

**IN THE DISTRICT COURT
AT NORTH SHORE**

**CRI-2015-044-001938
THREE STRIKES WARNING
[2016] NZDC 874**

THE QUEEN

v

ALEXANDER MAURICE CULLEN

Hearing: 22 January 2016
Appearances: B Finn for the Crown
J Mather for the Defendant
Judgment: 22 January 2016

NOTES OF JUDGE P J SINCLAIR ON SENTENCING

[1] Alexander Maurice Cullen, you are to be sentenced today in relation to three charges; aggravated burglary, carrying a maximum penalty of 14 years' imprisonment, wounding with intent to injure, carrying a maximum penalty of 14 years' imprisonment, and injury with intent to injure, carrying a maximum penalty of five years' imprisonment.

[2] The facts are that on 2 June last year at about 3.00 am the victims in this matter, John Williamson and Amber Hollis, were at their home on the North Shore. Mr Williamson went to check if the house was secure. However, he found that the doorway to the lounge was open and, as he went to shut the door, he was approached by two males unknown to him. One of those males was wearing a balaclava, the other a *Scream*-styled mask and was carrying what was believed to be a firearm. The male wearing the *Scream*-styled mask was you.

[3] When Mr Williamson saw what he believed was a firearm he attacked the two of you and a struggle ensued. During the struggle the victim was struck on the head by you with the purported firearm, causing him to fall to the ground. Both you and the co-offender kicked and hit the victim around the head and body. During the struggle the victim grabbed hold of you and pulled off the *Scream* mask you were wearing.

[4] On hearing noise from the victim, Ms Hollis came to the lounge area and saw the attack on her partner. She grabbed a steel bar from the lounge and attempted to hit your co-offender to stop him assaulting Mr Williamson. Your co-offender grabbed the pole and wrestled it from Ms Hollis, grabbing her and forcing her to the ground. She received a blow to the face area. Your co-offender then lifted Ms Hollis by her neck, telling her to shut up, and took her out the side door to the deck area while you continued to assault Mr Williamson.

[5] At this time the victim, Mr Williamson, ran from the lounge onto the deck area and jumped through some trellis fencing and fell to the ground. When he regained his feet he yelled out for someone to call the police. You and your co-offender fled the address through neighbouring properties where you got into a waiting motor vehicle.

[6] A police unit in the area activated its blue and red flashing lights and siren and a pursuit commenced. As your vehicle turned into a road it reduced speed. A male was seen getting out of the front passenger seat. That male was observed reaching into the car. He was handed a long object covered in a blanket. This was believed to be the firearm. The vehicle continued approximately 200 metres from where the male had decamped and stopped. The driver got out and was spoken to by police. Police searched the vehicle and located you hiding under a blanket at the rear of the vehicle.

[7] The Crown submit a starting point in the range of six to seven years' imprisonment would be appropriate with an uplift of six months for your previous convictions. The Crown indicate you would be entitled to a discount of 25 percent for your guilty pleas.

[8] You submit a global starting point of five to six years' imprisonment would be appropriate, acknowledging an uplift for your previous convictions would also be appropriate. You seek a full discount of 25 percent for your guilty pleas plus a further discount for your personal circumstances.

[9] A pre-sentence report has been prepared. You provided an explanation for your offending to the probation officer, stating the victims were unknown to you and you were only involved as a way of clearing up a debt you had with a previous gang. You are assessed as a high risk of re-offending. Given the nature of the offending and the injuries sustained by the victims, a custodial sentence is recommended by Probation.

[10] On 24 September last year I provided a sentencing indication providing a global starting point on the totality principle of six and a half years' imprisonment with an uplift of six months for your previous convictions and a 25 percent reduction for your guilty pleas in the event that you accepted the sentencing indication. I indicated that if any other discounts were sought I would require more information. You accepted the sentencing indication and entered guilty pleas.

