EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS]

IN THE DISTRICT COURT
AT AUCKLAND

CRI-2017-092-003291
[2018] NZDC 4955

THE QUEEN

v

[CORBIN CONRAD]

Hearing: 15 March 2018

Appearances: J Harley for the Crown
R Slade for the Defendant

Judgment: 15 March 2018

NOTES OF JUDGE P I TRESTON ON SENTENCING

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[1] Mr [Conrad], you appear for sentence today, as we have now ascertained, on three charges; [date deleted] February 2017, injuring with intent to cause grievous bodily harm, which carries with it the potential of 10 years' imprisonment. Then, in between 26 and 29 March 2017, attempting to pervert the course of justice, seven years' imprisonment potentially. Finally, 3 March 2017, breach of release conditions which relate to a sentence that was earlier imposed, on that charge one year's potential imprisonment.

[2] The facts of the matter are these. There was a criminal jury trial where you pleaded not guilty and were found guilty of the first charge and you had earlier, on the eve of the trial, pleaded guilty to the charge of attempting to pervert the course of justice. You and the victim had had an argument on the day in question on [date deleted] February 2017. You were together with her at her [accommodation] in Auckland. On the victim's account, the argument stemmed from your jealousy

because she was pregnant and you were questioning the paternity of the unborn child. You grabbed the victim around the neck with your hands and squeezed her neck tightly, strangling her. You then stopped. Shortly afterwards, you strangled her again, causing her to lose consciousness. After regaining consciousness, the victim noted that her face was all purple with pores coming out of her face, her eyes were small, bloodshot and looked like they were popping out, and those events, of course, gave rise to the charge of injuring with intent to cause grievous bodily harm.

[3] On 26 and 27 March 2017, in relation to the charge of attempting to pervert the course of justice, you sent a number of text messages to the victim, asking her to drop the charges against you, giving rise to a charge of attempting to pervert the course of justice.

[4] The third charge, breach of release conditions, you were released from Mount Eden Corrections Facility on [date deleted] 2016 and were subject to seven months, three weeks and two days of release conditions. You were fully inducted to the standard and special conditions including the condition that you were not to have contact with the victim, directly or indirectly, without the written consent of your probation officer and that was on [the following day in] 2016. Of course, the purpose of that was to prevent contact between you and the victim, given the extensive history of violence between the pair of you and to prevent further offending against her. Then, on 3 March 2017 information was received by the Department of Corrections from New Zealand Police to say that you had been in contact with your victim without the written consent of your probation officer and the period of offending covers the dates on which the lead offence occurred, [date deleted] February 2017, and the text message of 27 March 2017.

[5] Those are the facts and they make pretty disturbing reading because you have a previous conviction against the same victim for an assault with intent to injure. In fact, your previous convictions span four pages of printout between 7 November 2005 and 17 March 2017 and include assault with intent to injure, some of which related to the same victim (there were three of those), three convictions for assault, one conviction for male assault female and a conviction for assaulting a child. Interspersed among those matters of violence were matters involving traffic convictions, breaches

of bail, intensive supervision and other convictions as well that I do not propose to talk about in detail.

[6] There was a victim impact statement filed by the victim. She said after being strangled by you she felt sore on her tongue, she was foaming at the mouth, her eyes were swollen like they were bloodshot and there were pores coming out of her face. Her face felt like it was all swollen up, she said. She did want to go to the doctor but did not go to see one. She felt angry and confused and hurt because of what you had done and that she had mixed emotions about what had occurred and thought that she could have died. In fact, she was rendered unconscious by the second strangulation episode. She said at the moment she feels safe, and this is when she wrote the victim impact statement back in February of this year, because you were in jail but she would also think at the back of her mind that when you do get released she will not feel safe anymore and she is scared that you might come after her and do something worse, to track her down somehow. She does not want you contacting her and does not want to see you anymore. She says you should be held accountable for what you did.

[7] There is a probation officer's report which documents your age at 31. It says your ethnicity is [ethnicity deleted]. It talks about the 10 previous violent offences which I have already outlined. In addition, there was a common assault matter that I did not refer to. You also have six previous convictions for breaching your community-based sentences and on the last matter, which occurred in November 2016, you were sentenced to five months' imprisonment. You are assessed, not unexpectedly, as a high-risk offender for re-offending and a high risk of harm to others due to what is called your recidivist offending. Identifiable factors relating to your offending are some of which you have now acknowledged, your use of alcohol and illicit drugs, your propensity for violence and relationship difficulties which have been demonstrated in your background.

