

**IN THE DISTRICT COURT  
AT PALMERSTON NORTH**

**I TE KŌTI-Ā-ROHE  
KI TE PAPAIOEA**

**CRI-2019-054-000963  
[2019] NZDC 11953**

**THE QUEEN**

**v**

**AKARANA HOWES**

Hearing: 21 June 2019

Appearances: A Lyne for the Crown  
T Thackery for the Defendant

Judgment: 21 June 2019

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**NOTES OF JUDGE S J O'DRISCOLL ON SENTENCING**

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[1] Mr Howes, you appear before me today for sentence. The charge that you are appearing before me on is a charge of wounding with intent to cause grievous bodily harm. The offending took place on 6 April this year.

[2] The summary says that at about 3.00 am on 6 April the victim was with a group of friends on Main Street, Palmerston North. You walked over to the Golden Takeaways to get some food when you saw two groups of people squaring off against each other outside The Office Bar. You said that you recognised an associate of his as being one in the group and he crossed the road to see what was going on. The summary makes some reference as to various punches that had been thrown by someone, I have indicated that whether that was you or others, it really does not matter for the purposes of sentencing today.

[3] It is said that the group circled around each other and that you then lunged at the victim, stabbing him in the lower abdomen with a knife. The police arrived and saw you holding the knife. You dropped the knife on request from the police and you were then placed under arrest. The victim was then taken by ambulance to Palmerston North Hospital. Because of being stabbed in the abdomen the victim was operated on to assess the severity of his injuries. He sustained a punctured bladder as a result of what occurred.

[4] I have a victim impact statement which has been placed on the file. The victim was in hospital for a week. He had to take time off work, his injury re-opened and he had to take further time off. So, he received an injury, there were also clearly financial consequences for him and emotional consequences for him as a result of what occurred.

[5] There is a pre-sentence report before me. You are aged 18. You have accepted that you stabbed the victim. The writer of the pre-sentence report states that you have not displayed any remorse or empathy for what occurred. The writer of the pre-sentence report suggests that you have tended to minimise your offending. You said that to the probation officer that you had returned to Main Street from your home because you had to go back into town and to collect a friend. You said that you happened to be carrying a knife because while at home a section of your trouser belt needed trimming and you then put the uncovered knife into your pocket where you said that you forgot about it. Whether that is the true position or not, I am not sure. The writer of the pre-sentence report has assessed you at being at high risk of reoffending and at high risk of causing harm to others. It is said that there are numerous factors which have contributed to your offending, that is your attitude, your associates or friends, your propensity to commit acts of violence and drug and alcohol abuse. You turn 19 in August of this year. You are now aged 18. The recommendation that is made in the pre-sentence report is for a sentence of imprisonment.

[6] In terms of the aggravating factors, you were also serving a sentence of supervision at the time, again the report before me indicates that you failed to engage and you were non-compliant with that sentence. I also note that there are previous matters in the Youth Court where there have been offences involving violence. There

are matters relating to assault with intent to rob and assaulting a female. You are, as I have said, aged 19.

[7] The Crown have filed submissions, as has your lawyer. The Crown have said to me that it is accepted that this offending was not premediated but involved what is described as high level street violence. The Crown says that your offending needs to be looked at in light of a case called *R v Taueki* which sets out various bands and I am required to consider those bands.<sup>1</sup> The Crown says that your offending fits within the upper band 1 or the lower band 2 of *Taueki*. Band 1, the Court of Appeal said that a sentencing Judge must make an assessment and if it fits within band 1 that a starting point that I must consider is a sentence of between three and six years' imprisonment. The Crown submits to me that the appropriate starting point for your offending is a starting point of between five and five and a half years imprisonment.

[8] There is reference to another case which I have been given. It is a High Court decision, I simply see that as a case which applies the *Taueki* decision. In there it was said that the case fitted in within band 2 but that case, as I read it, involved attacks to the head of the victim.

[9] Mr Thackery has filed submissions on your behalf which I have read before coming into Court. He submits that your case fits within band 1 so that there is a starting point of between three to six years imprisonment. Mr Thackery has pointed out your age and has pointed out that you have not previously been sentenced to imprisonment. I have also been given two psychologists reports from 2015 and 2017. That sets out your background and indicates some of the defects that you have, and Mr Thackery has said that that may give the Court some guidance as to why there may appear to be a lack of remorse exhibited by you.