[11] I need to take into account the purposes and principles of sentencing as provided in s 7 and 8 Sentencing Act 2002. I need to hold you accountable for the harm you have done to the victims and the community and acknowledge the effect of the offending on the victims. I need to promote in you a sense of responsibility. Denunciation and deterrence feature heavily in this type of sentencing involving serious violence. I need to also take into account the gravity of your offending, including your degree of culpability and the seriousness of this type of offence in comparison with other similar offending, so there is consistency in your sentencing. Finally, I must impose the least restrictive outcome in the circumstances.

[12] The leading decision for this type of offending is *R v Taueki* [2005] 3 NZLR 372 (CA). The Court of Appeal established three bands which reflect the seriousness of offending based on the number of aggravating features that are present. Included in that decision were examples of offending to assist in the application of those bands. In my

view, there were approximately four or five aggravating features, three more significant within those four to five.

[13] First, premeditation. You arrived at the address with disguises and a weapon at 3.00 am. The first victim came across two of you near the front door of his house. I do not agree with your counsel that you had not committed any thought to wounding or injuring. Arriving at a person's house at 3.00 am in the morning dressed in disguises and carrying a weapon, in my view, does constitute premeditation. Therefore, in my view, premeditation is moderately high in this instance.

[14] Secondly, this was a home invasion matter. That is a significant aggravating feature in relation to this offending. In *Taueki* the Court emphasised the importance of recognising the sanctity of the home and the violence occurring in a person's home is to be treated as an aggravating factor calling for a higher sentence.

[15] Thirdly, you brought a weapon of a similar shape to a firearm to the burglary and used that weapon to strike Mr Williamson on the head. While I accept that the weapon is an element of one of the charges, it was used on the first victim and although there was only one strike, it was a strike to his head. After the strike to the victim's head the victim fell to the ground where both you and your co-offender began to kick and hit him in his head and body.

[16] Fourthly, although the violence was not extreme, in my view the level of violence was reasonably high. The attack involved a weapon, as mentioned, and also mentioned it was at one point to his head. The violence continued while he was on the ground. As a result of the assault the first victim's lip was split open and required stitches to reattach it to his mouth. As a result of the blow to his head his head was bruised. Although the injuries were not life-threatening they were certainly not insignificant. In my view, you used violence to overpower the victims so that you could carry out the aggravated burglary. On your account, entering the house with a weapon was intended to intimidate. However, I consider that does involve facilitation of a crime.

[17] Finally, you arrived at the address with an associate who also took part in the attack. I concur with the Crown that multiple attackers increase fear and intimidation

suffered by victims. I have not overlooked that you were not physically involved in the assault on the second victim.

[18] I have reviewed the decision of *R v Gash* [2012] NZHC 3039 provided by the Crown, which has some similarities to your offending. Mr Gash was sentenced to five years' imprisonment on charges of wounding with intent to cause grievous bodily harm, threatening to kill, aggravated burglary, assault with intent to injure and male assaults female. The victim was his ex-wife. The offending involved Mr Gash going to an address where he knew his former wife and her new partner were staying in a caravan. He slashed one of the tyres on the caravan and when his ex-partner went to the door of the caravan to see what was happening he rushed into the caravan, knocked her to the ground and then threw himself upon her and hit her face and head with his elbow. The male present intervened and leapt on top of Mr Gash to stop the attack. He flipped the male onto his back and began to cut the side of his neck with a knife.

[19] Your counsel has referred me to the decision of *Pulu v R* [2014] NZCA 24 which involved five offenders with weapons assaulting a person in his home. The victim was attacked with baseball bats and a small axe and ultimately hit on the head numerous times so that he collapsed on the ground. He was dragged towards the kitchen and an attempt was made to tie him up with plastic ties. When disturbed by the victim's partner the offenders left. The victim was hospitalised and required sutures for a deep laceration to his head. Mr Pulu was sentenced to seven years' imprisonment. The appeal Judge mentioned five features contributing to the seriousness of the grievous bodily harm offending. In my view the aggravating features in Mr Pulu's case – more attackers and the graver injuries sustained by the victim – is reflected in Mr Pulu's greater end sentence of seven years' imprisonment.

