

**IN THE DISTRICT COURT
AT INVERCARGILL**

**CRI-2015-025-000162
[2016] NZDC 3926**

THE QUEEN

v

MASON RUDOLPH

Hearing: 8 March 2016

Appearances: S N McKenzie for the Crown
P B Redpath and K M Barker for the Defendant

Judgment: 8 March 2016

NOTES OF JUDGE B A FARNAN ON SENTENCING

[1] I have before me for sentence today, Mason Rudolph. Mr Rudolph had been facing a jury trial in relation to four other matters. He was acquitted in relation to those charges but had previously pleaded guilty to a male assaults female charge that arose out of the same incident. That guilty plea was entered on 29 April 2015.

[2] The assault Mr Rudolph caused on 18 January 2015 to his former partner was serious. That is acknowledged by his counsel, Ms Barker, in Court today. What that assault involved was Mr Rudolph punching the complainant in the head area. She had a visible injury to her eye. I had the benefit of the doctor's report that explained some of the other physical injuries, including what appeared to be tenderness to the victim's head area and clearly visible bruises on her hands which appeared to have resulted from her being in a defensive position trying to avoid the defendant's punches. There were some other injuries which are not clear from the trial evidence I heard, but from the admission of guilt in relation to this charge, it is

clear the defendant was the cause of those other injuries. For the purposes of this sentencing today, is my view that I really have to put those to one side.

[3] In terms of your previous convictions, you do have a previous male assaults female conviction from 17 January 2014, some two years ago, although it was in relation to an incident from the previous year. You have various breaches and other convictions, including dishonesty and driving. As your counsel, Ms Barker, pointed out to me, there are a number of charges that seem directly related to your excessive use of alcohol. You have other common assault convictions from 2002, which is some 14 years ago, but also more recently as 2012, an injuring with intent conviction in 2012, from an incident in 2011. The most serious of your assault charges is a wounding causing grievous bodily harm, for which you were sentenced to a significant period of imprisonment in 2008.

[4] As you have heard today, Mr Rudolph, the male assaults female charge carries with it a maximum penalty of two years' imprisonment. It is my view your offending was in the moderate to serious category. You are possibly fortunate you are not, in fact, facing a more serious charge in relation to the particular injuries that you inflicted on the complainant, when I look at the actual injuries she suffered.

[5] The Crown are represented today by Ms McKenzie, who represented the Crown at the trial. She has filed helpful submissions. She has been able to obtain the victim's views in relation to this offending. She has ascertained the victim does not want to attend a restorative justice conference and nor does she wish to make a formal victim impact statement. Ms McKenzie reminds me the victim confirms her position as per her evidential interview and the evidence she provided at trial. She confirms through Ms McKenzie that she has nothing further to add.

[6] Your counsel, Ms Barker, has commented on the victim's position and has acknowledged not only that you inflicted the physical injuries that we are aware of, but Ms Barker quite properly, on your behalf, acknowledges the victim in this case will likely be suffering some emotional and other impacts as a result of your offending, possibly for some time to come.

[7] There is no tariff for such offending but the Crown have referred me to a Court of Appeal case of *R v Reihana*, 3/7/2003, CA143/03, which resulted on appeal to an end sentence of five months' imprisonment. However, Ms McKenzie submitted to me that that offending was not as serious as yours, and that with your offending involving, as it did, punches to the face - five on your evidence and possibly more on the victim's evidence - I should impose a sentence beyond the five months from the *R v Reihana* result. Further, Ms McKenzie submits a starting point from the Crown's perspective would be 10 to 12 months.

[8] I think in some respects the Crown have been quite generous in that regard as it could be that a starting point higher than that was warranted for your offending, but you have only been charged in relation to the physical assault with a male assaults female charge. With the maximum penalty for that being two years, a starting point for your actual offending of 10 to 12 months is not out of line. I am, of course, entitled to uplift that for your previous matters which I have already highlighted.

[9] It is my view I could impose six months to reflect your previous [convictions]. That might be slightly beyond the general imposition of uplifts for offending of this nature. It is my view that an uplift of three months is a sufficient reflection of your previous, considering that some of the more serious matters are some years old now.

