

EDITORIAL NOTE: SOME NAMES AND/OR DETAILS HAVE BEEN DELETED.

**IN THE DISTRICT COURT
AT CHRISTCHURCH**

**CRI-2017-009-000766
THREE STRIKE WARNING
[2017] NZDC 6717**

**THE QUEEN
DEPARTMENT OF CORRECTIONS**

v

MATTHEW JAMES GREENWOOD

Hearing: 29 March 2017

Appearances: S Mallett for the Crown
K Rupapera for the Department of Corrections
R Buddicom for the Defendant

Judgment: 29 March 2017

NOTES OF JUDGE S J O'DRISCOLL ON SENTENCING

[1] Mr Greenwood, you appear before me today for sentence on three charges. There are two charges of aggravated robbery and there is a charge of breaching release conditions by failing to report to a probation officer as required.

[2] The facts in relation to the aggravated robbery are these. The two victims of the aggravated robberies are taxi drivers. At about 2.30 pm on 21 January this year the first victim was dispatched to a job at [a Restaurant] in Colombo Street. The taxi was ordered by a cellphone in the name of James. You got into the taxi and when they were driving on Branston Street, you told the victim to stop, you pulled a knife out and put it in the left side of the victims abdomen and said, "Give me all your money." The victim gave you a \$10 note from his pocket but you asked for more. The victim took his wallet out. You grabbed between \$150 to \$200 in cash and left.

At about midnight on Saturday 21 January you ordered a taxi for a pickup. You gave a cellphone number where you ordered from the cellphone in the name of Jim. You got into the taxi being driven by a second victim. The driver drove to an address at your request. You told the victim to stop. The victim pulled up the driveway as it was raining. You said that you didn't have \$20 and the victim felt you push your closed fist against his ribs and said words to the effect, "Give me all your money." The victim reached into the glove box where his coin holder was and gave that to you. The victim then grabbed your wrist and tried to push you away and that is when he saw the blade in your hand. It was next to his ribs. You left the vehicle and that is when the victim saw the knife more clearly because you were standing up.

[3] The summary of facts says that both victims were shaken and scared but they did not suffer physical injuries. They were both too shaken to work the rest of the night.

[4] In addition to the two aggravated robbery charges there is then also the breach of release conditions that you have also pleaded guilty to. That relates to you failing to attend as required. On 16 August 2017 you were released from Christchurch prison although the summary of facts says that you were subject to conditions of release until 8 June 2016. I presume that really means 8 June 2017. So that means that these two aggravated robberies took place while you were still subject to the release conditions.

[5] The victim impact reports that I have got indicates that the taxi drivers felt anxious, nervous. They feared for their life and were scared as a result of your actions. Those are clearly all understandable reactions that the taxi drivers would have as a result of being victims of your offending.

[6] In terms of the aggravating factors there are of course the two charges. I take into account the effects on the victims. The victims were doing their job. They are what might properly be described as, "Vulnerable victims," because they were working alone in a taxi. There was clearly a degree of planning and pre-meditation on your part. That is evident because of the phone calls that were made to them, the false name that you gave, the fact that you had the knife in your possession. As I

have said, you were subject to release conditions at the time and those are all aggravating factors.

[7] In terms of the mitigating factors, the major mitigating factor is as I see it, is your plea of guilty. You have said that you are ashamed for what has occurred. You have expressed some empathy and understanding for the victims of your offending. In saying that I note, of course, that this is not the first time that you have been before the Court on an aggravated robbery charge. You have previously appeared involving an aggravated robbery in August 2011 and you were sentenced in June 2012. I would have thought or hoped that you may have had some understanding of the effects and consequences that your offending may have had on the last victim when you were considering getting involved in the aggravated robbery of these two taxi drivers.

[8] Your counsel has submitted that the amount of money that you obtained was at the lower end of the scale. In the whole scheme of things the amount taken is only one matter to consider. What needs to also be considered is the vulnerability of the taxi drivers and the effects and consequences that your offending has on them as opposed to just the amount taken. Your counsel has emphasised that you are someone in need of rehabilitation and you have a long term drug addiction which needs to be addressed by you in order that you can remain in the community without further offending.

[9] In terms of the purposes of sentencing, there is a need to hold you accountable. There is a need to denounce your conduct. When you now come before the Court for a second and third aggravated robbery there is also a need to protect the community. There is also a need to attempt to deter you and others from committing similar offences. In terms of the principles of sentencing I am required to take into account the gravity of the offending, the seriousness of the offending, your culpability, the effects on the victim, and there is also a need for consistency with sentencing in respect of your case and other similar cases.

[10] There is a Court of Appeal decision called *R v Mako*¹. That Court says that where there is a robbery of a taxi driver that an appropriate starting point would be in the vicinity of four to five years imprisonment.

[11] I have had the ability before coming into Court today to read the pre-sentence report that describes you as being medium to high risk of re-offending and harm to others. The recommendation in the report is one of imprisonment and your counsel does not urge upon me any other sentence.

