

**IN THE DISTRICT COURT
AT CHRISTCHURCH**

**CRI-2016-009-009638
[2017] NZDC 3486
CRI-2016-009-010130
CRI-2016-009-002526**

**THE QUEEN
DEPARTMENT OF CORRECTIONS**

v

BRENDAN WATTS

Hearing: 22 February 2017

Appearances: S Mallett for the Crown
L Siataga for the Department of Corrections
G Henderson for the Defendant

Judgment: 22 February 2017

NOTES OF JUDGE T J GILBERT ON SENTENCING

[1] Mr Watts, you are for sentence today on a variety of charges. There is one of aggravated robbery which is the main offence. There is a charge of breaching community detention, one of careless use of a motor vehicle, one of unlawful taking of a motor vehicle, one of driving with excess breath alcohol (or blood alcohol in fact), one of driving whilst forbidden, one of stealing an iPhone.

[2] In addition there is an application to cancel sentences of community detention which were imposed on you for charges of burglary and unlawfully being in an enclosed yard and there is no opposition to that application, although you partially served that sentence and I will take that into account.

[3] I gave you a sentence indication last year on 28 November. That was for a total sentence of two years and eight months' imprisonment on all matters including those which I need to re-sentence you on. In addition I indicated I would disqualify you from driving, as I have to under the law, and would consider reparation.

[4] I have thought further about the subject of reparation and given your means and the fact that you will serve a substantial term of imprisonment I do not consider it realistic.

[5] You, of course, accepted that sentence indication accepting that two years and eight months' imprisonment was appropriate.

[6] I will briefly outline the facts. The aggravated robbery which sits alongside the two charges of theft, all arose on 27 September last year where the victim was at a unit in a local motel. You arrived with your co-offender Mr Kirk. After about 20 minutes or so some young women arrived and you gave them a hand with their baggage. During that time your co-defendant stole a cellphone. After moving the luggage the group that you were now a part of began drinking alcohol in the victim's unit. You and Mr Kirk then demanded that the victim assist you in getting alcohol. He refused. The pair of you then walked to the kitchen area and returned. Your friend, Mr Kirk, was carrying a large knife whilst you were wielding a large carving fork.

[7] You and Mr Kirk approached the victim. He demanded the victim's car keys which was refused. Kirk then held the knife to the victim's throat and said, "Do you want me to slit your throat? Give me your car keys."

[8] At about this time you reached down and stole a USB charging cable from a plug in the wall. You then walked out of the unit and snatched the victim's cellphone from an associate of his and wandered off down Worcester Street. That was an iPhone 6 valued at around about \$1500.

[9] Understandably the victim was frightened by what had occurred and handed over his car keys to Mr Kirk who then took the car and picked you up a short way down Worcester Street before the pair of you drove off.

[10] The breach of community detention involved you leaving during a period when you were curfewed.

[11] There is another summary for charges of taking a motor vehicle, driving with excess blood alcohol, careless driving and failing to comply with the prohibition. In large measure those offences are self-explanatory and I do not, given that you have accepted a sentence indication, intend to go into them in any more detail.

[12] The two charges which are on review, the burglary and the unlawfully being in a yard, related to matters at the end of 2015 and the start of 2016. You went into a residential property, climbing through a bathroom window, and took various electronic items only some of which were recovered. That accounts for the burglary. The unlawfully being in the yard was from late 2015 when you and an associate were found on a property here in Christchurch.

[13] Since I gave you the sentence indication I have received the restorative justice letter which indicates that the victims were not interested in pursuing that.

[14] I have also received the pre-sentence report and it indicates that much of your offending occurred whilst you had been drinking and were intoxicated.

[15] Because I am sentencing you to over two years' imprisonment I do not get to set release conditions but it may very well be appropriate for you to do some course in prison in relation to your drugs and alcohol.

[16] It seems you are currently getting on and doing a course to try and help you with you with those issues. It may be that the Parole Board, which will be in possession of all the information when it comes to your release, thinks that some further treatment is required but whatever the case you should do what you can in prison to try and get on top of those issues.

[17] I agree with both Mr Henderson and Mr Mallett, who are here for you and the Crown respectively, that there is nothing I have read or seen which alters my sentence indication and so I will let you know the sentences on the individual charges because I need to allocate them across the individual charges:

- (a) On the aggravated robbery charge, CRN 2815, you will be sentenced to two years and five months' imprisonment.
- (b) On the breaching community detention charge, CRN 2829, you will be sentenced to three months' imprisonment.
- (c) On the charge of unlawfully taking a motorbike, CRN 3412, you will be sentenced to one year's imprisonment.
- (d) On the charge of driving with excess blood alcohol, CRN 3415, you will be sentenced to one month's imprisonment and disqualified from driving for six months starting today.
- (e) On the charge of stealing the iPhone, CRN 2816, you will be sentenced to one year's imprisonment.
- (f) On the charge of operating a vehicle carelessly, CRN 3417, you will be convicted and discharged because that is fineable only.
- (g) On the charge of failing to comply with a prohibition, that is, driving when you were prohibited from driving, CRN 3416, you will be convicted and discharged because that is fineable only.
- (h) On the two charges for which you are to be re-sentenced, that is, the burglary and the unlawfully being in a yard your sentence of community detention will be cancelled and you will be re-sentenced to three months' imprisonment. That will be cumulative on CRN 2815 which is the aggravated robbery charge.

[18] What that means is that all of the charges for which you are for sentence today for the first time will be served concurrently but that those charges which you are for re-sentence on will be cumulative which accounts for a total of two years and eight months' imprisonment. I hope that makes sense, the way I have done that. So that is the total sentence and the Parole Board will set your release conditions.

T J Gilbert
District Court Judge