[8] You have written a letter to the Court which confirms what you said to the probation officer about you being in a dark place at the time. You said that you had consumed approximately four litres of wine and smoked one gram of cocaine before the offending, then consumed another two litres of wine after the incident. Of course,

the fact of your voluntary taking of alcohol is not a matter that can be taken into account by way of mitigation.

[9] You said in evidence at the trial that you punched the victim. You still deny having strangled her but the jury obviously did not accept that. You said to the probation officer you feel sad and regret your actions and past behaviour and understand fully the impact of your actions on the victim. You have completed some relationship counselling, it is said.

[10] You have been non-compliant with community-based sentences imposed previously, the report says, and a sentence of imprisonment is recommended with a release on conditions but if the sentence is more than two years, it is the Parole Board that will impose release conditions on you in due course.

[11] You said, by way of background, that you grew up in violence and used alcohol as a coping mechanism but that made you worse. You have [children] aged between [age range deleted] from a previous marriage and you said that the relationship with the victim in this case was an on/off one for approximately two years. You reported you were a heavy drinker prior to your arrest and that is clear from what you said earlier to the probation officer and you reported that you used to smoke cocaine, methamphetamine and cannabis. You also, it seems, might have a gambling problem because you reported that you play poker machines on a daily basis and spend $200 per day on those machines. That is the probation officer's report which gives me some hint and knowledge about your background.

[12] The Crown says by way of summary that the sentence should be four years' imprisonment for the lead offence of injuring with intent to cause grievous bodily harm, an uplift of 18 months' imprisonment for the charge of attempting to pervert the course of justice, a further uplift of approximately three months' imprisonment on account of the Corrections charge of breach of release conditions and a starting point, then, of five years six months but that needs to be adjusted by an uplift of approximately six months for your previous convictions. It is accepted that your offending would entitle you to a guilty plea discount on the two matters that I have referred to and the Crown also seeks a minimum period of imprisonment of at least

half of the final sentence, for the reasons which it set out in the submissions, and a protection order against you is sought in relation to the victim and I hear now from your lawyer that that is not opposed.

[13] On the other hand, the submissions filed rather belatedly on your behalf submit that an end sentence of five years' imprisonment would be appropriate overall. The Crown submit, of course, that the end result should be six years' imprisonment and that is on the basis of an uplift on the charge of attempting to pervert the course of justice, no uplift for the charge of breaching release conditions and an uplift for previous convictions, of course, and a discount of five to 10 percent for various factors which have been referred to me in submissions. It is accepted that there are aggravating features and that there are no mitigating features in relation to the offending.

[14] It is important for this Court, of course, to hold you accountable for the offence which you committed, particularly the matter of violence, and your responsibility must be underlined in the strongest possible way. I must provide for the victim's interests, if that is possible, and I must denounce your conduct in the strongest possible way because of your offending on this occasion and your previous offending against the same victim. A deterrent sentence must be imposed because it is important for me to protect not only the victim but also for the protection of the community at large. As to your rehabilitation and reintegration into society, the Parole Board, in due course, will attend to that with release conditions and I would highly recommend that you do not breach those release conditions again, as you have in this case as I have indicated.

[15] It is, of course, the least restrictive outcome that the Court must adopt and I bear that in mind. There was, of course, the actual use of violence. There was the harm caused to the victim, there was the abuse of trust, effectively, of the victim and the vulnerability of her being a person who was pregnant and who is obviously of lesser stature than you. I take into account also by way of aggravation, your previous convictions, while I give you credit for your guilty pleas in relation to the two matters that I have referred to as having a guilty plea on them and for your expressions of remorse. I take all of those matters, of course, very much into account.

[16] I have read with care the letter which was handed up to me only this morning which says that your upbringing and early life was full of violence. You have already referred to those matters to the probation officer. Again, you say you were in a dark place, fuelled with pain, you were under the influence of alcohol and drugs and you extend in the letter your sincere apology to the victim and her family for the physical and emotional pain. You accept that what you did was wrong and take full responsibility for your actions. I am asked not to give up on you but, of course, I must sentence you according to law.

