

**IN THE DISTRICT COURT
AT WELLINGTON**

**I TE KŌTI-Ā-ROHE
KI TE WHANGANUI-A-TARA**

**CRI-2019-085-000704
[2019] NZDC 22343**

NEW ZEALAND POLICE
Prosecutor

v

PAUL RAYMOND HARRIS
Defendant

Hearing: 6 November 2019

Appearances: Sergeant M Stonyer for the Prosecutor
M Robinson for the Defendant

Judgment: 6 November 2019

NOTES OF JUDGE I G MILL ON SENTENCING

[1] Well Paul Harris, you appear for sentence on a charge of injuring James Shaw with intent to injure him. The charge arises from an incident at about 7.45 am on 14 March of this year and it was an incident where you saw Mr Shaw, who is a Member of Parliament, you did a u-turn in your vehicle, parked your vehicle and confronted him on the footpath as he was walking to work that morning.

[2] I need to refer to quite a few documents whilst I am sentencing you and explain as best I can to you the reasons for my sentence and the sentence itself. This is not a case about you having the right or otherwise to have certain views, which I know you have, or to hold those views very strongly. It is about you assaulting Mr Shaw in the

circumstances and, given the seriousness of the assault, what the appropriate sentence is.

[3] I will deal with the facts of the case first and I need to do that because the facts were disputed by you and Judge Tuohy made certain findings and I have to rely on his findings as to the offence itself and, therefore, assess its seriousness.

[4] Now there is no dispute that this occurred around about quarter to eight on the morning of 14 March. You were driving on Glenmore Street in Wellington. You had a job to do in Karori that day and you were due to be there at about 8.00 am, and it is not disputed that Mr Shaw was walking to work on the footpath down Glenmore Street and that you did a u-turn, you parked your vehicle and you confronted him.

[5] Now clearly the reason for confronting him was because of your views on a number of things but you recognised him as someone you have seen on TV and someone who was promoting a relaxation of the abortion laws, something which you totally disagree with, and it is not disputed that you confronted him but the facts as were proved or is proved in the information I have is that when you confronted him he was unable to make any sense of what you were saying. It seems that you were so emotionally aroused at that time that, although he made out something about the United Nations and maybe something else, he was unaware of why you were confronting him and so he turned to leave and you grabbed him by the lapel.

[6] In the documents that I have you say that you were motivated on that day because of his stance on the abortion law and the very recent miscarriage that your wife had had. That may have been so but you did not say that to Mr Shaw at the time. But nevertheless what happened next is what put you in the dock today.

[7] So Judge Tuohy in his decision of 22 August pointed out that there was no dispute that you confronted Mr Shaw and you assaulted him, causing significant injury to his right eye socket, involving a fracture to the bone in that area. The dispute was as to how many punches were thrown and landed by you and whether you kicked Mr Shaw when he was on the ground. You disputed that you had hit him before you

tripped him and causing him to go to the ground and said that you only punched him twice on the ground.

[8] Judge Tuohy heard evidence from four witnesses, three for the prosecution and of course you gave evidence also. Two of the witnesses were a couple who intervened and stopped the continuation of the assault. Judge Tuohy was satisfied beyond reasonable doubt that in fact there were not less than two punches, possibly more, and not less than two hard punches when you struck Mr Shaw in the eye area while he was standing and he was satisfied that that caused the major injury to Mr Shaw. The Judge was also satisfied from the evidence that not less than three or four punches were delivered to Mr Shaw's head and shoulder area whilst he was on the ground and you were bending over him.

[9] As to the allegation of you kicking Mr Shaw when he was on the ground the Judge was not satisfied that that was proven. The evidence from Mr Shaw was that he inferred that he had been kicked and that kick was delivered to his back where he was carrying a backpack and that it struck the backpack. The Judge found, however, that that blow which must have been a blow was undoubtedly a punch and not a kick. So it is on those facts that I proceed to sentence you.

[10] You have previous convictions. These convictions were some considerable time ago. Two convictions for drink-driving 1994 and 1997, a conviction in 2004 for disorderly behaviour but in the circumstances they have little relevance if any to the sentencing today.

[11] The sentence recommended by the probation officer is one of imprisonment and Mr Robinson on your behalf has made submissions that I should not imprison you today. While he accepts in his submissions that the starting point may be imprisonment he submits possibly a community sentence would be more appropriate. In his submissions he submits that perhaps supervision and community work be appropriate but I do not agree with that at all. As far as supervision is concerned in any event there have been no issues identified for which a supervision sentence would be appropriate and community work would be inadequate as far as a penalty is

concerned given the assault and the consequences for him. I am not prepared to further delay sentencing and I will refer to that shortly.

