

**ORDER PROHIBITING PUBLICATION OF NAMES OR IDENTIFYING  
PARTICULARS OF THE VICTIM AND HER MOTHER**

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

**CRI-2011-041-0934  
[2012] NZHC 2070**

**THE QUEEN**

v

**JAMES ROBERT HALL**

Hearing: 13 August 2012

Appearances: R J Collins for Crown  
J S Jefferson for Prisoner

Sentence: 13 August 2012

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**SENTENCING REMARKS OF PETERS J**

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Counsel: J S Jefferson, Napier: [scott@sjbarrister.co.nz](mailto:scott@sjbarrister.co.nz)

## **Introduction**

[1] Mr Hall, we are going to do this in four stages.

[2] The first stage is that I shall enter convictions on the two charges against you and give you the first of the “three strikes” warning.

[3] The second stage will be to consider your personal circumstances and the circumstances relating to this offending, and the effect your offending has had on your former partner, your daughter, and of course the wider community.

[4] Then we get onto stages three and four which is to determine what the sentence is going to be. The first of those stages is to arrive at what we call a starting point. The fourth stage is to reduce or increase that starting point to take account of factors that relate to you personally. I have already discussed some of those with counsel and the two that arise particularly in your case are your age and your guilty plea.

### **Stage one**

[5] Let us come back to stage one. I am going to convict you, because you have pleaded guilty to the charges in the amended indictment, on each of the two charges.

[6] The first is that on 20 March 2011 at Napier, with intent to injure your daughter, you did cause your daughter grievous bodily harm. I enter a conviction on that charge.<sup>1</sup>

[7] I also enter a conviction on the charge that between 21 November 2010 and 22 March 2011 at Napier, you caused your daughter grievous bodily harm with reckless disregard for her safety.<sup>2</sup> That is a representative charge. The significance of a representative charge is that the prosecution are to be satisfied that, in the period nominated, you committed that offence at least once, but they cannot pinpoint the

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<sup>1</sup> Crimes Act 1961, s 188(2).

<sup>2</sup> Ibid.

date. So at one point between November 2010 and March 2011 you have caused your daughter grievous bodily harm with reckless disregard for her safety but it is simply not possible to identify the precise date on which you did so.

### **Three strikes warning**

[8] Mr Hall, given those convictions you are now subject to what is called the “three strikes” law. I am going to give you a warning of the consequences for you of another conviction for a serious violent offence. You will also get this warning in writing.

[9] If you are convicted of one or more serious violent offence, other than murder, committed after I give you this warning and if a Judge imposes a sentence of imprisonment, then you will serve that sentence without parole or early release. If you are convicted of murder committed after this warning then you must be sentenced to life imprisonment, without parole, unless it would be manifestly unjust to do so. In that event the Judge must sentence you to a minimum term of imprisonment. That is the first stage warning, Mr Hall, you have now received it and you know the consequences if there is another serious violent offence. You will be given that warning in writing.

### **Sentencing**

[10] You are for sentence on the two charges of which I have just convicted you. Each offence carries a maximum penalty of seven years’ imprisonment.

### **Facts**

[11] The victim of this offending is your daughter. You and the victim’s mother were a couple for about three years and were living together at the time you committed these offences.

[12] Your daughter was admitted to Hawke’s Bay Hospital on 22 March 2011, at which time she would have been less than five months’ old. Her left leg was swollen

and injured and hospital staff carried out a fuller examination because they were suspicious. Their examination revealed other injuries, several inflicted some time previously, including a fracture to your daughter's right arm, two fractures to her right leg, two fractures to her left leg, an older fracture and bruising to her left leg, and bruising around her pelvis.

[13] The staff who examined your daughter thought that she had not sustained these injuries by accident but that someone had caused them. That led to the Police interviewing you, and you admitted that you had harmed your daughter. You told the Police that two days earlier, on 20 March 2011, you had bent your daughter's leg behind her back, causing her left thigh to swell.

[14] You seemed to the Police to less sure what had caused the other injuries but admitted that you had been rough with your daughter on several previous occasions, and that you had squeezed her hard against your body and may also have bent her legs back on other occasions.

### **Victim Impact Statement**

[15] Your daughter is now almost two and she, and her mother, are separated from you.

