

**IN THE DISTRICT COURT
AT AUCKLAND**

**CRI-2016-090-002373
THREE STRIKES WARNING
[2018] NZDC 3726**

THE QUEEN

v

DAVID JOHN ABRAHAM

Hearing: 27 February 2018
Appearances: H Jones for the Crown
K Stoikoff for the Defendant
Judgment: 27 February 2018

NOTES OF JUDGE C J FIELD ON SENTENCING

[1] Mr Abraham, you pleaded guilty and are for sentence today in respect of a large number of offences. Some of them, of course, are much more serious than the others and I refer, of course, to the robbery charges and the demanding with menaces charge. There are other related charges but these, for the purposes of sentencing I suppose, we should regard as the lead charges.

[2] What I intend to do is indicate the sentences that I would think proper for all of the offending in a global sense and then make the appropriate deductions or deduction for your plea and anything else that is relevant, arriving then at a sentence which will allow for a number of sentences but they will all be concurrent with each other. That is the basis on which I will sentence you today.

[3] The most serious charges are the robbery charges. Briefly summarised, they are these; that on 16 January 2017 you were picked up by [victim 1], a taxi driver, you

demanding that he give you all of his money and [victim 1] drove you to an ATM, withdrawing \$100 from the account and gave it to you. In respect of that, you have pleaded guilty to one charge of demanding with intent to steal.

[4] Later that morning, you were picked up by [victim 2], a driver for [taxi company name deleted]. You grabbed his mobile phone and told him that he had to give you money. He gave you \$20 in exchange for the phone and you left the scene without paying the \$50-odd fare. In respect of the second offence of this charge, you pleaded guilty to two charges of theft and one charge of obtaining by deception.

[5] Then on 23 January, a week later, you were picked up by [victim 3], another taxi driver. You demanded money from him. He gave you \$450. You required him to withdraw cash at an ATM. You demanded that he drive you to a petrol station and buy cigarettes. He ran away at the petrol station and as a result of that you were charged with and have pleaded guilty to robbery.

[6] Later that morning at approximately 5.00 am, you were picked up by another driver, [victim 4]. You asked him whether [victim 4] had any change. When he exposed the money, being \$30 in his shirt pocket, you grabbed the money; ripping his pocket in the process. You then ran from the vehicle. That leads to the second charge of robbery.

[7] In relation to these lead charges, I am required to have regard to a number of aggravating features. I am required to identify them and to indicate what weight I place on them. In terms of premeditation and planning, I accept that it did involve premeditation and planning. It was a series of events into which you must have put some thought; similar offending, similar behaviour and you certainly showed a propensity to offend in this way. That is a significant degree of premeditation. In terms of the taxi drivers, of course, they are recognised as being particularly vulnerable people and that is a relatively high level of culpability in respect of that. Property stolen is probably at the lower end of the scale, having regard to the number of robberies, and you are not in a position to pay reparation. Fortunately, the amounts taken were not as great as might have been the case.

[8] As to the victim impact statements, I have read the victim impact statements. I noted the way in which the offending has affected them; they are now on the alert when dealing with the public, and understandably so. Activity of this kind on a taxi driver can have an enormous effect on the way they do their jobs and the way they react to people around them so, again, I consider that the extent of harm is indeed significant and there is multiple offending. It would seem also that you were on bail at the time of the offending and that is also an aggravating feature.

[9] Without wishing to minimise in any way the offending, as I have said, some aspects of the offending are not as great as they might have been in the sense that there was no physical injury, there were no weapons involved, the amounts taken were comparatively low; however, I still consider that the appropriate starting point for the robberies is one of three years' imprisonment. In relation to the other charges set out in the Crown submissions, the demanding with intent to steal and obtaining by deception should each carry a cumulative sentence of six months. That is then three years and six months. In addition to that, you have a number of charges which I will deal with shortly. You have, as I say, committed these offences while on bail and I consider there should be an uplift of two months for that feature of the offending. That would then be three years and eight months.

[10] I turn to the other charges that you face and they are a variety of charges; thefts in what I might call the indictable jurisdiction, but thefts of a comparatively lesser nature. In respect of each of those charges, I consider that three months' imprisonment is appropriate so that is three months for all of the other minor charges, or comparatively minor charges, of theft. That is cumulative on the sentences already indicated.

[11] In addition to that, there is an application to have you re-sentenced in respect of the matters for which you received sentences of community work and supervision. You did carry out some of the sentence of community work but you carried out very little of the sentence of supervision. For what it is worth, and it may be unnecessary, I cancel the sentences of supervision and community work and I substitute three months for the original offences. Those are cumulative on the sentence that I have indicated.

[12] According to my calculations, that would then leave a sentence of four years and four months, there being 14 months added to the three years. I should also comment that I impose sentences of three months in respect of the breach of supervision and the breach of community work; that is in the mix, for the total starting point then of four years and four months.

[13] You have undertaken some counselling and you have used your time constructively in prison. I can give, I suppose, a limited amount of credit for that. In addition, I do acknowledge the presence of your mother in Court today; she is here to support you and I take into account what she has said about the way in which you were behaving and her hope for the future as far as you are concerned. The credit I give you must be rather more limited but from that 52 months I will deduct 25 percent, plus another two months for prospects of rehabilitation, remorse and the constructive way in which you have dealt with that. That would then leave a total effective sentence of three years and one month.

[14] I deal with you then on the basis that in respect of the two robbery charges, you are sentenced to three years and one month imprisonment. In respect of the other charges, as I have said, six months for the demanding with menaces and obtaining by deception. In respect of all other charges, including the breaches of supervision and community work, you are sentenced to three months. All of those three month sentences are concurrent with each other so that your total maximum sentence is one of three years and one month's imprisonment.

[15] In addition to that, I have regard to the fines outstanding. They are going to go; there is little point in pursuing you for those in the circumstances. I remit outstanding fines of \$6230.26.

[16] In addition to that, and finally, I am required to administer the strike warning for the robbery charges, which I now do. Given your convictions for robbery, you are now subject to the three strikes law. I am now going to give you a warning of the consequences of another serious violence conviction. You will also be given a written notice outlining these consequences which lists the serious violent offences.

[17] If you are convicted of any serious violent offence other than murder committed after this warning and if a Judge imposes a sentence of imprisonment then you will serve that sentence without parole or early release. If you are convicted of murder committed after this warning then you must be sentenced to life imprisonment. That will be served without parole unless it would be manifestly unjust. In that event the Judge must sentence you to a minimum term of imprisonment.

[18] Just on the subject of parole, I have no idea what the position is but you may be eligible for parole in the relatively near future; I do not know, but in any event, that is out of my hands. The effective sentence, as I say, is one of three years and one month imprisonment.

[19] There is a driving while suspended charge, for which the sentence is one of three months' imprisonment but there is also a disqualification period of six months which will commence today's date, for what they may be worth, on 27 February.

[20] I have considered the issue of reparation. In the circumstances, there is no realistic prospect of reparation and, whilst I am sympathetic to the needs of the victims, that is not practicable and I will not sentence you to pay reparation.

ADDENDUM:

[21] In respect of the aggravated assault charge previously omitted from the Crown submissions I sentence you to six months.

C J Field
District Court Judge