

**IN THE DISTRICT COURT
AT WELLINGTON**

**CRI-2015-085-003486
[2016] NZDC 3688**

THE QUEEN

v

PETERA RANGATIRO MIHAKA

Hearing: 7 March 2016

Appearances: A Winsley for the Crown
K Preston for the Defendant

Judgment: 7 March 2016

NOTES OF JUDGE J M KELLY ON SENTENCING

[1] Mr Mihaka, you appear for sentencing today following your acceptance of the sentencing indication I gave you on 18 September 2015. Based on the sentencing indication you have now entered guilty pleas to a large number of charges.

[2] The lead charge, for the purposes of sentencing today, is a charge of wounding with intent to cause grievous bodily harm against s 188(1) Crimes Act 1961. This is a serious charge which carries a maximum penalty of 14 years' imprisonment.

[3] The facts in relation to this charge are that at approximately 3.40 pm on Monday 2 March 2015 the victim, who is a police officer, identified you as the suspect for an offence because you were wanted for multiple breaches of Court bail. You ran away but were apprehended on Victoria Street.

[4] In the process of being apprehended you swung a 750 millilitre glass bottle of gin at the head of the constable. You struck the constable multiple times in the face and head, eventually smashing the bottle on the constable's head. A member of the public assisted the constable in apprehending you.

[5] As a result of the blows to the head the constable received four lacerations to his head and face, which required stitches and medical attention.

[6] I have read the victim impact statement from the constable who says this is the most significant assault he has been a victim of. Your offending has had a significant impact on him and his partner.

[7] The second set of charges are as follows:

- (a) Unlawfully taking a motor vehicle under s 226(1) Crimes Act 1961. This offence carries a maximum penalty of seven years' imprisonment;
- (b) Driving with excess breath alcohol, with a level of 667 micrograms of alcohol per litre of breath, which is one and a half times the adult limit, even though you were 18 at the time; and
- (c) Dangerous driving.

[8] The facts in relation to this set of offending are that, at some time between 11.30 pm on 7 August and 7.00 am on 8 August, a motor vehicle was stolen from Berhampore.

[9] At approximately 9.55 pm on 12 August 2014 you were driving the vehicle in Lower Hutt. Police received a call from a concerned member of the public regarding the vehicle's manner of driving.

[10] The police located the vehicle and signalled for it to stop by sounding the siren with red and blue flashing lights. You ignored the police and drove in a

dangerous manner, reaching speeds in excess of 100 kilometres per hour in a 50 kilometre per hour posted speed limit area.

[11] Several glass bottles were thrown at police from the vehicle. You crossed the centreline on numerous occasions. Several times you drove over roundabouts and drove in the wrong lane. At one stage you drove south on the Eastern Hutt Road, in the northbound lane, for approximately one kilometre, reaching dangerous speeds in excess of 100 kilometres per hour in a 70 kilometre per hour area. A police officer attempting to deploy road spikes was forced to jump for his safety as you aimed the vehicle towards the police officer.

[12] The vehicle was eventually stopped. You were required to undergo the evidential breath testing procedures which produced the level I have referred to.

[13] The next charge is unlawful interference with a motor vehicle. This offence carries a maximum penalty of two years' imprisonment.

[14] The facts in relation to this charge are that the victim parked his vehicle on Arlington Street in Mount Cook. When he returned to the vehicle the next day he discovered that the vehicle had been broken into. The front passenger door lock and the steering column had been significantly damaged. Your fingerprints were located on the outside of the left passenger door, below the door handle. A reparation order is sought to cover the victim's insurance excess.

[15] The next charge is one of burglary. This is a serious offence which carries a maximum penalty of 10 years' imprisonment.

[16] The facts in relation to this charge are that at about 3.00 pm on 7 February 2015 the victim was at an address in Wellington. She was working in the backyard, in her garden. At about 5.00 pm she returned to the house to find that several items had been stolen. The burglary was reported. Forensic evidence was gathered by the police. Your fingerprints were found inside the address. An order for reparation of \$750 is sought.

[17] I have read the victim impact statement in relation to the burglary. The victim says that the alleged offending was a massive violation of her privacy. She had things of personal value taken from her and also important documents that had her identity contained in them. She says she ended up moving house as she did not feel safe in her house.

[18] The next charge is a charge of assault with intent to injure. This offence carries a maximum penalty of three years' imprisonment.

[19] The facts in relation to this are that at about 8.30 pm on 27 February 2015 you and the victim, who is known to you, were in Wellington. A verbal altercation began. You punched the victim in the head three or four times using a wrench to bolster your fist. The victim ran away. You chased him. You caught up with the victim and punched him in the face again. As a result of you assaulting the victim he received injuries to his head, chin and bruising to his eye.

[20] In the victim impact statement he refers to the injuries he received and the fact that after this assault he was not allowed to go into town anymore.

[21] The next set of offending is a charge of disorderly behaviour, which is fineable only, and a charge of common assault under the Crimes Act.

[22] The facts in relation to this offending are that at about 2.45 pm on 9 November 2014 you were with a female associate in central Wellington. You had been drinking. You took exception to your associate being arrested on an unrelated matter. You walked in front of the police and yelled obscenities at the police. You ignored warnings from the police and continued to yell obscenities, making offensive and gang-related hand gestures.

[23] You were subsequently arrested and placed in a patrol car. When the constable tried to put the seatbelt on you took the opportunity to spit in the police officer's face. The spit landed on the right cheek and eye area. You spat at the police officer twice more before the victim was able to move out of range. You continued to be abusive and aggressive.

