of your offending as being the breach of position of trust or authority, secondly, the extent of the offending, and thirdly the extent of the damage or harm resulting from your offending. The Crown has also referred me to the decisions of *R v Schoeman* CA18/95, 22 May 1995 and *R v Trimble* HC Hamilton CRI-2006-079-000987, 6 June 2007, Williams J to support their suggested starting point.

[23] For his part, Mr Eaton submits that you should be sentenced on the basis that is consistent with the verdict – namely a single act of unlawful behaviour. He points to mitigating factors associated with the offending as being the absence of any overt threat or aggression and says also that the offending must be viewed in the context of what was a prolonged and ongoing sexual relationship, and the evidence that the complainant would have been agreeable to the sex if you had paid for it.

[24] I accept Mr Eaton's submission that you must be sentenced on the basis of a single act. I also consider that, because an abuse of power is an inherent feature of this offence, it is important to avoid double counting by citing breach of authority. The fact, however, that you committed this offence as a police officer is nevertheless an aggravating feature because of the harm done to the police force and the resulting loss of public confidence in the police. That is something that strikes at the very heart of our legal system. It is imperative that we have faith in the integrity of our sworn police officers who are entrusted by the community with the task of enforcing the law.

[25] Another important aggravating feature in my view is the vulnerability of your victim. She had no-one that she could turn to.

[26] There is no tariff case for this offence, and indeed, apart from *Trimble*, no other sentencing decision. The facts of *Trimble* are distinguishable, and in my view, having regard to the maximum penalty and comparable sentences for a single act of

rape, an eight to nine year starting point is far too high. In my view a more appropriate starting point is five years' imprisonment. I therefore fix the starting point as five years' imprisonment.

[27] That is the first stage.

[28] The second stage is to consider your personal circumstances.

[29] I consider that there are three very important mitigating factors. The first is the absence of previous convictions. The second is the significant punishment you have already suffered in terms of the loss of your career, the breakdown of your marriage, the harm to your relationship with your children, and the public vilification. You have been publicly disgraced and humiliated. Thirdly, as an ex-policeman you will be at risk in prison and likely to spend a significant part of imprisonment in isolation. That, I am told, would entail 23-hour lockdown and being unable to mix with other prisoners.

[30] I am prepared to give you a substantial discount on account of those mitigating factors, to the point where I am prepared to reduce the term of imprisonment to a sentence of two years.

[31] That, of course, renders you eligible to be considered for home detention, an outcome strongly advocated by Mr Eaton. In support of that submission, he points to a number of factors, including the fact that you have already suffered a great deal as a result of this offending and secondly the fact of the risks for you in a prison sentence. In my view, however, home detention, even taking into account the factors mentioned by Mr Eaton, would nevertheless be an inappropriate response to the seriousness of this offending involving as it did a police officer abusing his power for his own personal benefit. I accept the submission made by Mr Zarifeh that denunciation and general deterrence must be a primary consideration in this case and that those interests would not be sufficiently met by a sentence of home detention.

[32] Nathan Thorose Connolly, on the charge of inducing consent to sexual connection by threat you are convicted of that offence and sentenced to a term of imprisonment of two years.

Solicitors:
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