[12] An electronic sentence was to be explored by Probation but you have refused up until now for that assessment to be done. What is quite apparent from the documents that I have and in particular the psychiatric report is that, although you do not suffer from any mental disorder and although I must emphasise that you are quite entitled to the views that you have and to express them, you do have personality traits that have contributed to this offending. It is clear that the views that you hold are fixed in your mind and will not be changed. These views involve political issues and other issues involving children and the rights of children but you were particularly concerned on this day with abortion and the rights of the unborn child. Although you are entitled to those views and to express them as strongly as you wish you are not entitled to use violence to express those views.

[13] So a specialist report was prepared and I need to refer to that report, not extensively but in some respects. What the report does demonstrate and also the probation report is that when you were challenged on your views or when you believed you were being challenged to do something that you believe there is no legal basis for you can react emotionally and quickly and in a number of instances it is because you have simply misinterpreted the information that you have been given and it does take some time to set you right if that can be done.

[14] In Dr Darling's psychiatric assessment this happened right at the start when she asked you to consent to her having access to information to complete the report and you became very agitated and remained agitated for some time until you realised that you were being asked for something that you had not realised or had misunderstood. You did participate, however, in the very long interview that followed. You told the psychiatrist that impulsively you did a u-turn and parked your van and approached the victim and your motive was because you were feeling distressed and angry as your wife had experienced a miscarriage two days earlier. Having assaulted Mr Shaw and left the scene, however, you then drove to your appointment and completed the job you had at 8.00 am. You have had no contact with mental health

services in the past. You have been trespassed from Parliament grounds as a result of your behaviour in the last year but there have been no charges in relation to that.

[15] You were seen by a number of people during your time in police care and otherwise and everyone who saw you has commented on your rigid overvalued ideas in their view and belief system and the inflexibility and the rigidity of your thinking. But none of them have come to the view that you have a mental disorder because other people express their views in the same way and will not be shifted on them.

[16] So you have I suppose a personality which contributed to you behaving in this way because of that fixed view that you have about abortion and your inability to change your thinking or to maybe express alternative ideas when you listen to others or otherwise. You also have some fixed ideas about the United Nations and the treatment of others but there is no mental health condition that you suffer from and there is nothing that is so bizarre in your behaviour that you have any psychosis or any diagnosis of such.

[17] You did say to the doctor that you were sorry and you had an ability to reflect on how it may have been for your victim and that Mr Shaw was entitled to his view as you were entitled to yours. So that goes some way in countering what the probation officer said about your lack of remorse.

[18] You seem to have functioned well enough in adult life. You have a business that you operate from home. It seems successful. You seem to have a successful marriage. You have a young family and another baby on the way. And so it seems your propensity to misinterpret things and to overreact is what has got you partly at least into this situation. So the report was helpful in that it eliminated any mental health disorder but it did highlight your personality which I would have to describe in many respects as unusual and problematic when you are faced with an alternative argument.

[19] Mr Shaw has completed a victim impact statement. He points out that during the attack the ambulance was called by the other people who were present. He had swelling to his right eye and cheek and forehead and generalised tenderness and

abrasions. Paramedics treated him and advised him and he went off to work. An hour or two after the attack his nose started to bleed and he went to the Emergency Department in Wellington Hospital and after a number of hours and a CT scan he was diagnosed with a fracture to his right orbital plate. This had been bleeding into his sinus and caused the bleeding from his nose.

[20] He said that during the attack he just simply did not know when the hitting would stop and this made him very anxious and that he is accessible to members of the public and that is part of what he does as a Member of Parliament and he worries that this incident will make him less accessible to the public. He has felt at least in the time following the attack less inclined to go out and this has had a very significant effect on his family and also his staff, all of whom have been shocked and upset and he wants you to know that this has caused a great deal of distress to the people he loves and the people who are close to him.

[21] The eye socket is recovering. There is still bruising which will take some time to disappear and he was very disappointed that you pursued the disputed facts hearing because that caused further trauma to himself and his family and the accompanying media interest of course added to that. He confirms that at no time during the attack or before it did you actually refer to the miscarriage or to the issue of abortion but you raised other issues such as beneficiaries and the United Nations.

[22] So the probation officer has had some issues with getting information from you. Your history of course does not suggest that you are a violent person but you are facing a very serious charge and sentence and the probation officer talks about your apparent lack of remorse and indifference. However, this is countered to some extent by the report that I have from the psychiatrist with whom you spoke at length with.

[23] You have refused to complete the interview or consent to electronic monitoring saying that it would cause undue stress on the unborn baby that your wife is expecting and the recommendation is imprisonment given the seriousness of the offence. There were two interviews, one on 2 October which was eventually rescheduled as you did not wish the report writer to place undue stress on your wife. Attempts were made to explain the role of the probation officer, however, you declined to proceed with the

interview further and on 11 October a second interview was convened but again terminated prematurely.

