

**IN THE DISTRICT COURT  
AT ROTORUA**

**CRI-2017-063-003691  
[2018] NZDC 1082**

**THE QUEEN**

v

**MAAKI TE HUIRAU EMERY**

Hearing: 23 January 2018

Appearances: M Jenkins for the Crown  
L Te Kani for the Defendant

Judgment: 23 January 2018

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**NOTES OF JUDGE A J S SNELL ON SENTENCING**

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[1] Mr Emery, you are before the Court for sentencing in relation to five separate offences. The first of those offences occurred on 8 October 2017 and was an attempted unlawful taking of a motor vehicle. That is punishable by two years imprisonment. The second offence, and the most serious offence today, was the offence of aggravated robbery which took place on 15 October 2017 and is punishable by 14 years imprisonment. The remaining three offences arose on 17 October in an attempt to apprehend you, where there was the unlawful taking of a motor vehicle, which carries a maximum penalty of seven years imprisonment, escaping custody, five years imprisonment, and driving a motor vehicle in a dangerous manner, three months imprisonment.

[2] The factual circumstances for all of the offending was as follows. On 8 October at about 3.00 am, you were at the [location deleted] in Murupara. You

smashed the rear window of a Toyota Previa motor vehicle and you unlocked the doors, then attempted to start the motor vehicle by breaking the ignition barrel and hotwiring it. You were unable to do that before you were disturbed and someone from a nearby house came out. That disturbed you and you left the scene, but you left behind blood on the dashboard of the motor vehicle which was then linked back to you and you subsequently admitted the factual circumstances.

[3] Some days later, you and another man, who is currently before the Courts facing the same charge, went to [the store]. The two of you entered the store and walked behind the counter which is closed to the public. The victim, who was the store worker, appeared from the rear of the store and on seeing him, you chased him and punched him once to the back. The victim fled to the back of the store and stayed for the remainder of the ordeal. Whilst that was taking place, the alleged accomplice opened the cigarette cabinet behind the counter and took a significant amount of cigarettes. You proceeded to return to the cash register and rip it off the counter, causing it to fall to the floor. You then removed the cash drawer and the two of you fled from the store. You ran across to a nearby alleyway. The cash was removed from the till and subsequently, through forensic analysis, a fingerprint was found belonging to you on the cash drawer and there was also a fingerprint relating to the co-accused. Again, when you were advised of these circumstances, you admitted the circumstances and a total amount of reparation of \$4290 is sought, being the cost of the cash and the cigarettes stolen from the store.

[4] Some two days later on 17 October, you were spoken to in the street at Murupara by a constable. He was making inquiries to see who you were and making inquiries regarding the robbery of [the store] committed two days earlier. You provided him with false details, but he checked your identity and established that you were using a false name and you were in fact the person wanted for the earlier robbery. You were advised that you were under arrest and you initially co-operated. You were placed in handcuffs with your hands in the front and seated in the front seat of the car. The constable, as is often in rural and remote areas, was already dealing with two others who were in the back of the car and when he went to drop those two people at a nearby house, you were able to lock the doors of the motor vehicle and start it and take off in it. What you then did was drive the motor vehicle away from the constable.

The constable was calling upon you to open the doors and you reversed out of the driveway and onto a street in Murupara. You then accelerated, getting away. Attempts were made to deflate the left tyre of the vehicle as it drove off and you were then observed to drive at speed and at various stages on the wrong side of the road around different streets in Murupara. There were pedestrians around, including children, some of whom had to take evasive action to avoid from being hit. You drove sometimes on the wrong side of the road and at excessive speed through pedestrian crossings and through Give Way signs. You eventually drove out from Murupara and onto a gravel road heading out to the forest. You lost control of the vehicle and crashed it into a ditch at the side of the road. You then abandoned the vehicle and continued on foot. You were not located for some three weeks after this event when you were arrested and placed before the Court. You again were also, when confronted with this offending, in agreement that that represented the circumstances.

[5] You come before this Court with six previous convictions. They were all dealt with in 2017 but represent offending that occurred in both 2016 and 2017. There are two key offences that you have in your offending history. There is an aggravated robbery offence which occurred on 16 October 2016 and then subsequently a robbery by assault offence which occurred on 7 November 2016. There is also a breach of home detention and an assault on a police officer which are separate offences and at the time of all of the offending for which you are about to be sentenced, you were on release conditions from a term of imprisonment for the key offences that I have identified.

[6] I have a victim impact statement from the shopkeeper involved in the aggravated robbery. That document is remarkably fair and the shopkeeper simply says that they did not suffer any lasting physical injuries and there was no personal or financial loss to them, although there was loss to the shop and they feel as a result of the robbery that they would prefer and feel safer working at a different branch of the organisation.

[7] I have a victim impact statement to assist me from the victim of the attempted unlawful taking. That person manages [details deleted] and she says there have been

financial losses which are documented and she is more on edge at night and fears that there could be further vandalism of cars at the motor camp in the future.

[8] I have a pre-sentence report which relates to you and that says that this is not the first time you have appeared before the Court for offending of a similar nature, but it is concerning that there is an escalation of your offending and that is even more concerning given your relative young age. You were 18 at the time of the offending. It says that you claim a close childhood friend had recently passed away and that you were in the grieving process, but you are said to take responsibility for your own actions and you do not shy away from that. Your offending related factors are identified as your lifestyle, negative peers and associates and alcohol and drug misuse. It says that compliance with previous sanctions has been poor and that there is no evidence of you wanting to undertake any rehabilitative components of the sentence or that you are qualified to do so. There is no evidence of any attitudinal change that would make any sort of a positive impact on your compliance. They state your risk of re-offending and your risk of harm to members of the community as both being assessed as high. It says finally that you have come from a dysfunctional lifestyle and you display little motivation to put in place the basic requirements for a prosocial existence in the community. The recommendation is one of imprisonment.

