

**IN THE DISTRICT COURT  
AT HAMILTON**

**CRI-2016-019-007183  
[2017] NZDC 27492**

**THE QUEEN**

v

**TYRONE JOHN WATKINS**

Hearing: 4 December 2017  
Appearances: M Dillon for the Crown  
J Bell for the Defendant  
Judgment: 4 December 2017

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**NOTES OF JUDGE A S MENZIES ON SENTENCING**

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[1] You are appearing for sentence today in respect of three charges. The most serious charge is aggravated burglary, which has a maximum penalty of 14 years' imprisonment. The other two charges are male assaults female and assault with a weapon. Male assaults female has a maximum penalty of two years' imprisonment and assault with a weapon five years' imprisonment. Pleas of guilty have been entered at a reasonably advanced stage of the process. You are entitled to a credit in respect of the guilty plea and I will cover that at the conclusion. Counsel for the Crown and on your behalf are agreed that an appropriate allowance, given the time that pleas were entered, would be in the order of 15 percent of the sentence.

[2] First, as to your past record, you have a list of previous convictions that is reasonably extensive. It extends in excess of 30 in number. You have been sentenced

to imprisonment previously and the most recent sentence, as Mr Bell has outlined, was a sentence that was imposed in February of this year for burglary and that was a sentence of one year and nine months' imprisonment which I understand has recently come to an end. You have other convictions for both burglary and violence offences and have been subject to sentences of imprisonment in the past.

[3] The background to the offending describes events in June 2016. The victim at the time was seven months pregnant and she was not known to you. She was at home at the time this offending occurred, as were a number of other flatmates. You and another associate approached this property and you were holding a hammer. Essentially, you entered this property uninvited and the victim's partner had walked out of the bedroom and into another room when he heard his flatmate yelling that there were two men wearing bandanas that were coming into the flat. You and your associate walked into the front room and then you walked into the victim's bedroom, leaving your associate in the lounge. The victim was lying on her bed and she saw the bedroom door opening. As she stood up, you walked some two metres into the room, holding the hammer in your left hand. You became aggressive with the victim, saying that you were from the Mongrel Mob and demanded her money and drugs. The victim swore at you. You pushed her backwards slightly and she held her ground. She took a step closer and nudged you backwards out of her room. She grabbed the door handle, pulling it shut, and used her weight to hold the door shut against you. The victim's partner walked towards you as you stood outside the bedroom. You raised the hammer and swung at him in a threatening manner. The partner jumped out of the way to avoid being hit by the hammer which you swung. After several warnings to leave, you ran out of the property into the waiting vehicle.

[4] A pre-sentence report has been prepared for today. That report describes the background to the offending, in particular that you had drug involvement. Factors that are identified in this report that have contributed to the offending are offending-supportive associates, drug abuse, a violence propensity and in essence the offending was a result of a drug deal gone wrong. On the positive side, in terms of this report, it records that this offending was in June 2016. Since then, the report records that you have given up all drugs, you have married, your wife is described as being pro-social and you have distanced yourself from the gang culture. This has been

further evidenced by you being placed, while you were in prison, in segregation to avoid gang influence and contact and the report writer is satisfied that in general you appear to have been trying to turn your life around and you are viewed by the report writer as being motivated to address your offending factors. You are regarded as being at medium risk of re-offending, given the volume of offending in the past. The final recommendation from the pre-sentence report is one of imprisonment. It does note that enquiries were made about electronically monitoring considerations that would be necessary for a sentence of home detention.

[5] The Crown has provided written submissions and spoken to those today. Of particular relevance in those submissions, having gone through the factors, purposes and principles of the Sentencing Act 2002 that are of application, the Crown has referred to a previous Court decision of *R v Mako*.<sup>1</sup> That case provides some guidance as to sentencing in relation to offending of this sort, driven by the number and nature of aggravating features involved in the offending. Here, the Crown points to the fact that the offending was gang-related, it was offending committed for the purposes of obtaining money and drugs from the complainants, it was a form of home invasion, the complainant was some seven months pregnant and particularly vulnerable as a consequence, you took a weapon in the form of a hammer which you did not use to actually strike anybody but you attempted to do so in relation to the victim's partner. The Crown says there is a degree of premeditation, you having made the choice to go to the property and take a weapon with you in the form of a hammer. There were two people involved. There was some violence involved, albeit at a low level.

[6] The victim impact statement that has been provided speaks to ongoing concerns on the part of the victim. She was not physically harmed, but she was seven months pregnant and very stressed by what had occurred. She was bothered by the risk to herself and to her unborn child.