[10] It is submitted by your counsel that the appropriate starting point here is four years imprisonment, that I should then uplift it to take into account your previous convictions or your previous offending and then decrease it to take into account your age. The matters referred to in the psychologists report and your plea of guilty.

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<sup>1</sup> *R v Taueki* [2005] 3 NZLR 372 (CA).

[11] In terms of the purposes of sentencing today, it is, as I see it, clearly deterrence. There is a need to deter people from carrying knives at night. There is a need to attempt to protect the community from the use of knives and a need to hold people accountable who do carry knives. In terms of the principles of sentencing I am required to impose the least restrictive sentence. I am required to take into account the seriousness of the offending, the gravity of the offending and your culpability.

[12] Carrying a knife around the streets at 3 o'clock in the morning is serious. You were involved or came across an altercation. You used that knife. That is the exact reason why the law forbids people to carry weapons. The Crown accept that the use of the knife here was not in any way premeditated but experience has shown that the mere carriage of the knife, while it may not have been intended to be used, people can in volatile aggressive situations pull out a knife and use it and that is exactly what you have done.

[13] It is often a matter of chance or good luck or bad luck whether someone dies when they are stabbed. It is often a matter of chance as to whether or not death occurs. It is often a matter of chance as to whether you are standing in the dock facing a charge of wounding as you are now or facing a charge of murder and that is what would have happened if someone had died in this case. So, it would then have been a question really of how much longer any sentence would have been and whether or not any sentence that would be imposed would be a sentence of life imprisonment. That is why people must not carry knives.

[14] I accept that your case fits within band 1. I do not think that it fits within band 2 of the *Taueki* decision. I also distinguish the High Court case that the Crown have provided me with. That involved a victim who received a fractured skull and bleeding to the brain. I acknowledge and accept and have read the material that is in the psychological report. In my view no sentence of imprisonment, short of imprisonment, would achieve the purposes and principles of sentencing. You have not previously been sentenced to imprisonment and I must impose the least restrictive sentence on you.

[15] This is, as you have said Mr Howes, a sad day. It is a sad day for everyone here. It is a sad day for you, it is a sad day for your parents and your supporters and it is a sad day also for the court because what has happened is that you have made various appearances in the Youth Court and you have graduated from the Youth Court into the District Court and within a relatively short period of time you have been involved in a serious violent incident, and I am left with no option but to sentence you to imprisonment.

[16] Experience has also shown that when young men like you are sentenced to imprisonment that is where you often make new friends and associates and that can begin an unfortunate pathway in and out of prison for many years in the future. I hope that that will not happen to you and I hope that when you come ultimately before the Parole Board for your release that you will be able to convince the Parole Board that you are worthy of early release and you will not continue on that pathway getting involved in crime and violent crime. You need to do what you can while you are in prison to do whatever you can to ensure that this is the last time that you appear in Court.

[17] I take as a starting point for this offence, a starting point of four and a half years imprisonment. I intend to increase that by six months to take into account that you were on sentence at the time, a sentence of supervision and I am not sure whether you are on community work at the time that exactly that this occurred, but you have certainly on sentence for supervision. That then means that there is a provisional sentence of five years imprisonment. I intend to reduce that by nine months. I do that because I take into account your age and the material that is before me in the psychologist's report so that the sentence is then one of four years and three months imprisonment. I then give you a full discount for your guilty plea. There has been an early guilty plea here, and while you may have attempted to minimise your offending, it has saved a trial. I reduce the four year and three-month sentence by 13 months because of that guilty plea.

[18] The sentence that I therefore impose on you on the wounding charge will be one of three years and two months imprisonment.

[19] I make an order for destruction of the knife.

[20] I make an order cancelling the outstanding sentence of supervision that is on you.

[21] I do, Mr Howes, urge you to address all those issues that I have mentioned about alcohol and drugs and your friends and associates and your attitude so that this is the last time that you appear in Court.

S J O'Driscoll  
District Court Judge