

**IN THE DISTRICT COURT
AT WELLINGTON**

**CRI-2015-085-006706
[2016] NZDC 3438**

THE QUEEN

v

ADAM PAORA TAMA IKUREO DROLLETT

Hearing: 2 March 2016

Appearances: S Woods for the Crown
C Nicholls for the Defendant

Judgment: 2 March 2016

NOTES OF JUDGE J M KELLY ON RE-SENTENCING

Re-Sentencing to Correct an Erroneous Sentence

[1] On 4 December 2015 the defendant, Mr Adam Drollett, appeared before me for sentencing having pleaded guilty to three sets of charges. They are as follows:

- (a) First set of charges:
 - (i) Aggravated robbery under s 235(c) Crimes Act 1961. The maximum penalty for this offence is 14 years' imprisonment;
 - (ii) Robbery under s 234 Crimes Act 1961. The maximum penalty for this offence is 10 years imprisonment; and

- (iii) Demanding with intent to steal under s 239(2) Crimes Act 1961. The maximum penalty for this offence is seven years' imprisonment.
- (b) Second set of charges:
- (i) Being unlawfully in an enclosed yard under s 29(1)(a) Summary Offences Act 1981. The maximum penalty for this offence is three months' imprisonment;
 - (ii) Intimidation under s 21 Summary Offences Act 1981. The maximum penalty for this offence is six months' imprisonment; and
 - (iii) Possession of a pipe under s 13 Misuse of Drugs Act 1976. The maximum penalty for this offence is one year's imprisonment.
- (c) Third set of charges:
- (i) Two charges of aggravated assault under s 191(1)(c) Crimes Act 1961. The maximum penalty for each of these offences is three years' imprisonment;
 - (ii) Possession of an offensive weapon under s 202A(4)(a) Crimes Act 1961. The maximum penalty for this offence is three years' imprisonment; and
 - (iii) Escaping from lawful custody under s 120(1)(c) Crimes Act 1961. The maximum penalty for this offence is five years' imprisonment.

[2] Mr Drollett had entered guilty pleas to these charges following his acceptance of the sentencing indication I gave him on 18 September 2016.

[3] In accordance with that sentencing indication I sentenced Mr Drollett to a total sentence of five years six months' imprisonment. That total sentence was allocated as follows.

[4] In respect of the first set of charges, on the aggravated robbery charge Mr Drollett was sentenced to three years' imprisonment. On the robbery charge Mr Drollett was sentenced to 18 months' imprisonment cumulative on the sentence of three years' imprisonment imposed on the aggravated robbery charge. On the demanding with intent to steal charge Mr Drollett was sentenced to 18 months' imprisonment which was concurrent.

[5] In respect of the second set of charges, on the charge of being unlawfully in an enclosed yard Mr Drollett was sentenced to two months' imprisonment cumulative on the sentence of 18 months' imprisonment imposed on the charge of robbery. On the charges of intimidation and possession of a pipe Mr Drollett was sentenced to two months' imprisonment as concurrent sentences.

[6] In respect of the third set of charges, on one of the charges of aggravated assault Mr Drollett was sentenced to 10 months' imprisonment which was cumulative on the sentence of two months' imprisonment imposed on the charge of intimidation. On the remaining charges of aggravated assault, possession of an offensive weapon and escaping from lawful custody, Mr Drollett was sentenced to 10 months' imprisonment as concurrent sentences.

[7] I then made an order imposing a minimum period of imprisonment of 50 percent of the total sentence.

[8] On 11 December 2015 I was advised by the Court registry that Corrections had advised that the minimum term warrant that imposed a minimum term of imprisonment of two years and nine months was incorrect.

[9] That was because s 86(1)(a) Sentencing Act 2002 provides that a minimum period of imprisonment may only be imposed on a sentence of more than two years for a particular offence.

[10] It follows that a minimum term cannot be imposed on the total cumulative sentence.

[11] Therefore, as the sentence which includes the minimum term of imprisonment order was one that could not by law be imposed, on my own motion pursuant to s 180(1) Criminal Procedure Act 2011, I directed that Mr Drollett be produced to be re-sentenced.

Discussion

[12] I have considered the written submissions filed on behalf of Mr Drollett. I have also listened to the submissions made by Mr Nicholls on behalf of Mr Drollett.

[13] I have read the written submissions filed on behalf of the Crown. I have also listened to the oral submissions made by Mr Woods on behalf of the Crown.

[14] First it is accepted that there is jurisdiction to re-sentence Mr Drollett under s 180 Criminal Procedure Act 2011.

[15] I agree with the Crown submission that the Court should impose a new sentence that achieves the clear judicial intent at sentencing which was to impose a minimum period of imprisonment of 50 percent on the total sentence for all offending.

[16] I also accept the Crown submission, and I think this point has been conceded by Mr Nicholls, that this was the clear expectation arising from the sentencing indication that Mr Drollett accepted.

[17] In the sentencing indication I gave Mr Drollett on 18 September 2015, I indicated that an end-point sentence of five years six months would be imposed. In relation to the minimum period of imprisonment, I said:

[56] Subject to further submissions and what may be said in any pre-sentence report and any restorative justice or other demonstrations of remorse, I would be of the view that serving one-third of the nominal sentence would be insufficient to achieve the purposes I have referred to.

[57] As I have said, subject to all those matters, I would then need to determine how long the minimum period of imprisonment should be.

[58] Having regard to the need for denunciation, deterrence and protection of the public, the information provided to the Court regarding the impact of your alleged offending on the victims and the aggravating factors of your previous convictions, I, at this stage, can indicate that I would be of the view that I would impose a minimum period of imprisonment, being 50 percent of the sentence.

[18] The only question in issue today is how to achieve that outcome.

[19] Mr Nicholls argues on behalf of Mr Drollett that the only error to be corrected relates to the minimum period of imprisonment order, not the particular finite sentences given to each offence.

[20] Mr Nicholls argues that to increase the sentence imposed on the aggravated robbery charge from three years' imprisonment with cumulative sentences added to a lead sentence of five years six months with concurrent sentences would offend against s 116 Criminal Procedure Act which provides that a sentence indication is binding on the Judge who gives it.

[21] I do not accept that argument because I am of the view that s 180 enables the Court to re-sentence to correct an error which would enable the Court to impose a lead sentence of five years six months on the aggravated robbery charge with concurrent sentences because that would be consistent with the clear intention of the sentencing indication.

[22] However, as it is not necessary for me to decide that point to achieve the same end result, I opt to take the option of leaving the finite sentences as they are but increasing the minimum period of imprisonment to approximately two-thirds on the aggravated robbery sentence of three years' imprisonment.

[23] Mr Nicholls accepts this is permissible under s 180.

[24] The Crown accepts that practically speaking this would achieve a 50 percent minimum period of imprisonment on all of the offending as indicated by the Court and accepted by Mr Drollett.

[25] This would be because Mr Drollett would serve, first, approximately a two-thirds minimum period of imprisonment of the sentence of three years and then one-third of each of the cumulative sentences.

Decision

[26] For the reasons given, I correct the erroneous sentence imposed on Mr Drollett on 4 December 2015 by imposing a minimum period of imprisonment of 23 months on the aggravated robbery offence, which counsel agree is approximately two thirds of the finite sentence of 3 years imprisonment.

J M Kelly
District Court Judge