

**IN THE DISTRICT COURT  
AT DUNEDIN**

**CRI-2016-012-002146  
[2017] NZDC 10467**

**THE QUEEN**

v

**SUAESI LEVI ELISARA**

Hearing: 17 May 2017  
Appearances: R Smith for the Crown  
M Scally for the Defendant  
Judgment: 17 May 2017

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**NOTES OF JUDGE K J PHILLIPS ON SENTENCING**

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[1] Mr Elisara, you are facing sentence before me in the Dunedin District Court this afternoon on a charge of aggravated robbery, assault with intent to injure and breach of bail. I accept what Ms Scally says, the two major charges against you occurred within a relatively short period of time. The allegations being that the aggravated robbery occurred on 13 May. In the week prior to that you had assaulted [the victim] with intent to injure him. So she is quite right in what she says that this occurred about a week apart. At that time you were living in Dunedin away from your home. I understand living with your sister. From what I read you had come directly into an environment which you were attempting to avoid in Auckland of drugs and alcohol. You partook in it all fully. You ended up where you are now. You need to understand quite simply that I have to, in the end, send you to prison for a lengthy period of time, even allowing for the fact that you are 20 years of age and that you are a person who has not been to prison before.

[2] The facts of the aggravated robbery are extremely well known to me. I have been involved in giving sentencing indications and sentencing persons who you were with on the particular night since early in January this year. You know the facts as well really. It was a planned robbery. Ms Scally says to me that you were not one of the principal planners. Neither were a lot of the others. In the end you all went to a planning meeting/briefing meeting (call it what you will) prior to then going to the house where it occurred. You are being sentenced as a principal offender. In other words you were a person who knew what was going down and you went along with it. That, in my view, is clearly borne out of the facts of the matter. You were part of the group that armed themselves upon arrival at the house. You arm yourself with a long-handled axe. The others with you armed themselves also. One had a pretend pistol (if I can call it that) and went with you. You all went into this house. You were there. You were present in that property when threats were made. When the house was searched. When a young man who was awoken by having this pistol, pretend as it may be, a pistol he thought was real, pointed directly in his face. You were standing there. You were standing there carrying this metre long axe. You were disguised.

[3] Let us recap what you actually did. You entered into the lounge with the other two. You were there when the member of your group questioned the female victim who was in the lounge. You then went with your co-offender, Unahi, to the male victim's bedroom where he was awoken, as I have said, by the pretend gun being presented at him. At the time that questions were being asked by Unahi of the male victim you were walking around the room. You would have heard Unahi demand drugs. You understood that is the whole purpose of why you had gone to where you were. You were present when Davis, the other offender, told the victim not to move. You were present when a knife was held to the face or neck area of the victim. You were there, really, to add impetus and overcome any question of the victim being able to rebut or rebuff what was going down. I am quite sure that that was your role in relation to it. Then you left with the others, travelled in vehicles and went to where a very small amount of goods that were obtained were divided up. You took your share.

[4] That is your role in the matter. Ms Scally will say well you were not a prime mover in your offending. One of the reasons why this is an aggravated robbery is it was a home invasion by a number of men all disguised, carrying weapons. You were part of that. You may not have physically held a knife to the neck of anyone or presented a pretend firearm in the face of anyone but you were there with the axe over your shoulder stating the position and the implied threats that went with that. I acknowledge what Ms Scally says that you were a follower rather than a leader, but you had ample opportunity to walk away from there and walk away from this crime prior to it all going down. You made no attempt to do so. You were a willing participant within it.

[5] In relation to the assault with intent to injure, as I have said, that was a few days earlier. You were intoxicated. You were in the exchange area of Dunedin, a public place. The victim walked past. There were verbal altercations. There was a struggle. You took the victim to the ground. Then you sat on top of him as he lay on the ground, holding him down by that action. You threw approximately 12 punches to his face. That was bad enough. You then stood up and you stomped on him. That means you brought your foot down on his face with force. You then dragged him six metres along the ground. You were only stopped from further assaulting him by members of the public who intervened and tried to get you to stop what you were doing. They were attempting to get the victim away. You were attempting to get yourself re-involved. You were that angry. You were so far out of control that when the victim was being taken away in a motor vehicle you kicked the car.

