

**IN THE DISTRICT COURT
AT WELLINGTON**

**CRI-2016-085-002098
[2017] NZDC 3555**

NEW ZEALAND POLICE
Prosecutor

v

TONI SYLVIA WILTON
Defendant

Hearing: 22 February 2017

Appearances: H Goodhew for the Prosecutor
J D Dallas for the Defendant

Judgment: 22 February 2017

NOTES OF JUDGE P A H HOBBS ON SENTENCING

[1] Ms Wilton, you appear before me today for sentence on 16 charges. The offending occurred between July 2015 and April 2016. There are four charges of burglary, two of assault with a weapon, one of aggravated assault, one of unlawfully taking a motor vehicle, three of using a document to obtain a pecuniary advantage, one of unlawfully being in an enclosed yard, three of theft and one of demanding with menace. You pleaded guilty to all of those charges following a sentencing indication given by me on 15 September last year.

[2] With respect to the burglaries, the first in July 2015 involved an accommodation house for the [victim training centre] in the northern Wairarapa, southern Hawke's Bay area. You went to the house with an associate. The house was

unoccupied at the time because it was the holiday period. Once inside, you took a 32 inch flat screen TV, curtains, a microwave, kettle, crock pots, food and other items.

[3] Sometime between 14 April 2016 and 25 April 2016, you stayed at an Otaki address. Sometime between 25 April and 30 April, you went back to the address and removed a number of glass panes from the back of the garage. You went through a number of boxes in the garage, taking two miniature picture frames, a power drill and a sanding machine. You also took two Wellington Zoo passes while staying at the address, which gives rise to one of theft charges. You had been staying at that address with the occupant, but had been required to leave for whatever reason.

[4] The third burglary was again an Otaki Beach address. You went into the address and put your bag in the kitchen. You proceeded to collect items and money from around the house. You then left the address with some of those items, leaving some items behind with your bag. The occupant of the house returned, having left the property briefly with her son. She found the property missing, and she also found your bag in the kitchen, which identified you because your driver's licence was there. You came back to the house when the occupant was present, gave the occupant a torch and then left the address a second time. You were located by a cousin of the occupant, who returned you to the address, and the stolen property was then given back.

[5] The fourth burglary occurred on 28 April 2016. You went into this property using keys previously taken from the property. You removed the victim's car keys and you left the property with the victim's vehicle, which contained his work tools. You then obtained a storage unit, where you unloaded those tools, later returning the motor vehicle to the victim's property. It is apparent that the occupant of the house and the owner of these tools later located them and returned some of these items.

[6] With respect to the three charges of using a document, you had worked for the victim as a farm worker. You were asked to leave in November 2015, as the arrangement was not working out. The summary of facts suggests that you left the farm property just prior to Christmas. During the time you worked for the victim, you had access to his credit card to purchase items for the farm. Those purchases were

authorised. On a couple of days around the Christmas period, you went back to the address to use a washing machine. The house was not locked,[detail deleted].

[7] On 6 January 2016, the victim checked his bank account and discovered three transactions on 5 January 2016, using that bank card. It was used to purchase perfume and cosmetics valued at \$865, two radar detectors valued at \$2410.95, and \$1100 worth of Warehouse gift cards and two smartphones. You used the card on those three occasions to obtain property.

[8] On 20 January 2016, the same victim was at his home on the farm. A 4x4 Jeep pulled up at the address. You got out of the Jeep, charged into the house and straight at the victim. You then struck him over the head with an extendable baton about 50 centimetres long, hitting him on the left side of his head behind his ear. He put his arm up to protect himself and was struck on the arms, with you repeatedly swinging at him. He tried to ring the police with his cellphone, but you smashed the phone with a baton and then took a Samsung telephone belonging to him.

[9] The further charge of assault with a weapon arose on 7 February 2016. You and the victim were known to each other. You arrived at the victim's property unannounced and went inside. There was an argument about the location of the victim's medication. That argument continued and you became agitated, yelling at the victim. You then picked up a can of traction spray and threw it at the victim, hitting her on the face just behind the left ear.

[10] On 2 April 2016, you went to a Palmerston North carpark, smashed the driver's side window of a car with a screwdriver, opened the door and got inside and tried to force the ignition with the screwdriver. The owner of that vehicle came out of an address to confront you. You then ran off. The victim gave chase, tackled you to the ground. You tried to stab the victim with the screwdriver and a pair of scissors. Eventually you broke free and ran off. Fortunately, there was no injury sustained by the victim.

[11] Finally, there are the charges of demanding with menace and with intent to steal and theft. You went into the house again in Otaki, a house where you had

previously stayed. After a brief conversation with the occupant, you walked further into the house with a co-offender. You collected property from around the house and loaded it into a vehicle. You then told the occupant you would give him time to think about much money he would have to pay for the property to be returned. You had told the victim you would be back at 11.00 am. You returned with a co-offender about 20 minutes later, again asking how much money he was going to give you to get his property back. He suggested \$3000, to which you agreed. He handed over \$400 in cash in an attempt to satisfy you, but he was told he would need to come up with more money. The victim was given a phone back and you and the other person left the address.