[12] In addition to the pre-sentence report I have also had the benefit of a psychological assessment which is dated 20 March 2017. I must say that it is a helpful report from my point of view in understanding your background and your offending. It seems when I look at this matter that you originally were from the United States. You came to New Zealand and then returned to back to the States and then have come back to New Zealand. The report notes that your only criminal conviction in the United States was at the age of 24 and that was in 2008 for driving under the influence of alcohol. Since arriving in New Zealand in 2010 at the age of 26, you accumulated some 16 convictions that excludes this current offending. Your other offending began at the age of 27 in 2011 and that includes the previous conviction for aggravated robbery. The report notes that you had an occasional can of beer as a child but began consuming large amounts of alcohol following Hurricane Katrina in 2005. The report says that you have reported drinking one litre of spirits daily for approximately a year and that you would typically become more aggressive and lose consciousness. Following your move to New Zealand in 2010 you would now consume two boxes of ready-to-drink mixed spirits daily and your illegal drug use increased while your alcohol consumption decreased. The report says that the repercussions of Hurricane Katrina appear to have had a significant deleterious effect on you. You reported that you had lost your job and home. You were severely assaulted in the looting which followed the event. Your long term relationship ended. It forced your family apart and then the report says that you descended into an extended period of interpersonal and psycho-social difficulties. That then prompted you to return to New Zealand in 2010.

¹ *R v Mako* [2000] 2 NZLR 170; 17 CRNZ 272 (CA)

[13] The report sets out your background and personal circumstances which I find helpful. You have also apparently been diagnosed with ADHD. You have been homeless. You have been diagnosed as being bi-polar and you have had an increased risk of compulsive behaviour. It is said that you began begging from the streets here in New Zealand. You felt humiliated and angry at the poor response you got and then the combination of that along with the influence of drugs has led you into a situation where clearly, as a result of you wanting money, you have engaged in these two acts of aggravated robbery.

[14] The report, as I have said in the pre-sentence report, is for a sentence of imprisonment. The *R v Mako* decision that I have referred to says that, "For one aggravated robbery a starting point of between four to five years imprisonment is appropriate." Here there are two aggravated robberies. The fact that there are the two aggravated robberies committed at different times, although close in time with two victims, clearly requires a response by the Court.

[15] My view is that the appropriate starting point when looking at the two aggravated robbery charges is a starting point of six and a half years imprisonment. I intend to reduce that by six months to take into account your personal circumstances and the mental health matters that have been referred to. That means that there is then a sentence of six years imprisonment and to then take into account your plea of guilty, I intend to reduce that six year sentence by 18 months, which gives you the discount for the plea of guilty.

[16] On both the aggravated robbery charges you will then be sentenced to four and a half years imprisonment. In terms of the breach of the release conditions, you will be sentenced to two months' imprisonment. I have considered and reflected whether or not there should be a cumulative sentence of two months' imprisonment on the four and a half years imprisonment but I think that four and a half years is the appropriate response by the Court. I am not going to impose a cumulative sentence. Nor am I going to uplift the four and a half year sentence due to the previous conviction for aggravated robbery that you have. I think to do that would be to breach the totality principle and I am conscious that the sentence that I have imposed

on you will be a sentence which you are required to serve and complete in full, without parole, because you are subject to a strike warning.

[17] You have pleaded guilty to the earlier aggravated robbery charges. It appears that no formal conviction was entered on those matters when you pleaded guilty. I am now going to formally enter a conviction and I am now required to give you a stage 2 strike warning.

[18] The warning is this. Given your conviction for aggravated robbery, you are now subject to the three strikes law. This is now your final warning which will explain the consequences of another serious violent conviction. You will also be given a written notice outlining these consequences which list the serious violent offences. If you are convicted of any serious violent offence other than murder or manslaughter, then you will be sentenced to the maximum term of imprisonment for each offence. That will be served without parole or early release unless it would be manifestly unjust. If you are convicted of manslaughter committed after this warning then you will be sentenced to imprisonment for life. The Judge must order you to serve at least 20 years imprisonment unless the Judge considers it would be manifestly unjust to do so in which case the Judge must order you to serve a minimum of least 10 years imprisonment. If you are convicted of murder after this warning then you must be sentenced to imprisonment for life. The Judge must order that you serve the sentence without parole unless it would be manifestly unjust to do so. If the Judge finds that it is manifestly unjust to do so then the Judge must impose a minimum period of imprisonment of at least 20 years unless that would be manifestly unjust, in which case the Judge must sentence to a different minimum term of imprisonment. If you are sentenced to preventive detention you must serve the maximum term of imprisonment for the most serious offence you are convicted of, unless the Judge considers that it would be manifestly unjust.

[19] Mr Greenwood, what that means is this. If you engage in another aggravated robbery, whether it is minor aggravated robbery for \$5 or it is a major bank robbery, you must be sentenced to the maximum term of imprisonment unless it would be manifestly unjust. What that means that any aggravated robbery or serious violent

offence would then mean that you are liable to be sentenced to 14 years imprisonment without parole. So I hope you understand and appreciate that.

[20] I am going to direct that the reports that I have been given which I take the Department of Corrections, the prison, already have. But just to ensure that they do have it, I will direct that that accompany my sentencing notes so that the prison is aware of your background and personal circumstances which are in far more detail in that report than is what is in the pre-sentence report.

[21] I would urge you to do whatever you can while you are in prison to take whatever psychological counselling and/or counselling programmes or courses to address alcohol and/or drugs and any other factors that have caused or contributed to your offending. I am not sure what conditions the Parole Board can or will impose on your release but again, I would urge you because it seems to me that there is a deep-seated issue which needs to be addressed, that when you are released from prison that you do whatever you can to address the issues related to your offending.

[22] It looks as there will be some conditions on your release but I would hope that you would make the first step while you are in custody. You have got four and a half years now to do something while you are in prison.

S J O'Driscoll
District Court Judge