

**IN THE DISTRICT COURT  
AT NORTH SHORE**

**CRI-2014-044-001441  
[2016] NZDC 6618**

**NEW ZEALAND POLICE**  
Prosecutor

v

**JASON LUCAS**  
Defendant

Hearing: 19 April 2016  
Appearances: Sergeant G Holliday for the Prosecutor  
L Herbke for the Defendant  
Judgment: 19 April 2016

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**NOTES OF JUDGE L I HINTON ON SENTENCING**

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[1] Mr Lucas, you are appearing for sentence today in relation to six charges of burglary and one charge of unlawfully taking a motor vehicle. On 17 December 2015 I gave you a sentence indication following submissions I had received from Mr Coleman for police and Mr Herbke for you, and that sentence indication was that I would impose a sentence of imprisonment of between three years two months' and three years four months were guilty pleas entered to those charges. You subsequently accepted that sentence indication and a pre-sentence report was commissioned.

[2] Sentencing has been delayed a little because of a referral to restorative justice but the ultimate conference has not been possible in the circumstances. The issues that remained for me at the time of the sentence indication were issues of reparation and minimum period of imprisonment. I recall in December that Mr Herbke had

raised with me your interest in rehabilitative options that were available to you. Each of those things we have needed to address and I will have comments on them later.

[3] Subsequent to 17 December we have a further pre-sentence report, some supplementary submissions which have been filed by Mr Herbke and a report from probation in relation to the issue of reparation. I am just going to go briefly through the facts here, Mr Lucas, because the facts are pretty serious particularly taking into account your background. Your history shows that you have more than 20 convictions already for burglary and a number of convictions, I think in the region of 80, for previous offending in total.

[4] Commencing in August 2014 you committed a series of burglaries. The first on Monday 18 August at an address in Epsom where you entered via the second floor while the occupants were, in fact, downstairs having dinner. You heisted a number of items of jewellery, before leaving, to the value of \$5300. On 19 September you were at a property in Hillcrest, Auckland. You forced open a window at the rear of the premises and climbed inside. You removed from the master bedroom a laptop, a computer, a number of items of jewellery and so forth with a combined value of approximately \$2500.

[5] On 12 November you were at a property in Waterview, Auckland. You forced open a window at the rear of the address and climbed inside. The burglary alarm was activated. You pulled the alarm panel from the wall in an attempt to deactivate it. In your attempts you left blood on the wall above the alarm panel. Again items of jewellery, electrical items and wine were removed to a combined value of approximately \$30,000.

[6] In May 2015 you were at a property on the North Shore where again a number of items including jewellery, cash, perfume and toiletries this time to the value of \$50,000 were removed. You were at a commercial premises in Henderson in November 2014. You forced entry to the yard by cutting the front gate padlock. Once inside you removed a safe which contained approximately \$2000.

[7] In July 2013 you gained entry into a BMW motor vehicle in Northcote. You drove it. That vehicle was subsequently recovered. In August 2013 you were at [address deleted], Oteha Valley. You entered that property, removed various items including artwork, wine, items of jewellery and cash to the total value of \$80,000.

[8] That, Mr Lucas, is a summary of the facts surrounding your offending. I have considered several victim impact statements which speak of invasion of privacy, theft of jewellery that was extremely sentimental, theft of family heirlooms which were irreplaceable and in one case a house being trashed. Your victims have suffered to varying degrees. Some were insured, some lost more than others. All but one have suffered outrageous and sometimes very bold invasion of their residences and the privacy of their homes. Homes have been damaged. High value items have been targeted. There was planning involved and the value of property taken was over \$150,000.

[9] I have considered quite comprehensive submissions from Mr Herbke and from Mr Coleman on behalf of the police, and I have considered the various cases cited in those submissions. My view was at the time I gave you the sentence indication and is now that the five residential burglaries here and the commercial burglary, having regard to the high value of the property targeted and taken and the damage done, merited a starting point exceeding that in the cases we discussed, which were *R v Wilson* [2013] NZHC 3455, *R v Anderson* HC Palmerston North CRI-2005-454-027, 19 July 2005. My starting point was three years and three months, that is to say 39 months.

[10] Of course, a substantial uplift was merited because of your previous offending and the uplift that I decided was appropriate was 11 months. There was no real disagreement about that between the police and Mr Herbke. You have 80 previous convictions. You have 22 previous convictions for burglary between the period 1987 until 2010 and other dishonesty convictions. From a starting point then of 50 months, with a 20 percent discount for your guilty plea, which was appropriate would result in a sentence of imprisonment of 40 months, that is to say three years and four months.

[11] I mentioned at the start, Mr Lucas, that there were some matters which needed further attention on 17 December 2015. One important item was a pre-sentence report. I have an updated report now available. This is attached to Mr Herbke's submissions which I have just seen. It is a positive report. Your risk of harm to others is assessed as low. To your credit the report states that you have completed the Problem Gambling Foundation of New Zealand programmes and a parenting programme. You have further reported that you are in a preadmission stage with Odyssey House and you have completed the introductory session. You meet the criteria for a departmental programme, such as a short rehabilitative programme, to address problem thinking and poor problem solving strategies. You are assessed as a suitable candidate for a rehabilitative sentence, but of course due to the nature of your offending a term of imprisonment is appropriate.

[12] Mr Herbke attaches to his supplementary submissions also certificates of attendance and participation in rehabilitative programmes. These include the Problem Gambling Choice Not Chance group and Strengthening Resilience workshop, certain unit standards courses, a parenting programme and so forth. All these testify to your rehabilitative focus which is positive and is referred to in the reports and in the submissions and which I accept.

[13] So far as the question of reparation is concerned you are in a not good financial position obviously, and it may well be that difficulties present following your release from prison. The Court can only order reparation to be paid where there is a reasonable prospect of it being paid. Here the amount of reparation which is sought is a significant amount which you have no prospect of paying. It might be possible to order you to pay a lesser amount at a future date following your release from prison, but it seems to me realistically that this would only be a reasonably modest amount that could be awarded. I must accept the reality that you will have difficulty in meeting even a modest award.

[14] That said the sentence that is imposed upon you today will be at the higher end of the indication that I gave you because that is precisely what I had in mind at the time that indication was given. The question of reparation was flagged and your inability to meet it must mean that the sentence is maintained at 40 months. That is

not to say that you are not getting credit for the rehabilitative focus that you now have and the steps that you have taken whilst you have been in prison. Again that was recognised at the time in what I said to you at the time of the sentence indication.

[15] The final issue is whether a minimum period of imprisonment should be imposed under s 84 Sentencing Act 2002. My recollection is that there was agreement between the police, Mr Herbke and myself at the time of the sentence indication hearing that that may be inappropriate. I confirm that I have had regard to s 86 and in particular the matters stated in s 86(2) Sentencing Act, and that no minimum period of imprisonment will in the circumstances be imposed.

[16] The result for you, Mr Lucas, is that in relation to each of these charges you are convicted and you are sentenced to imprisonment for a term of three years and four months.

L I Hinton  
District Court Judge