[6] In relation to Unahi. He was about the same age. In relation to Davis, they were the same age. They went to restorative justice, or Unahi did. Unahi was a first defendant. They both got credits for their youth and their good character and both have pleaded guilty at a time where they were entitled to 25 percent discount. Heydon was the driver and there is clear authority to the effect that the people who did not go into the house should be treated with some leniency overall. From a starting point that I adopted of eight years' imprisonment I allowed Heydon a year to bring it back to seven years. He did not go in; he was no more than a wheel man.

[7] The fact of whether you have written letters of apologies or letters of remorse and you did not bring them with you is not the point. The point is whether you are remorseful. I accept that at this point in time when you are looking at the bleak future that life holds for you today you are remorseful. I have no doubt about that. But your continuation of a not guilty plea when others were admitting their involvement is alarming. It was only (and I accept this from the Crown) when you realised that the last person to plead had pleaded and was going to give evidence against you, identifying you, that you pleaded guilty. It does not signify remorse at all. It signifies a late acceptance of reality.

[8] The pre-sentence report that I have discussed that you have what you call a propensity to violence. In reality, I do not think that is of your making entirely. I think you have a good deal of that from your origin and from the time in Auckland. What is really relevant is that you have major alcohol issues. You were so intoxicated, you say, you could not remember. You are also a substance abuser. You, like the others really, have to be dealt with on the basis that you have good character as a first defendant.

[9] Mr Smith, in his written submission, points me to the authority that is binding on us of *R v Mako*<sup>1</sup> particularly para [58]. The starting point where there is an aggravated robbery, armed people, disguised people enter a house, is normally 10 years' imprisonment. Serious aggravating. I note that in relation to the matter for the other offenders I set a starting point of eight years, considerably under what *Mako* was telling me was appropriate. I note that there is clear comment that where offenders do not enter the target premises that they have played marginal roles and should be given a credit for that but your role was not marginal in my view.

[10] The Crown accepts here that in relation to your case the starting point should be the same as the other main offenders at eight years. In relation to the assault with intent to injure, Mr Smith points out it was an attack to the head of the victim, punching and kicking to a vulnerable victim on the ground. The actions of you sitting on him, continuing to punch him, then standing up and stomping him showed premeditation. The Crown's submission is that is at the middle to upper end, it

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<sup>1</sup> *R v Mako* [2000] 2 NZLR 170 (CA)

should be a starting point of some 18 months. The Crown accepts you are entitled to youth credit, good character credit. I think Mr Smith would also perhaps accept there is some degree of remorse. He would describe the plea as belated, as I have said, following advice that you received that another defendant would identify you. Mr Smith would say a 15 percent credit. Overall Mr Smith's calculations are that, taking into account totality, the end point should be five and a half to six years' imprisonment.

[11] Ms Scally argues well. She argues everything that possibly could be said, on your behalf. She makes the strong submission you were not a prime mover and you were not part of the original planning and that you were following and not leading. I balance against that submission that she makes the fact that you were purposely carrying a long-handled axe. I do not know where it had its origin from but that would indicate to me that you had it, you intended to carry it with you and you did exactly that by carrying it into the house, into the lounge where it could only have intimidated and terrified the female victim and then into the bedroom where again intimidation acquiescence, giving in of the male victim was what your group wanted. You succeeded in that. I do not accept there should be a distinction in the starting point between you and these other two.

[12] Ms Scally made separate and detailed submissions in relation to the assault with intent to injure. She argues that the only factor on aggravation is the attack to the head. Her argument is a starting point of some 11 months. I think she ignores the vulnerability of your victim as you sat on him and punched him; the level of violence; and the stomping on the face of a totally vulnerable man lying on the ground. Overall, therefore, Ms Scally says that the sentence starting point is eight years and 11 months but that there should not be an uplift because of the fact you were on bail when the aggravated robbery went down. You should get a guilty plea credit to the aggravated robbery in the vicinity of 20 percent. That you should get credits for youth and good character and remorse. She sets a total of 35 percent to bring an end sentence to you of five years and six months. She then suggests a further adjustment after extra allowances.

