

**IN THE DISTRICT COURT
AT TAURANGA**

**CRI-2017-070-002734
[2018] NZDC 264**

THE QUEEN

v

[TIKA HAMUERA]

Hearing: 10 January 2018
Appearances: S Davison for the Crown
T Bayley for the Defendant
Judgment: 10 January 2018

NOTES OF JUDGE C L COOK ON SENTENCING

[1] Mr [Hamuera], you have pleaded guilty now to one charge of aggravated robbery following a sentencing indication that I gave on 30 October last year. That related to offending which you committed on 8 July 2017. I am not going to go into the background of the facts in that case, it is all included in the sentencing indication, as is my approach to the starting point for the offending and the aggravating and mitigating factors which were the factors that make it worse and the factors in your favour. I ask that the notes from the sentencing indication be attached to the sentencing notes.

[2] In regard to that indication I came to a starting point for the offending of seven years and I provided you with discounts for your youth and a guilty plea in the amount of approximately 50 percent. I indicated if there were any further factors which came

out subsequently and in the pre-sentence report I would take those into consideration as well.

[3] You also appear for sentencing in regard to three charges of assault. I am just going to go through the summary of what occurred in respect of those matters and then I will come back to the aggravated robbery charge.

[4] In regard to the Crimes Act 1961 charges, you face a charge of male assaults female on [date deleted] April 2018 and one charge of assault, and then a charge of assault against the same victim on [date deleted] June 2017.

[5] In regard to what occurred on [date deleted] April, you were with your partner, who is the victim, at [a fast food restaurant]. There was an argument which occurred over money, you took exception to a comment made and you punched the victim in the ribs both sides, a total of seven times. She grabbed her phone to call the police, you grabbed the phone from her, smashing it on the ground. After smashing the phone you punched the victim twice in the face as she turned to walk away and you struck her in the back using an umbrella. She turned towards you to confront you and you punched her a further two occasions in the face.

[6] In regard to the incident on [date deleted] June, the summary says that there was an argument in regard to a phone. You punched her three times in the head, you were separated by an acquaintance and you punched her a further two times to the head. There is an order sought for a protection order by the victim in respect of this matter and I am advised by the police that is still sought and not opposed.

[7] In regard to the assault charges, I have read the victim impact statement which sets out the victim says that she had had enough and that she wanted to end the relationship.

[8] The pre-sentence report presents a very different picture of your perspective and perhaps your whānau's perspective of the relationship. Your view is that it was tumultuous and exacerbated by drug and alcohol issues.

[9] Turning to the pre-sentence reports, as set out by your lawyer, they are detailed and helpful for the Court. They set out your background and I am not going to go through all of that in open Court but it is clear that you had a really difficult early life and the first report assesses you as being very lost, living a lifestyle which was devoid of any routine, pro social engagement or constructive attitudes.

[10] In regard to the assault charge the pre-sentence report recommends a sentence of supervision and community work which would assist with oversight for both drug use, your unstable situation and use of violence. It did record that you present as being remorseful for your behaviour.

[11] On the night of the aggravated robbery again you present with a different picture of how it occurred and the report indicates that you did not go to the caravan with the intention of committing any serious violence but due to the chaos that ensued then the violence occurred. I have already dealt with the summary of facts as it came in front of the Court and provided an indication but I just highlight that you clearly have a different perspective of how it all occurred.

[12] I have also considered the victim impact statement for the aggravated robbery and it says as a result of the incident the victim suffered no physical injuries but his position is that as a result of this he has had to leave the area and has felt anxious and has had some trouble sleeping.

[13] In regard to the approach that I take for the aggravated robbery, I am asked to give you a further credit for your remorse and willingness to engage in the restorative justice process, which unfortunately did not occur. I have had an opportunity of reading the letters which have been sent by you and the remorse, as I have indicated, was touched on in the pre-sentence report. I accept in your case that over a period of time you have developed a genuine remorse for what has occurred and I accept that the letters do reflect that and I am going to take that into consideration.

[14] Your lawyer has also addressed the need to provide the least restrictive outcome which is appropriate and to take into consideration all your personal circumstances.

[15] In my view I have already given you an appropriate discount for both your youth and the guilty plea of 50 percent and I am going to deduct a further five percent for remorse. That would give me a deduction of 55 percent for deductions from a starting point of seven years which leads me to an end point of three years and two months in regard to the aggravated robbery charge.

[16] In regard to the assault charges, the charges and the events were serious. There were a number of aggravating features, that was a breach of trust, this was a domestic situation, there was an assault to the head area and it was of a repeated nature. I do take into consideration however your age at the time of the offending, that you as I understand did not have any offending history for convictions in the Youth Court and also the background factors which are taken into consideration and highlighted from the pre-sentence report.

[17] The recommendation of the pre-sentence report for those assault charges alone would have been a community-based sentence and I agree that that may have been an appropriate outcome had those charges stood alone.

[18] In regard to the assault charges I would start with the lead charge which is the male assaults female of a four month period, uplift for a further two months for the other assault charges, giving me a starting point of six months. I would then give you a discount for youth, guilty plea and remorse of a further three and a half months. That would take me to an end point of the assault charges for a two and a half month period.

[19] I need now to consider whether that should be on top of, cumulative to the aggravated robbery charge. In my view given the principle of totality, which means I need to stand back and consider your offending as a whole and take into consideration the fact that you have not been imprisoned before, I am of the view that what we call a concurrent period of imprisonment in regard to the assault charge is appropriate. What that means is it would not be any further period of imprisonment for you.

[20] What that means is that in total the sentence that I am going to impose on you is a period of three years and two months. So I am now going to do that.

[21] In respect of the charge of aggravated robbery I am going to impose a sentence of imprisonment for three years and two months. Because the period is over two years any release conditions will be dealt with by the Parole Board.

[22] In regard to the assault charges you are going to be convicted and sentenced to a period of imprisonment for two and a half months on a concurrent basis. Given the circumstances it is not appropriate to impose any standard or special release conditions.

C L Cook
District Court Judge