

**PERMANENT ORDER PROHIBITING PUBLICATION OF NAME,
ADDRESS OR IDENTIFYING PARTICULARS OF PRISONER.**

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

**CRI-2010-009-18038
[2012] NZHC 709**

THE QUEEN

v

CRS

Appearances: P A Currie for Crown
E C Bulger for Prisoner

Judgment: 17 April 2012

REMARKS ON SENTENCE OF CHISHOLM J

[1] Originally you were charged with murdering your daughter immediately following her birth. Following reports from Professor Brinded (the Crown expert) and Dr Short (the defence expert) it became common ground that infanticide rather than murder was the appropriate charge. Consequently, the indictment was amended and you were charged with infanticide to which you immediately pleaded guilty.

[2] The Crime of infanticide applies where a mother kills a child within a certain timeframe, at a time when the balance of the mother's mind is disturbed by the effect or the disorder consequent upon childbirth to such an extent that the mother should not be held fully responsible. In other words, there is an element of diminished responsibility in the charge that you now face. You are probably aware, Ms [S], that

the maximum penalty for infanticide is three years imprisonment. I am not going to leave you in suspense. I can tell you now that I am not going to send you to prison.

The offending

[3] After you became pregnant in early 2010 you concealed your pregnancy from your family and your friends and, judging from the psychiatric reports, you probably disassociated yourself from the pregnancy and simply did not want to believe that it had occurred.

[4] After your daughter was born at your parents' home you smothered her by holding your hand over her air passages. Having done that you placed her body in a shopping bag and put it in a wardrobe. You removed all signs of the birth so that your family would not be aware of what happened. About six weeks later your mother discovered the decomposed body of your baby daughter.

Your circumstances

[5] You are 29 years of age. Your first two children were adopted out and your third child has now been removed from your care, although you are having continuing contact with her. Your fourth child was born dead in 2009 and following that birth you concealed the body. As a result of that concealment you were sentenced on 2 June 2010 to supervision for one year.

[6] At the time of that sentencing you were obviously pregnant with your baby daughter whose death has given rise to this charge. Whether you were aware of that at that time I do not know. Possibly you were aware, possibly you were in denial that you were pregnant.

Psychiatric reports

[7] There are two extremely thorough and helpful psychiatric reports before the Court. Both psychiatrists have spent considerable time with you. You have been at Hillmorton under psychiatric care for an exceedingly long time. Both psychiatric

reports record a history which is immensely troubled and sad. That history provides the context for both your offending in 2009 when you concealed the body and your current offending.

[8] Both psychiatrists regard your case as complex, and clearly it is. In the course of both reports there is reference to remorse and I accept that your remorse is genuine.

[9] For his part, Professor Brinded explained that you had descended into a major depressive disorder upon discovering your fourth pregnancy (that is the pregnancy before the pregnancy giving rise to this sentencing). Professor Brinded says:

Unfortunately, following her subsequent conviction for concealing the dead body of a child she appears to have been unable to engage effectively in the counselling of it and a subsequent pregnancy appears to have overwhelmed her coping mechanisms completely. I believe that Ms [S] never fully recovered from the effects of becoming pregnant and then giving birth to the fourth child which was then compounded by a fifth pregnancy and that her severe major depressive disorder has profoundly influenced her subsequent actions resulting in the tragic death of her baby in 2010.

Professor Brinded was satisfied that the defence of infanticide was available to you.

[10] Dr Short said this:

It appears that the alleged offence may have occurred in the context of a partially treated major depressive disorder particularly associated with the pregnancy and delivery of her fourth child and a traumatic stress response to the circumstances of that delivery and the subsequent postnatal events, such that Ms [S] was in a state of denial of her fifth pregnancy. This appears to have been a pervasive denial (the absence of both intellectual and emotional awareness of the pregnancy) such that with the unexpected onset of labour she experienced flashbacks and traumatic thoughts of her fourth baby. In this state of high emotional arousal and physical pain there also appears to have been a transient episode of peri-traumatic disassociation when Ms [S] experienced a disconnection from the reality of her situation which she likened to watching a "slowed down movie".

As I have already mentioned, Dr Short was also satisfied that the defence of infanticide was available.

[11] Currently you are a patient at Hillmorton Hospital and under psychiatric care. My understanding is that this situation will continue for the foreseeable future under

the Mental Health (Compulsory Assessment and Treatment) Act 1992. All the information I have is that you are assisting and co-operating in an attempt to resolve your mental health issues and to rehabilitate yourself.

The probation officer's report

[12] At the request of the Court the possibility of electronic monitoring was considered, but given that you are at Hillmorton the probation officer understandably ruled that out. For similar reasons there is no reference to the possibility of community work.

[13] According to the probation officer, who has discussed the matter with the psychiatrists, the risk of re-offending is low. The probation officer does not see any purpose being served by a sentence of supervision because you are, and will be for the foreseeable future, at Hillmorton. Under those circumstances the recommendation from the probation officer is that you come up for sentence if called upon.