[16] I have heard your former partner's victim impact statement. From that, it is quite clear that she had no idea that you could not be trusted to look after your own daughter. She says that she trusted you and that she believed you when you said that you were happy with, and capable of, looking after your daughter when she was away from the house. She cannot understand why you did not say you that could not cope and did not wish to be left alone.

[17] Your daughter must have been in considerable pain. You would have known that and would have known why. But you did nothing about it. Your former partner cannot understand why you would have said nothing to her when bruising was evident.

[18] Naturally, your former partner was horrified when she found out what had gone on and all I can say, Mr Hall, is thank goodness for her and for her family.

[19] Your former partner says that she blames herself for not realising what was going on. She is now a good deal more anxious and worries about who your daughter is with, as she feels she cannot trust people as she should be able to. The break-up of your relationship has plainly been hard on her both socially and financially. You have left her and your daughter in the lurch because you simply cannot be trusted.

[20] Perhaps the only good piece of news from the material I have seen is that the doctors think that your daughter will not suffer long term physical effects from the injuries that you inflicted.

### **Personal circumstances**

[21] I have considered the Probation Officer's full pre-sentence report and also the psychologist's report that your lawyer, Mr Jefferson, obtained regarding your offending.

[22] Both reports have given me important information regarding your background, your personality and your response to this offending.

[23] You are 20 years old. You seem to have had a normal family upbringing although you say that a series of events occurred within your family when you were 11, for which you feel a degree of responsibility. You would not be responsible for those events, if they occurred. Someone else would be. You are responsible for other things, but not for those other matters, if they occurred.

[24] You left school at 16 and since then have worked as a painter and decorator. You have a good work history and clearly have the potential to be a good employee. With a bit more time you should be able to complete your apprenticeship although, as I understand it from your counsel, your employer said he did not wish to keep you on after learning of the charges you now face.

[25] You told the Probation Officer that you found it difficult to bond with your daughter and had trouble dealing with the degree to which your former partner and her family appeared to occupy your daughter's attention. You have said that you regret doing what you did, say that you feel guilty and regret that your behaviour ruined your relationship.

[26] You accept that you get angry quickly, too quickly and, to your credit, have shown some willingness to get help for this. I understand you have completed an anger management course known as the Dove Programme; have complied with the protection order that is in place in respect of your former partner and your daughter; and you have complied with all of your conditions of bail.

[27] Previously you were sentenced to community work for a driving offence. I understand there may have been some difficulty complying fully with that sentence. After hearing from your counsel, I am satisfied that would not necessarily be the death knell to a sentence of home detention, if we were to get to the point that were appropriate, and that is a big "if".

[28] The other important point to come out of the pre-sentence report is the Probation Officer's opinion, and this is always worthy of respect, that the risk of you offending again in this way is low.

[29] You have six previous criminal convictions, all for driving offences. Although they indicate that you need to grow up, and grow up fast, they are quite different in type from the present offending and I propose to disregard them in sentencing you.

[30] So those are your personal circumstances and the circumstances that relate to this offending. I am now coming to stage three which, as I said, is to arrive at a starting point for the sentence.

### **Purposes and principles of sentencing**

[31] In arriving at a starting point I need to consider several matters.

[32] First, I need to remind myself of the purposes for which I am sentencing you and the matters that I have to take into account. I also have to look closely at how the Courts have treated other offenders who have committed similar sorts of offences so that you are treated the same way other people in your shoes have been treated.

[33] You must be held accountable for the harm that you have done to your daughter and, through her, your former partner, her family and the rest of the community.<sup>3</sup> You need to understand that you are responsible for your actions. I need to make it clear to you that the community does not tolerate this type of behaviour and that it requires a sentence to be imposed that will deter you and others from acting this way. Violence against children usually will be met with very severe punishment.<sup>4</sup>

[34] I also need to assess the seriousness of your offending; take into account, as I say, what has happened in other cases so that you are treated as everyone else; and I also must impose the least restrictive outcome that is appropriate in the circumstances. I also need to consider what the Court can do to make sure that this offending is a “one off”, so that you do not do it again and so that no other child is harmed by you.

### **Submissions**

[35] The Crown has submitted that a starting point in the region of four years’ imprisonment is appropriate. Your lawyer submits that the starting point is somewhere between two and a half years and three years’ imprisonment. So we have a range. At one end of the scale is two years, six months, and at the highest it is up to four years’ imprisonment.

[36] I have considered a Court of Appeal case called *R v Brown*<sup>5</sup> which lists a range of comparable decisions and I have considered some of those decisions.