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

[7] The Crown has then helpfully referred to a number of other cases and while I have considered the cases, I do not propose to go through them in any detail. For the record, they are *Hape-Kino v R*,<sup>2</sup> *Wooster v R*<sup>3</sup> and *Nicholls v Police*.<sup>4</sup>

[8] Having reflected on those decisions and *Mako*, the Crown argues for a starting point in terms of this offending for between four and a half years to five years' imprisonment. In support of that position, the comments in *Mako* which the Crown has referred to include the following:

Forced entry to premises at night by a number of offenders seeking money, drugs or other property, violence against victims, where weapons are brandished even if no serious injuries are inflicted would require a starting point of seven years or more. Where a private house is entered, the starting point would be increased under the home invasion provisions to around 10 years.<sup>5</sup>

[9] The Crown starting point of four and a half to five years then should be subject to an uplift, according to the Crown, of some three months to reflect previous convictions which I have referred to. The Crown acknowledges, as I mentioned at the outset, that a guilty plea warrants recognition and submits that 15 percent is the appropriate allowance in that regard.

[10] Mr Bell, on your behalf, has responsibility accepted that the overall approach advanced by the Crown is appropriate. He says in the light of the *Mako* decision that a starting point of four years' imprisonment can be supported. He also acknowledges that an uplift of up to six months would be appropriate to reflect previous convictions. He also argues on your behalf that a discount of 15 percent would be appropriate as mentioned by the prosecution.

[11] From there, Mr Bell argues that there are further factors that need to be taken into account. One is the totality principle, arising because these events occurred before you were sentenced to unrelated matters in February of this year. Essentially, Mr Bell is saying that if you had pleaded at an earlier stage and all matters were before the Court in February of this year, then some allowance may have been built in for totality

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<sup>2</sup> *Hape-Kino v R* [2017] NZHC 2599.

<sup>3</sup> *Wooster v The Queen* [2017] NZHC 893 [5 May 2017].

<sup>4</sup> *Nicholls v Police* [2016] NZHC 1979 [23 August 2016].

<sup>5</sup> At paragraph [58].

and therefore the different timing should not deprive you of the benefits of a totality approach. The second issue that he has raised is that you are still relatively young and that there are positive features that have emerged from the pre-sentence report that suggest that you have tried to turn matters around, for which you are entitled to some credit.

[12] I have also considered the letter that you have written, Mr Watkins, and the letter that has been provided by your wife. I understand you have family support and I understand the issues that are raised and are clearly genuinely felt by you both. I may be pointing out the obvious, but in terms of a sentencing approach by a Court there are a range of issues that need to be considered. Your personal position is certainly one of them and the need for rehabilitation is a factor that is to be taken into account as well. Balanced against that, there are the interests of the victims involved in crimes, there are the interests of the community in terms of deterring offending of this sort by individuals and by the community generally, so sentencing is an exercise that involves the balancing of all of those issues, many of which are conflicting.

[13] This offending has involved elements of a home invasion. It was not at night, which would have been a more aggravating feature. There were at least two of you involved and it would have been a frightening experience for those that were involved. You were wearing bandanas. You had a hammer and your presence and appearance and the use of weapons were clearly designed to intimidate. The actual physical assaults were not major. Nonetheless, there was an overall violence about the conduct on a particularly vulnerable victim. The gravity of the offending is reflected in the comments that I referred to from the *Mako* decision about home invasions.

[14] I am also aware of the favourable issues that have been raised in the pre-sentence report. Those are matters that warrant consideration, as do the matters that have been raised in respect of totality.

[15] The appropriate approach here is to set a starting point in relation to this offending which reflects the gravity of the offending in the light of the matters that I have mentioned and the cases that I have mentioned. In my view, that starting point is four and a half years' imprisonment. That compares favourably to the starting point

that was in the *Wooster* decision for example but I regard those circumstances as slightly more serious than yours. Therefore, that starting point of four years and six months is where I will start and I consider that the previous matters are sufficient to warrant an uplift of six months, which would take us to a total of five years in relation to all three charges, or 60 months' imprisonment.

[16] From there, I need to build in recognition of the matters that have been raised. It is difficult to be precise about the totality principle and it is difficult to be precise about the remorse that you have shown and the attempts that you have clearly made to turn your life around. I therefore propose to adopt a global figure to recognise all of those features and I set that at 12 months. Therefore, I deduct the 12 months from the 60 which leaves an end total of 48 months' imprisonment. From that figure, I intend applying approximately 15 percent by way of a deduction for the guilty plea but I am deducting specifically eight months' imprisonment. That then leaves an end total of 40 months' imprisonment.

[17] The end result of what I have outlined to you is that on charge 1, which is the most serious matter of aggravated burglary, you are sentenced to three years and four months' imprisonment. On charge 2, male assaults female, six months' concurrent imprisonment and on charge 3, assault with a weapon, six months' concurrent imprisonment so the end result is the total period of three years and four months' imprisonment.

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Judge AS Menzies  
District Court Judge

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