[24] The probation officer says you accused the probation officer of being part of the system representing the Court and not there for you and said let the Judge decide the punishment. You did not wish to get your wife involved in the issue of sentencing. You refused to continue with the interview. You had a raised voice and accused the writer of being evil. So the probation officer comes to the conclusion that you have no remorse but I think you have some remorse. Mr Robinson has asked me to delay again for a further assessment to be made for an electronic sentence but in view of the probation report that I have I am not prepared to do that.

[25] As far as the sentence is concerned a sentence of imprisonment is appropriate. Mr Robinson in his thoughtful and detailed written submissions has submitted to me that a starting point of eight to 12 months is appropriate. He also says you should get the benefit of a guilty plea and that should be reduced further.

[26] The lead case in this area is *Nuku v R* and also the case of *R v Taueki* is relevant to sentencing for this sort of charge.¹ In my view the charge that you pleaded guilty to is the appropriate charge. You clearly injured Mr Shaw and at the time you intended to do so.

[27] Mr Robinson has suggested that there are very few aggravating features in this case. In the case law the higher Courts direct me to consider the combination of factors that apply in this case and assess the appropriate band of sentencing. So it is not just a matter of identifying what the aggravating features are but how serious they are and weighing them together to see what the appropriate starting point is.

[28] In this case the violence that you perpetrated on Mr Shaw was significant and it was not just one blow, it was several blows as Judge Tuohy indicated, both while the man was standing and on the ground. There was significant violence in this case. It can hardly be said that you premeditated this attack but you did go out of your way to confront Mr Shaw but I cannot say that at that stage you intended to assault him. It

¹*Nuku v R* [2012] NZCA 584, [2013] 2 NZLR 39, *R v Taueki* [2005] 3 NZLR 372 (CA).

was a complete overreaction I believe to Mr Shaw turning away from you. So premeditation if it exists is so insignificant that I do not take that into account.

[29] I look at the seriousness of the injury. The injury was serious. There was a fracture of the bone around the eye and other less serious injuries but it was significant. There is also an attack to the head and it was not just a single blow. There were a number of blows to the head which shows of course your intention to cause injury and a sustained effort to do so. The fact that Mr Shaw can be described as a public official is relevant. As a Member of Parliament he is in the media spotlight and the public spotlight and will no doubt be someone who you either agree with or you do not depending on the issue at the time, but he is more vulnerable because of his public position and his holding out of his views and is entitled like any other citizen to walk down the road to work without being assaulted. Because he is a public official he is more vulnerable and deserves the protection of the law.

[30] Mr Harris has just said to me that in relation to the right of a citizen and in particular an official to be able to walk without fear in a public place that must be balanced against the 50 lives that he says are lost through abortion each day.

[31] In my view the combination of the factors that I have identified and the seriousness of them in combination mean that this case falls into what is known as band 2 of the case of *Nuku* where a penalty up to three years could be imposed. In that respect and given that there was no kick to Mr Shaw it is at the lower rather than the higher end of that band but there was significant force used as identified by Judge Tuohy.

[32] Accordingly I come to the conclusion that the starting point is one of 12 months' imprisonment and that that reflects the actual violence and the consequences of it.

[33] I now have to deal with what discounts you are entitled to. First of all for your guilty plea and I refer in this context to the Supreme Court case of *Hessell* where a discount for a guilty plea of 25 percent can be granted in cases where there is an early

guilty plea.² Now the rationale behind that is that the guilty plea reflects the remorse that the defendant has and it also reflects that the case does not need to proceed to a hearing, the consequent cost to the State and also the human cost to the victim is mitigated.

[34] In this case that is not entirely the case because of his challenge to the facts which was only partially successful. But in my view the challenge to the facts is dealt with in my starting point of 12 months' imprisonment as opposed to something up to 18 months' imprisonment had there been kicks administered.

[35] So the early guilty plea needs to be considered carefully by me. The plea was not entered until two months after your first appearance but that is not fatal to a full discount. But there is the hearing that was held for the disputed facts and I have to take that into account as to the findings that the Judge made show that there was extensive violence and that although there is some remorse there is not a lot of evidence of the extent of that remorse, that is are you are really sorry for what the victim has suffered from and his family.

[36] As best as I can I assess the discount for a guilty plea including your remorse that has been demonstrated as 20 percent. As to any other discount there is no further discount for remorse because there is not exceptional remorse shown in this case. But I note that violence is not in your character usually. I am giving you a discount and I am giving you a further five percent for your previous good character and your personal circumstances.

[37] Now I would be prepared to commute this sentence to one of home detention but I am not today. So the result is that you are now convicted and sentenced to nine months' imprisonment. I give you leave to apply for a substituted sentence but I do not delay the sentence itself. That means that you can apply whilst in prison for an electronically controlled sentence, particularly home detention if you choose to go down that course.

²*Hessell v R* [2010] NZSC 135, [2011] 1 NZLR 607.

[38] Accordingly that is my decision. Convicted and sentenced to nine months' imprisonment.

I G Mill
District Court Judge