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<sup>3</sup> Sentencing Act 2002, s 7(1)(a).

<sup>4</sup> Sentencing Act 2002, s 7(1)(e) & (f).

<sup>5</sup> At [18]-[21].

[37] A recital of those decisions will be in the full written sentencing note but it is appropriate that I summarise them now.<sup>6</sup> In those cases, starting points of between two years, nine months' imprisonment and six years' imprisonment were adopted. In those cases, the Court took into account matters such as the nature of the injuries inflicted; whether they were to the brain or head which is obviously more serious; whether it was a case of one off or repeated offending, as it is in this case; the circumstances in which the offending came to be committed; the extent of hospital treatment that the child required; and the long term prognosis for the child. As I say, all of those factors may have an impact on the starting point.

[38] *In R v Gatland*<sup>7</sup> the offender fractured the skull of, and caused brain injury to, his six month old child. The Court of Appeal upheld an end sentence of three years' imprisonment.

[39] *In R v Wilson*<sup>8</sup> the offender was convicted of six counts of violent offending against his daughter when she was six to twelve weeks' old, including four of causing grievous bodily harm with intent to do so. The most serious injury was a fracture to the baby's skull but the offender also broke ribs, collar bone, forearm and leg. There was some risk that the injuries would have a long term effect. The starting point adopted in that case was six years' imprisonment, although the Court said that a starting point of about eight years could well have been justified.

[40] *In R v Filo*<sup>9</sup> the offender was a young man who was convicted of causing grievous bodily harm to a child, with reckless disregard for the child's safety.<sup>10</sup> The victim was the six month old nephew of the offender's partner. The child sustained a number of injuries, consistent with his head having been hit on a hard object. The child was admitted to hospital and spent several days in intensive care, having sustained severe head injuries. The Court of Appeal upheld a starting point of two years, nine months' imprisonment.

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<sup>6</sup> See [38] – [42] of this sentencing note.

<sup>7</sup> CA330/98, 26 November 1998.

<sup>8</sup> [2004] 3 NZLR 606 (CA).

<sup>9</sup> [2007] NZCA 20.

<sup>10</sup> Crimes Act 1961, s 188(2).

[41] *In R v Te Waaka*<sup>11</sup> the offender shook his four year old son causing substantial brain injury, as well as fractures to the child's ribs and bruises to his arms. There were signs that the child's long term development would be affected by his injuries. The Judge adopted a starting point of three years, six months' imprisonment.

[42] *In R v Brown*<sup>12</sup> the offender was charged with wounding his 14 month old son, with reckless disregard for his son's safety. Related charges were an assault on the child and a charge of resisting Police. Amongst other things, the child suffered bruising to the face, which was particularly severe around the child's right eye. There were also cuts to the child's right eyelid and his mouth. The likely cause of these injuries, which formed the basis of the wounding charge, seemed to be at least two punches to the child's head. The assault charge stemmed from smacking the child. The Court of Appeal adopted a starting point of three years, six months' imprisonment on those two charges and that of resisting the Police, which arose out of the same offending.

[43] Reviewing those cases, by itself the offending that led to your daughter's visit to hospital on 22 March 2011 would probably attract a starting point of something in the region of two years, nine months' imprisonment. However, the starting point in this case must reflect the representative charge to which you have also pleaded guilty. Bearing that in mind, in my view, the appropriate starting point is three years, three months' imprisonment. In arriving at that starting point I bear in mind this was a case of injuries to limbs, not the head, and that the injuries are not expected to have long lasting physical effects.

#### **Stage four**

[44] I then come to the next part of this sentencing which is to consider whether there are any aggravating or mitigating factors that relate to you personally which make it appropriate to increase that starting point or to reduce it.

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<sup>11</sup> HC Auckland CRI-2006-092-015178, 7 April 2008.

<sup>12</sup> [2009] NZCA 288.

### **Aggravating factors**

[45] There are no aggravating factors so it will not be going up from three years, three months. There are mitigating factors which both counsel are agreed must be taken into account.

### **Mitigating factors**

[46] The first matter for which there should be some reduction is your age and comparative youth. Court of Appeal decisions have commented on the impact of youth on what otherwise might be an appropriate sentence. The reason why youth may be relevant is because often someone who is younger is more impulsive; is less equipped to deal with the circumstances in which they find themselves; a longer sentence may affect a younger person more than it would affect an someone of more advanced years; and there is the greater opportunity for the offender to turn themselves, and their situation, around. There is greater scope for rehabilitation with someone who is young, and to make sure the offending does not happen again.