[10] I am told that on completion of sentencing today your intentions are, once you are physically released from prison – which, of course, you will be as a result of my sentence imposed upon you today - that you will return to Ashburton. It seems to me that that is an appropriate response, in your current circumstances.

[11] You have been in Ashburton more recently prior to your recent incarceration. It would seem, from the information I had from the trial, that you were, in fact, doing well in Ashburton. You had held down a full-time job and in fact had taken that job so seriously over the period of Christmas and New Year of 2014, that you had returned to Ashburton to work some intervening non-holiday time. I am told you can

resume that job as soon as you are back settled in Ashburton. I take from that job offer, that is a reflection of the regard your employers hold for you.

[12] You have family support in Ashburton and I am pleased to hear that. You have a son here in Invercargill but have formed the pragmatic view it would be best if you stay away from Invercargill. I think that is a very sensible attitude on your part. I think it would be very foolish if you came upon the victim, whether accidentally or not, and that the best course of action is for you to stay away from Invercargill. You will, of course, need to make appropriate arrangements for your son to be able to see you.

[13] I need to consider the purposes and principles of sentencing. In your case I need to consider deterrence and denunciation. I need to consider the victim's views and I need to protect the public from offending such as yours.

[14] I agree with Ms Barker that you appear to have some struggles and issues with the use of alcohol. I am aware, of course, from the evidence at the trial, that not only had the victim been drinking on this particular night, but you yourself had also been drinking and had in fact commenced drinking either in Ashburton before you left on that particular evening, or, at the very least, on the journey from Ashburton to Invercargill.

[15] I am also troubled by what appears to me to be anger issues. If you do not resolve your anger issues, then it is my view you will simply be back before the Court and will spend more time in prison.

[16] It is to your credit you did plead guilty to the male assaults female charge. I must assess your culpability when considering the punches to the face and their repetitive nature. As I have indicated, I assess a moderate to higher level of culpability which could well justify a starting point beyond that which is sought by the Crown.

[17] I accept you immediately showed remorse and apologised, but I agree with the Crown that your subsequent texts and messages could be seen as some sort of damage control on your part.

[18] I can give you the overall credit of a guilty plea and possibly some credit for remorse but that credit would be no more than a total of 20 percent that Ms Barker has indicated would be appropriate.

[19] Therefore, Mr Rudolph, it is my view, taking into account your culpability, that a starting point for your offending is a 12-month sentence of imprisonment. I uplift that by three months, which makes a total end sentence, without deductions, of 15 months. I take from that the 20 percent for your guilty plea and other associated discounts and bring that down to 12 months, which is essentially what both the Crown and the defence are seeking.

[20] I impose release conditions upon you. You will be subject to the general release conditions but I am also going to impose special release conditions that you attend a Stopping Violence programme, if considered appropriate by a probation officer, and you attend alcohol counselling as directed if considered appropriate by a probation officer.

[21] Additionally, I intend to make a protection order today. I have the jurisdiction to make a final protection order under s 123B Sentencing Act 2002 if you have been convicted of a domestic violence offence. Male assaults female is such an offence. There is not currently in place a protection order against you under the Domestic Violence Act 1995 for the protection of the victim. I understand there is no such order in place. If I am satisfied the making of the order is necessary for the protection of the victim - and I have formed a view, having heard both from her and you during the trial, that it is necessary for her protection that there be a protection order - her children are automatically protected. I understand the victim does not object to the making of the protection order and, in fact, actively seeks a protection order.

[22] I direct that you attend an assessment and attend a non-violence programme. That programme will be set out in the order you will be given before you leave Court today. The domestic violence programme you will be directed to attend is through Stopping Violence Services. It is a men's non-violence programme. The venue is the [venue details deleted]. You will get the full details of that as well as the starting date, with the first initial appointment to be on [appointment details deleted]. You will need to let your employers know you cannot work on that day because you will be attending the first assessment for your Stopping Violence programme.

B A Farnan
District Court Judge