[9] I have your letter where you acknowledge your offending, you apologise for it and you ask for some level of leniency.

[10] The Crown position is that a five year starting point on the aggravated robbery should be imposed with an uplift for the other charges and also a further uplift for your previous offending. Your own counsel accepts that the case of *R v Mako*<sup>1</sup> applies as the tariff case for the aggravated robbery and accepts that there must be an uplift for the other offending, as well as for your previous history and offending and he has no argument with the starting point suggested.

[11] In terms of the purposes of sentencing, I must hold you accountable for your actions and promote in you a sense of responsibility for what you have done. I must denounce your offending. I must provide deterrence personally for you and generally

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<sup>1</sup> *R v Mako* [2000] 2 NZLR 170.

to others who might think to commit similar offending and there are, where you are concerned at the present time, clear issues of protection of the community because you remain a danger of committing these types of offences.

[12] In terms of the principles, I need to take account of the gravity of the offending, the comparative seriousness of the type of offences involved and I must sentence you consistently with appropriate sentencing levels for similar offending.

[13] The lead decision in this type of offending for aggravated robbery is *R v Mako* and in respect of that, that case outlines types of offending where sentencing guidelines are provided by the higher Court.

[14] I find that the aggravating features of this offence are:

- (a) That there was actual violence involved. You chased the victim. The victim was punched once to the back as he fled to the rear of the store.
- (b) There is the extent of the harm that applies. While the victim does not claim that he suffered any ongoing or lasting harm from the assault, there is the psychological harm of the robbery and the victim now feels safer working at a store outside of Murupara.
- (c) There is the inherent vulnerability of a lone shopkeeper in a small shop which is confronted by robbers.
- (d) Finally, there is the number of offenders. There were two offenders involved, you and the co-accused, and the amount taken in this instance was the sum of \$4290 worth of cash and goods by way of cigarettes.

[15] I do not think that there was an awful lot of premeditation. There were certainly no disguises or anything of that nature, but there must have been some level of premeditation because the two of you came in with a set purpose in mind.

[16] In relation to the tariff case of *Mako*, the starting point for a robbery by two or more people with the aggravating features here is one of five years imprisonment and that is the starting point that will be imposed upon you.

[17] I turn to the other offending and I turn to the three offences that occurred after the robbery. In relation to that, the first is that the victim of the unlawful taking was a police officer who was executing his lawful duty. You took his police car and escaped in it. The second aspect is that your driving and your escape in that police car endangered several members of the public and the driving was exceedingly bad. You crossed lanes on two occasions, you narrowly missed hitting children who were in the street and you went through Give Way signs as well as pedestrian crossings at speed. You eventually lost control of the vehicle and abandoned it after crashing it. When I look at those matters, which seem to me that that offending for those three charges, the unlawful taking, the driving related charge and the escaping, as well as the attempted unlawful taking earlier, could result in a starting point of up to 18 months imprisonment.

[18] I need to take totality into account and I do so. I reduce that by one-third and provide an uplift of 12 months for all of the other offending on your five year starting point. That leaves you with a six year starting point before I turn to personal circumstances.

[19] When I look at personal circumstances, there are aggravating personal circumstances. First and foremost is the fact that you were on release conditions, having been very recently released from prison for very similar offending as the lead offence of the aggravated robbery here. Secondly are your previous convictions. Primarily, the aggravated robbery and robbery by assault, which were both committed in 2016 and for which you were sentenced in 2017. For those previous convictions and for the offending whilst you were subject to a sentence of the Court, I uplift your starting point of six years to six years, six months, an uplift of six months in total.

[20] I turn then to personal mitigating factors. Primarily amongst this is your youth, with your age being 18 at the time of this offending. You are young, you are impulsive in all of the ways that are explained in various precedent cases relating to young

offenders. However, I must balance that with your experience in Court. You have already been to prison for similar offending. You were on release conditions for that offending and you cannot be said to be somebody who is unaware of what you were doing or of what was likely to occur. In those circumstances, the maximum discount for youth that I can give you is one of six months imprisonment. That reduces your sentence from six years, six months to six years.

[21] I turn then to your discount for pleas. You are entitled to the full 25 percent discount. As your lawyer, Mr Te Kani, has indicated, you pleaded at an early stage. You are entitled to the full credit for that and the remorse that that shows. I couple that with your letter. There is no additional remorse appropriate. That amounts to a reduction of 18 months or one and a half years from the six years and reduces your sentence to four years, six months on the aggravated robbery charge.

[22] In relation to all matters, all sentences will be concurrent and if you will please stand, you are sentenced as follows. You are sentenced to four years, six months on the aggravated robbery, three months on the attempted unlawful taking, six months on the unlawful taking, nine months on the escaping custody and two months on the driving in a dangerous manner.

[23] You will be disqualified from driving or obtaining a driver's licence for a period of two years from today.

[24] All sentences are concurrent, a total sentence of four years, six months imprisonment.

[25] Any current sentences from his previous offending will end today. No reparation.

A J S Snell  
District Court Judge