[13] The purposes and principles of sentencing that I have to apply, Mr Elisara, is to hold you accountable. I have read detailed victim impact statements from the male and female victims. The male victim is only really “getting his gear” together now. It had a huge impact upon the female victim which will be ongoing in the recurring consideration of how violent it all was for them and the fear that they faced. I have to take their interests into account in sentencing you. Aggravated robbery is a matter that is abhorred by our community. It is becoming far too frequent and there has to be a very strong element of denunciation and deterrence. It is high on the list of seriousness. Here there was a home invasion, disguised men in numbers carrying weapons. I have to be consistent. I have attempted to bring all of those factors into account as well as taking into account those matters that Ms Scally stressed to me: There is youth, 20 years of age; a history that really is not relevant; you have great rehabilitation prospects. I acknowledge the presence of your whānau members in Court here today.

[14] Your role that you played had an impact on these victims. It had an impact on the outcome of the robbery itself whereby the male victim just volunteered where his drugs and any cash was. Your role there, in being the stand-over man really with the axe, was not minor at all. I note that you were right there at the central events that occurred with the female victim and the male victim. The starting point that I bring to account here recognises that there was no actual violence but there is no doubt again in my mind that the threats that were made had a real significance on these victims and your presence with an axe, carrying the axe and being disguised had an impact upon them. The starting point for the aggravated robbery that is appropriate is eight years’ imprisonment. You would have already heard what Mr Smith said, he felt that I was far too low in setting that as a starting point in any event.

[15] In relation to the assault with intent to injure, you took the victim to the ground. You sat on him, punched him about 12 times to his face and then stood up and stomped with your right leg on the victim’s face with force. You then dragged him along. The fact that I have to take into account there was an ongoing attack to the victim’s head, moderately serious violence in a public street. The victim was vulnerable and at the very least you premeditated the stomping because it could not

have happened any other way. The starting point I adopt for that offence is 15 months' imprisonment.

[16] That makes a total overall, when I add those two together, because they are separate offences they need to be cumulative, of nine years and three months. I must take into account, however, the overall totality because I intend to impose a sentence on you today on the aggravating robbery. I consider that the end starting point of eight years and nine months represents the correct position as to your violent propensity and allows for the overall totality.

[17] There are no personal aggravating factors. Credits that I allow. I consider the plea to the aggravated robbery very late. You are really entitled on the authorities to very little credit. I have to balance that against the guilty plea on the assault with intent to injure where I think overall you would be entitled to 25 percent. I adopt a credit that I consider to be merciful overall allowing for both of those factors of 15 percent against that total. I am going to allow you for your youth and good character (youth is a relative term, you are 20, you are approaching maturity) 10 percent. For the remorse, five percent. A total of 15 percent together. With the other 15 percent, a total of 30 percent overall.

[18] The 15 percent credit equates to some 16 months' imprisonment and that comes off to bring it to seven years and five months' imprisonment. On the seven years and five months I allow 15 percent for your guilty plea credit to bring my end point to six years and four months' imprisonment.

[19] In preparation for your sentencing I then looked and accepted what Ms Scally said as to "crushing sentences". Your age, your prospect of rehabilitation and similar such issues. I consider when I have regard to all of those factors I should allow, against the figures that I have quoted to you, a further credit. In the end I am satisfied that the end sentence should be five years and nine months' imprisonment. I am sending you to prison for that period.

[20] Accordingly, I rule a sentence will be entered on the charge of aggravated robbery, I note on that matter you have already been given a first strike warning. On

the charge of assault with intent to injure you are, on that charge, sent to prison for 12 months. It will be served concurrently. On the breach of bail you are sent to prison for one month. That term to be served concurrently.

K J Phillips  
District Court Judge