[47] You were a young father, and you clearly lacked parenting and communication skills. You were very fortunate in having your former partner as a partner. Your daughter is very fortunate to have her as a mother, and of course, her extended family. To your credit, you have shown a degree of self awareness and a need to address now the reasons for your behaviour.

[48] Given your youth, I propose to reduce the three year, three month starting point by 20 per cent. That would reduce your sentence to two years, seven months' imprisonment.

### **Guilty plea**

[49] The next matter to consider is your guilty plea. Your counsel has asked me to also take account of your expressions of remorse. I do not propose to make any reduction for remorse because remorse needs to be more tangible than it has been in this case.

[50] Your guilty plea is a very significant factor.

[51] You pleaded guilty to the offending in this case in May 2012.

[52] Crown counsel accepts, very fairly, that you did accept responsibility for your actions and acknowledged from the outset that you had caused these injuries. After that, however, it was necessary to arrive at the correct process and consider whether the offending should be dealt with in the District Court or the High Court, and to arrive at the right charges. These matters meant that it was not until May 2012 that a formal guilty plea was entered. You did, however, acknowledge that you were responsible from day one.

[53] So, from an early stage it was clear the case should be able to be resolved without going to trial. Guilty pleas are important because they save your former partner having to give evidence, they save the doctors having to give evidence and they save the need for a trial. That is why a discount is usually given for a guilty plea.

[54] Crown counsel has said that he would not object to the Court giving you the maximum guilty plea reduction of 25 per cent because of the lapse of time between the charges being laid and the date on which guilty pleas were formally entered. I propose to reduce the sentence by 25 per cent. By my calculation that takes you to just below two years' imprisonment.

### **Home Detention**

[55] Because I have arrived at a sentence of two years or less imprisonment, I must consider whether home detention is an appropriate sentence in this case. I am required by law to consider that and to impose on you the least restrictive sentence that is appropriate in the circumstances.

[56] I have to say that a sentence of home detention in a case such as this will be very rare. Violence towards children is so serious that circumstances will usually demand a sentence of imprisonment.

[57] That said, anyone who thinks that home detention is a soft option should think again. It requires the person to stay at home 24 hours a day, seven days a week for the duration of their sentence, subject to any absences that the Corrections Department might agree. Some who seek or obtain a sentence of home detention have reason to think that they would have been better off in prison because their liberty would not be as restricted as it is under home detention. Home detention is certainly not a soft option.

[58] The fact that the law requires home detention to be considered in a case such as this indicates that it can be taken to meet the purposes of deterrence, denunciation, rehabilitation and reintegration that are sought.

[59] Given the fact that there is a suitable home detention address; given your youth; given your willingness to front up to this offending and your responsibility for it, I have decided that it is appropriate to impose a sentence of home detention on you.

### **Sentence**

[60] Please stand.

[61] On the charge of causing grievous bodily harm with intent to injure you are sentenced to 12 months' home detention.

[62] On the charge of causing grievous bodily harm with reckless disregard you are also sentenced to 12 months' home detention, to be served concurrently.

[63] That means that your total sentence is 12 months' home detention.

[64] I impose the standard conditions referred to in s 80C(2) of the Sentencing Act 2002.

[65] I also impose the following additional conditions being those set out in Appendix 1 to the Department of Corrections Full Pre-Sentence Report dated 31 May 2012:

- (a) to travel directly to 316 Orchard Road, Camberley, Hastings and await the arrival of the Probation Officer;
- (b) to comply with the requirements of home detention and submit to electronic monitoring as directed by the Probation Officer and to adhere to the conditions and requirements of such monitoring unless otherwise authorised by your Probation Officer.
- (c) to attend an assessment for a departmental rehabilitation programme and if deemed suitable, to attend and complete this programme and its subsequent maintenance programme to the satisfaction of your Probation Officer and programme facilitator; and
- (d) to attend an assessment for an anger management programme and if found suitable, to attend and complete this programme to the satisfaction of your Probation Officer and programme provider.

[66] I also impose a condition that you are not to have the care of or be alone with any child under the age of 10 years during this sentence of home detention.

[67] Stand down.

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M Peters J