[12] The victim realised a number of items were missing. There was extensive text contact over a period of time, making arrangements for the exchange of the additional \$2600. Eventually, there was a meeting between you and the victim. The victim led you and the other person to another address, where you argued about the exchange of the money for a short period of time. Ultimately, you left empty-handed, but the next day arrangements were made to meet the victim. He gave you \$2400 in cash and two \$100 Warehouse vouchers, which resulted in the return of some of the property you had kept.

[13] Obviously, that is extensive offending that occurred over an extended period of time. It presents a difficult sentencing exercise because of the number of the charges, the different nature of the charges and the extended period of time over which they occurred. I have, as I must, considered the principles and purposes of sentencing, and I have tried to weigh and balance those as best I can. There is a need to denounce and deter your offending. There is a need to take into account the interests of the victims, and I have considered victim impact statements. There is also a need to consider your rehabilitation and impose the least restrictive outcome that is appropriate in the circumstances.

[14] I deal first with the burglary charges. As I said, there are four. One is of a garage; one is of an empty accommodation block in a rural area. Two of them, including that garage, relate to properties that you had previously been occupying. They are all, apart from the garage, although that was on a residential property,

burglaries of residential addresses. That in itself is an aggravating feature. The number of them, four in total, is also an aggravating feature. I do accept, however, that they are not, at least in the case of three of them, intrusion into strangers' homes in the middle of the night while occupants are asleep, so there is a slightly different complexion to them than the most serious of burglary charges. But again, as I have said, there are four of them, they involved a breach of trust with those persons who had welcomed you into their home previously, and they are all residential of sorts in any event. I am satisfied that at least two and a half years' imprisonment is the appropriate starting point for the burglary charges.

[15] With respect to the assault with a weapon charge and theft of the cellphone, there was the use of a weapon, which of course is intrinsic for a charge of assault with a weapon. It did involve intrusion into the victim's home uninvited. He was struck on the head with a weapon, suffered minor injuries, and the blows were repetitive in nature as he tried to protect himself. I think that attracts a starting point of at least 18 months' imprisonment.

[16] The using document charges again involve a breach of trust, used three times to obtain a relatively significant number of goods and valuable property. I understand somewhere in the vicinity of \$6000 is sought in terms of reparation. That on its own would attract an 18 month sentence of imprisonment.

[17] The aggravated assault, which involves the attempt to break into the car and then the assault of the owner of that motor vehicle who pursued you, attracts a 12 month sentence of imprisonment. It involved a weapon to avoid apprehension, which is serious in itself and could have resulted in serious injury.

[18] The demanding with menace charge carries with it a maximum penalty of seven years' imprisonment. Obviously that type of activity needs to be deterred. Demands were made for money to have property returned, it happened over a period of time. Although I accept there was no physical violence used in this case, I would have thought again, on its own, 18 months' imprisonment could be achieved for offending of that kind.

[19] I do not think anything needs to be added for the unlawfully in an enclosed yard, and I think that 18 months for the demanding with menace covers the theft that is included in that transaction.

[20] That in itself would give a total sentence, if one were to deal with it on a cumulative basis, of 8 years' imprisonment. If I stand back and look at that offending in the round as I am required to do, and consider its gravity and the totality of the offending, I am satisfied that eight years is excessive. It needs to be adjusted downward. It is a somewhat arbitrary and nebulous concept, the totality principle, but doing the best I can to assess the overall gravity of your offending over that extended period of time, I would have thought five years' imprisonment in total is appropriate.

[21] It is apparent from Mr Dallas' submissions that some efforts have been made by you towards rehabilitation. I referred to those at the sentencing indication. I suggested to you that I would give you a 10 percent credit for those efforts. I now have the benefit of a comprehensive drug and alcohol report, and I also have the benefit of reading the letter you have provided to me today. That comprehensive drug and alcohol report discloses a difficult background for you, and difficult personal circumstances. It is also apparent that your life has spiralled out of control as a result of some of those circumstances and as a result of an addiction to methamphetamine and the use of other drugs and alcohol.

[22] It is apparent that you are using your time in prison well. You have engaged in programmes to deal with that addiction, you are working in the prison laundry, and you have expressed a desire to continue to use your time in prison in a positive fashion in the hope that when you are released, you can lead a constructive and positive life in the community. I am therefore satisfied that you should be given greater credit than I indicated at the sentencing indication, because I am satisfied that there does appear to be some genuine remorse, over and above that which is recognised by your guilty plea, some real efforts towards rehabilitation and an insight into your offending. It also recognises the difficult previous personal circumstances which you have suffered.

[23] I am satisfied that 15 percent should be granted to you by way of credit, which would reduce that sentence by nine months. You are also entitled to full credit for

your guilty pleas of 25 percent, which is a further 13 months' reduction, the end sentence being one of three years and two months imprisonment. Your release date with a sentence of that length will be determined by the Parole Board.

[24] On the charges of demanding with menace, aggravated assault, the two charges of assault with a weapon and the three charges of obtaining property using a document, you are sentenced to 12 months' imprisonment.

[25] On the theft charges, you are sentenced to one month's imprisonment.

[26] On the charge of unlawful taking of a motor vehicle, nine months' imprisonment.

[27] On the four burglary charges, three years and two months' imprisonment.

[28] They will all be served concurrently. The effective sentence is one of three years and two months' imprisonment.

P A H Hobbs
District Court Judge