[20] Bearing all of this in mind, in my view your offending sits in band 2 of *Taueki*. Band 2 is appropriate for offending which features two or three of the aggravating features. Although I have referred to more relevant aggravating features I consider that there are three that sit at the higher end – as I have mentioned, premeditation, use of a weapon and offending involving home invasion. I concur with the Crown that a global starting point, bearing in mind the totality principle, should be adopted for this offending and I set a starting point of six and a half years' imprisonment.

[21] You have an extensive criminal history. You have 11 previous convictions for violence, the most recent of which, in 2008, attracted a sentence of six years and four months' imprisonment. While I am aware that the majority of your convictions are historic and I am mindful not to doubly punish you for previous offending, the violent offences I have mentioned are relevant to this sentencing. I consider an uplift of six months is appropriate.

[22] I turn to the mitigating factors referred to by you. In *Hessell v R* [2010] NZSC 135, [2011] 1 NZLR 607 the Court of Appeal directed that remorse and personal circumstances, aside from the entering of a guilty plea, could be the subject of a discount. You are seeking a modest discount for your personal circumstances and remorse. Your brother-in-law Mr Holland gave an impassioned address to the Court this afternoon. It is clear your family want to assist you in your rehabilitation and assist you when you have completed this term of imprisonment. They noticed a change in you when you were last released from prison and they are here in support of you.

[23] You raise several other aspects through your counsel – several other factors that you ask the Court to take into account for this discount. First, abuse suffered by you and difficulties faced by you as a young person. You have lodged a claim with the Ministry of Social Development, which is being processed at present, for previous abuse suffered, as I understand, in foster and government institutions. Secondly, you have a sincere desire to address a deep-seated and ongoing addiction with methamphetamine. Thirdly, you have made some efforts in prison to better yourself, including attending a parenting course, an anger management course and also embarking on an engineering diploma. Fourthly, you are suffering from grief and sorrow after the recent passing of your brother who died last week. You feel intense sorrow that you were not able to attend the tangi that your family attended. I am told your brother was an influential person and a positive role model in your life and you will suffer ongoing grief for his loss.

[24] The next point you raise is that you have made a genuine attempt to express remorse to the victims by offering to attend a restorative justice conference. That

opportunity has not been availed to you because the victims did not wish to partake in the process. However, you have written letters of apology to the victims.

[25] The Crown does not consider these factors warrant a specific or discrete reduction, although acknowledge it is heartening to hear that you have significant support from your family.

[26] In my view, while each of those factors you have raised would not of themselves constitute a reduction, the combination of your personal circumstances and remorse expressed does, in my view, warrant a discount, but it will be a very modest discount. I agree with the Crown, although your past indications of abuse, I am advised, have been significantly traumatic for you, it cannot provide any justification or excuse for this violent offending. However, there does seem some genuine attempts on your part and some sincere commitment on your part and your collective family to embark on a more positive trajectory in the future so that you can be a more valuable and offence-free member of the community. Your efforts to date can be acknowledged and in my view a modest discount can be allowed. I impose a discount of four months from the starting point that I indicated.

[27] Finally, I turn to your guilty pleas. You have entered guilty pleas at a reasonably early opportunity. In light of the factors discussed in *Hessell v R* I consider a 25 percent reduction is appropriate. On these calculations, I reach an end sentence of five years' imprisonment.

[28] For clarity, I impose five years' imprisonment on the more serious charges of aggravated burglary and wounding with intent to injure. On the injuring with intent to injure I impose one year. That is concurrent, to be served at the same time.

[29] Mr Cullen, given your convictions for aggravated burglary and wounding with intent to injure, you are now subject to the three strikes law. I am now going to give you a warning of the consequences of another serious violence conviction. You will also be given a written notice outlining these consequences which lists the serious violent offences. First, if you are convicted of any serious violent offences other than murder committed after this warning and if a Judge imposes a sentence of

imprisonment, then you will serve that sentence without parole or early release. Secondly, if you are convicted of murder committed after this warning then you must be sentenced to life imprisonment. That will be served without parole unless it would be manifestly unjust. In that event, the Judge must sentence you to a minimum term of imprisonment.

P J Sinclair
District Court Judge