

**IN THE DISTRICT COURT  
AT PALMERSTON NORTH**

**CRI-2015-054-000415  
[2017] NZDC 13122**

**THE QUEEN**

v

**IHAKA HAMUERA ARAPETA PAUL**

Hearing: 16 June 2017  
Appearances: M Blaschke for the Crown  
M Phelps for the Defendant  
Judgment: 16 June 2017

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**NOTES OF JUDGE L C ROWE ON SENTENCING**

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[1] Ihaka Paul, you appear for sentence having pleaded guilty to a charge of aggravated robbery. In sentencing you today I acknowledge the presence in Court of [your mother] who has travelled from Hawkes Bay to be here to support you. It says something very positive about you that your mother is here. It demonstrates you have whānau support which will be available for you on release.

[2] You are being sentenced on the basis of what I understand to be agreed facts that, on the day in question, you needed money to get your sister's car out of an impound in Palmerston North. You travelled from Hawkes Bay for that purpose. You did not have the money to get the car out of the impound so you organised fellow gang members to commit an aggravated robbery of the dairy in Summerhays Street. You visited the dairy in advance suggesting that you were involved in the planning of this robbery, and the car that you had brought from

Hawkes Bay was used in the robbery, suggesting you were closely and intimately involved in what occurred.

[3] The two offenders entered the dairy at 3.55 pm. They were disguised. They were armed with a pistol which was presented not only at the proprietor but also a customer in the shop who backed into a corner. Some \$1500 was placed into a bag that the robbers had taken with them. The robbers then fled followed by the shopkeeper. Because they were being pursued by the shopkeeper they did not get back into the car but jumped over fences and it was the discovery and retention of the car which led to most of the evidence identifying you as being involved in this offence. After the robbery you paid the money to your sister for her car to be released from the impound and no doubt those were funds from the robbery.

[4] The factors that affect a starting point sentence for this offence are:

- (a) The nature of the premises, in this instance a small retail shop.
- (b) Presence of the public. This occurred at 3.55 pm when there was a high chance the public would be present and indeed a customer was present. The firearm was presented at them as well as the shopkeeper.
- (c) The use of a firearm and presentation of a firearm.
- (d) The offending was clearly premeditated and you were part of the planning.
- (e) Disguises were used.
- (f) The victim impact. I have read the victim impact statements. This offending caused significant anxiety and emotional impact for them as one could well understand. In many ways the financial loss is nothing compared to the ongoing effect they feel from having their premises invaded in this way.

[5] Your co-offender, Mr Edwards, received a starting point term of imprisonment of four years, four months. You, having arranged this offence and been part of the planning and equipping of the offenders, demonstrates you are equally culpable for what occurred. There is no reason to depart from the starting point term of imprisonment that was applied in the case of Mr Edwards. I would have to say that a by-product of the way this has been resolved is that there is an offender out there who has not been held accountable for their conduct and what occurred. I would also make the point that your having organised fellow gang members to commit this robbery suggests you held some influence and involved others in a serious criminal enterprise.

[6] How I approach the matter, having identified a starting point of four years, four months however is affected by the fact you are currently serving two years, three months' imprisonment for other offences committed while you were on bail for this robbery. They were themselves serious offences. They involved the use and production of firearms or imitation firearms, pursuits, threats to kill, matters of that nature. I have read Judge Rea's sentence indication notes and sentencing notes for those offences.

[7] It would be wrong of me, and I indicated this to you earlier when you pleaded guilty, to simply say that the starting point should be the four years, four months plus two years, nine months which was the starting point for those offences. That would place a starting point well in excess of seven years. It is certainly the case though that the offending is discrete, serious offending. I definitely need to consider the two matters cumulatively and you can understand why but there needs to be moderation of that.

[8] If you were being sentenced for everything at once, I would then apply the discounts that might be available to you or any other aggravating factors and arrive at what would have been a total sentence for everything. If I then deduct the two years, three months you received this would bring me to the correct sentence for the aggravated robbery.

[9] The way I approach it is this. The starting point for the aggravated robbery is four years, four months. Judge Rea's starting point for the other offending was 33 months, that is two years, nine months. My assessment of that other offending, taking into account that it was committed while on bail for the aggravated robbery, it involved the use or production of firearms or imitation firearms, it was violent offending and very serious offending that could have ended tragically for everybody. an uplift is definitely required but not as much as two years nine months. If sentenced for everything at once I would consider the uplift for the other offending as being met by an increase of two years. The overall starting point would therefore be six years four months.

[10] At this point I pause and ask whether there should be any other increases particularly having regard to your previous convictions. You have previous convictions for violence but nothing of this magnitude. Like Judge Rea I consider that the term of imprisonment I have identified as a starting point is enough and it would be wrong of me to increase that because of your previous convictions. Accordingly I apply no further increase to a starting point of six years four months.

[11] I have read the pre-sentence report and obviously it is a concerning report for a Judge to read. It suggests you had in some way threatened probation officers and there was no full engagement with you. I do not take what is said to be threats as a matter of aggravation. What I do have regard to is some of your personal circumstances that are still well described in that pre-sentence report. The grief that you felt for example after the passing of your father. I understand that, and that you have had difficulty coping with that. I am heartened to hear that you had the support of your whānau and as I said I am very pleased your mum is in Court today to demonstrate that support.

[12] You have also previously had good employment and there is clearly another side to you that is very different to how you presented in relation to these offences. I would like to have the magic power to say the right words that made a difference for you, to be able to move on from this, come out of prison and put all of this behind you. I am not sure what your iwi is, whether it is Ngati Kahungunu or elsewhere. It is. We are in a society now where we are finding that engagement with one's iwi is

an excellent way to become productively involved in one's community and to give something back and for them to help you in their turn. I hope that is something you can engage with.

[13] The pre-sentence report does not help me much in terms of remorse. It is said that you were remorseful. How much I can take that into account today is difficult. The main area of dispute between counsel is as to any discount you should get for guilty pleas. You pleaded guilty in relation to the other offences at a time when Judge Rea indicated in a discount of about 15 to 20 percent on those matters.

[14] In relation to the aggravated robbery you pleaded guilty on the first day of trial but before the trial got underway but that was a re-trial so these victims had previously given evidence. It is suggested that the victims were not aggressively cross-examined and neither would they have been, they were clearly robbed, they were the victims of robberies. The issue was identification. But equally one cannot underestimate the effect on people who have been held up in this way and had a firearm presented at them and their lives threatened by this behaviour. How hard it is for them to come along to a courthouse to retell what has happened to them. So I do not underplay at all the effect that their giving evidence has had on them and how difficult that process is for victims.

[15] There has been discussion of percentage discounts. That is a difficult process to reconcile. The way I think it is best achieved in this case is by saying that here I have an overall starting point of 76 months. I consider the guilty pleas on the aggravated robbery, which have at least spared some expense and provided vindication for these victims, and the guilty pleas that you entered in Napier are properly reflected by a total discount of 10 months. That would take me back to an end point of five years six months. From that, as I said, I must deduct the two years three months that you are currently serving. That takes me to an end point sentence of three years three months for the aggravated robbery charge. That takes into account totality, all of the relevant principles and is the least restrictive sentence appropriate as I assess it to be for this offending.

[16] The sentence therefore is three years three months' imprisonment cumulatively on the sentence that you received in Napier.

LC Rowe  
District Court Judge