Aggravating and mitigating features

[14] As to the aggravating and mitigating features of the offending there has been some debate between the Crown and defence as to whether premeditation is an aggravating feature. While I can understand the Crown's point of view, my impression, having read the extensive information available about the offending and about you, is that it was a spur of the moment action on your part.

[15] On the other hand, a greater abuse of trust is hard to imagine – the taking of a life of a baby who has just been born. That is something that you are going to have to live with. Hopefully you will be able to recover from the realisation of what you have done.

[16] There is also the concealment which is clearly an aggravating feature. To my mind that factor must have reflected a very troubled mind, especially given the

duration of the concealment and the steps that you took to prevent anyone discovering that the baby was in the wardrobe.

[17] As far as personal aggravating features are concerned there is, of course, the fact that this offence was committed when you were on supervision for the concealment of the body of the previous baby. However, for reasons that appear from the psychiatric reports I think Ms Bulger is right in that the two events are so closely interrelated that it is difficult to put much weight on the possibility that the previous offence is an aggravating feature of the current offence.

[18] As far as mitigating factors are concerned there is, of course, your guilty plea. I accept that from the outset you have been prepared to plead guilty to infanticide and you should receive full credit for that. There is also your health and personal circumstances, which I am not going to go into. They make the saddest possible reading. Clearly they played a very big part in this absolutely dreadful episode that we are now having to consider.

[19] In addition there is remorse. I have already said that I accept your remorse is genuine.

The approach to sentencing

[20] There are no guidelines for sentencings of this nature. Invariably they are extremely difficult. On the one hand, a life has been taken. On the other, there are deep underlying psychiatric factors that need to be weighed and this is reflected in the offence of infanticide.

[21] Counsel on both sides have drawn my attention to a number of cases and I thank them for their research. As far as they are aware, no mother been sent to prison for infanticide. For the Crown, Ms Currie accepts that imprisonment is not the appropriate solution in this case and naturally Ms Bulger supports that approach on your behalf.

[22] Probably the case that is closest to this is *R v JRH*.¹ Sentencing took place in that case in 2009. The mother was a year younger than you. Like you she hid her pregnancy. Three earlier children had been taken away from her. As in this case she smothered her baby. As in your case she suffered from a major depressive disorder. Mallon J sentenced her to two years supervision.

What sentence should be imposed in your case?

[23] I agree with Ms Bulger that you need help. On the other hand, I need to keep in mind that a life has been taken. Unfortunately, the options available to me are very limited. Home detention and community work are effectively ruled out. In truth, I am left with one option, or perhaps two. Either intensive supervision or supervision. While I can understand why the probation officer has recommended a sentence of coming up if called upon I reject that as an unrealistic possibility here.

[24] There has to be some form of sentence to reflect what has happened. In the normal course of events Judges adopt a starting point and take into account aggravating features and mitigating features before arriving at the end result. However, in this case that approach would be somewhat meaningless because I have in mind to impose intensive supervision for the maximum available period, namely two years. So I am going to go immediately to that sentence. Theoretically my starting point might have also involved community work or something of that nature.

[25] I am going to ask you to stand while I impose sentence on you and then I am going to turn to the question of name suppression.

[26] Ms [S], you are now sentenced to two years intensive supervision. There will be the following special conditions:

- (a) You are to undertake such psychiatric treatment as may be directed while you are at Hillmorton or at any other institution pursuant to the Mental Health (Compulsory Assessment and Treatment) Act.

¹ *R v JRH* (HC) Wellington CRI-2007-032-2799 31, July 2009.

- (b) Following your release from that hospital you are to undertake any other treatment if directed by the probation officer.
- (c) You are to notify the probation officer if you become pregnant. That means immediate notification. I know that you have agreed to an injection but it is absolutely imperative that you seek help if you become pregnant again.

Name suppression

[27] Crown suggests that notwithstanding the further report provided by Dr Short (who has also discussed the matter with Dr Earthrowl), Ms [S]'s name should be published. On the other hand, on the basis of that report, Ms Bulger has submitted that this is a case for permanent suppression of Ms [S]'s name, there having been interim suppression up to this time.

[28] Under the Criminal Procedure Act 2011 I can only make an order suppressing Ms [S]'s name if I am satisfied that publication would be likely to cause extreme hardship to Ms [S]. The other possible grounds of suppression under s 200(2) do not apply in this case.

[29] This is a relatively finely balanced matter. In essence the psychiatrists are satisfied that publication of Ms [S]'s name could compromise recovery, rehabilitation and family reintegration. The issue is whether that would amount to extreme hardship. On balance I am satisfied that it would, and I am going to suppress Ms [S]'s name. That means, of course that that the television footage of the prisoner when she came into Court cannot be broadcast.



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