[17] It is my view that the matters referred to in *R v Taueki*[1] apply to this particular sentencing situation and in relation to that case, the Court of Appeal referred to various bands which reflect the seriousness of offending; band 1 through to six years' imprisonment, band 2 five to 10 years' imprisonment, band 3 nine to 14 years' imprisonment. Various examples were set out in the case as to how the bands ought to be related. Clearly, in my view, this is at the top end of band 1. It involved two actions of strangling and it was very lucky that the results to the victim were not merely lapsing into unconsciousness but something more serious indeed.

[18] Your lawyer accepts on your behalf there are no real mitigating features of the offending and I have already referred to some of the aggravating features. I did not say but those aggravating features include offending while on bail, your previous convictions, which I referred to, and the nature of the offending by the attack to the top end of the victim's body by strangulation on two occasions. All of those matters, of course, bear with me when I consider what the appropriate sentence ought to be.

[19] I agree that the starting point would be in excess of six years' imprisonment and it is a starting point which is probably over six years, being four years for the prime matter of assault, an uplift of 18 months for the attempting to pervert the course of justice, further uplift of three months for the breach of release conditions and an uplift for the previous convictions, some of which involve the complainant and the victim.

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[1] *R v Taueki* [2005] 3 NZLR 372 (CA)

[20] At the end of the day, it is my view that the matter can best be resolved in this fashion, giving you such credit as I can. I disagree with defence counsel that some of the discounts ought to be 10 percent or so together with another five percent as was submitted to me.

[21] There can be a five percent discount, of course, for your guilty pleas but at the end of the day my calculations are these:

(a) On charge 1, injuring with intent to cause grievous bodily harm, a term of imprisonment of four years and six months.

(b) On, effectively, charge 3, attempting to pervert the course of justice, giving you such credit as I can, a term of imprisonment of one year and five months.

(c) On the charge of breach of release conditions, one month's imprisonment.

[22] That makes a total of six years imprisonment because the term of four years and six months stands alone. The charge of attempting to pervert the course of justice is to be cumulative to that charge. That is one year and five months cumulative on the four years and six months, and then the breach of release conditions, cumulative on charge 3, which is the attempting to pervert the course of justice, imprisonment one month cumulative on that, so that makes a total of six years' imprisonment.

[23] In addition to the sentence that the Crown had placed before me as appropriate, there is an application for a minimum term of imprisonment. Section 86 Sentencing Act 2002 provides for the imposition of a minimum term of imprisonment where the sentence is longer than two years and a minimum term may be imposed if the Court is satisfied that the usual parole period is insufficient for the purposes of holding you accountable for the harm done to the victim and the community, denouncing your conduct, which I have already done, and deterring you and others from the same or similar offences. The minimum period of imprisonment imposed must not exceed the lesser of two-thirds of the full term of the sentence of 10 years, it

said, and the Court is required to take into account all the relevant circumstances of you as well as the offending.

[24] It is my view that a parole period of one-third of the final sentence would be insufficient to meet the purposes of holding you accountable. After all, you have been found guilty of a serious violent offence against a vulnerable victim which you continue to minimise. You deny the strangling and say that you only punched the victim. Given the history and persistent nature of your violence, particularly towards the victim, a minimum period is sought by the Crown of one half of the final sentence which would appropriately address the criteria, some of which matters I have referred to.

[25] That is opposed, of course, in your circumstances. I bear in mind what you have done in relation to some counselling because you have produced a certificate from the Department of Corrections to recognise you have completed in custody the Alcohol and Other Drug brief support programme and you have done well at that, to your credit, but it is my view that a minimum period of imprisonment of half of the sentence of six years is appropriate and I direct that that is the case.

[26] There is also an application under the Domestic Violence Act 1995 for a protection order and that is not opposed by you realistically. You have confirmed that you do not oppose it and the Crown seeks a protection order on the basis that the offending is extremely serious and ought to be considered in light of the history between you and the victim, of which I am aware, so I make such an order under s 123B Domestic Violence Act 1995 against you in relation to the victim.

P I Treston
District Court Judge