[24] I have read the victim impact statement from the police officer. He talks about the effect of your offending on him, particularly, his concerns regarding the transmission of diseases.

[25] The next charge is one of receiving under \$500. This offence carries a maximum penalty of three months' imprisonment.

[26] The facts in relation to this charge are that on 1 September, at about 1.00 pm, the victim was at a winery in Waipukurau. She left her handbag sitting on the counter. It was stolen. On 2 September, at 12.45 am, you were arrested for other matters. When you were searched a cheque was located on you which was written out to the victim.

[27] Again, there is a victim impact statement that talks about the effect of your offending on the victim.

[28] The next set of offences are theft of an iPhone, valued at \$1000 and male assaults female.

[29] The facts in relation to these offences are that at about 10.45 am on 18 November 2014 the victim was in Manners Street using her iPhone. You approached her. You reached out and groped her bottom with your hand. You then grabbed the victim by the hem of her dress and pulled her towards you and said, "I am going to take you home. I do not give a fuck." The victim told you to go away. You then let go of the victim's dress and ran away with her cellphone.

[30] There is a victim impact statement talking about the effect of your offending on the victim.

[31] The next set of offences are three charges of breach of community work and two charges of breach of supervision. These relate to breaches of the sentences of community work and supervision imposed on 23 October 2014.

[32] There is also an application to cancel the sentence of supervision, imposed on 23 October 2014, and re-sentence you on charges of burglary, receiving property,

unlawfully in an enclosed yard, possession of instruments for conversion and unlawfully in an enclosed yard, times two.

[33] Finally, there is a charge of breach of bail, where you failed to attend Court on 9 December 2014.

[34] With regard to your personal circumstances, I have read the pre-sentence report, dated 24 December 2015. You are aged 18.

[35] In relation to the lead charge of wounding with intent to cause grievous bodily harm, you told Probation that at the time of this offending you were high on methamphetamine and intoxicated. You explained that you did not know what was going on but you do remember the offending.

[36] You told Probation that you never think about the consequences of your actions. That at the time you were living an unstructured lifestyle and that you grew up in the system. You did, however, acknowledge that the victim did not deserve to be hit.

[37] You acknowledged to Probation that you have a propensity to use violence and that you get angry. Probation identifies your ties to Black Power, your antisocial peers, and an offending supportive attitude as factors contributing to your offending.

[38] I have also read the comprehensive alcohol and other drug assessment dated 26 December 2015, prepared by Mr Roger Brooking.

[39] At the time of this assessment you had been on remand for 11 months. Mr Brooking said your mood and thinking appeared to be normal. You made good eye contact and established a pleasant rapport.

[40] You told Mr Brooking that in prison you are classified as IDU3, which means you have incurred three incident reports, related to alcohol or drug use while on remand. You also told Mr Brooking that being in prison has given you time to reflect on your situation. You have admitted that you have an alcohol and drug problem and this has been a major factor in your offending.

[41] You told Mr Brooking that you come from a gang family and that your father has been in and out of prison. Your parents separated when you were at primary school and you were raised by your mother. I acknowledge the presence of your mother in Court in support of you today.

[42] You said that you started drinking and smoking cannabis at an early age and were sent to Epuni Boys Home at the age of 12.

[43] You said you started prospecting for Black Power when you were 13 and you are now a patched gang member.

[44] You told Mr Brooking that you have two younger brothers, one of whom has also been in prison. You said the other one has ADHD and is in a youth justice facility.

[45] You scored 30 out of a maximum of 40 on the alcohol use disorders identification test. This is a very high score. You scored 16 out of a maximum of 20 on the drug abuse screening test. This is also a very high score.

[46] Mr Brooking says that despite your turbulent background you now appear to have a reasonable relationship with your mother. She visits you and you now appreciate her support a lot more than you used to.

[47] Mr Brooking suggests that you need to attend a long-term residential programme to have any hope of turning your life around. Mr Brooking suggests that given your age and vulnerability to peer pressure you would be likely to gain more from a drug treatment programme in the community where you will have more pro-social support. That may be something that the Parole Board can look at on your release.

[48] I have also read the restorative justice report. To your credit you attended a restorative justice conference with the victim of the charge of unlawful interference with a motor vehicle. Your mother attended the restorative justice conference as your support person.

[49] You apologised to the victim. You are reported as saying to the victim, "I've had time to reflect in here. I am sorry for what I've done. I've never had to face my victims before. I would like to say sorry to you for putting you through all that." The victim accepted your apology and said that he did not want any reparation. He wanted you to try and change your life and work towards being a positive male influence in your family.

[50] As I said in my sentencing indication, having considered the submissions on behalf of the Crown and the defence, I was of the view that the lead charge of wounding with intent to cause grievous bodily harm falls within category 2 of *R v Taueki* [2005] 3 NZLR 372 (CA). Because your offending involved attacking a police officer, the use of a weapon, being a glass bottle, and attacking the head, I indicated that a starting point of five years' imprisonment was appropriate in relation to that charge.

[51] I then indicated a cumulative sentence of two years' imprisonment would be appropriate for the remaining charges, which took the total starting point to seven years' imprisonment.

[52] I indicated that an uplift of six months was appropriate for the aggravating factors, that many of the offences were committed while you were on bail and while you were subject to a sentence, and also your previous convictions. That took the sentence to seven years six months' imprisonment.

[53] In my sentencing indication I indicated that the mitigating factor in relation to you was your age and indicated that a deduction of 12 months was appropriate for that factor. However, having listened to the submissions made on your behalf by Mr Preston and having had the advantage of reading the pre-sentence report and Mr Brooking's report, I am persuaded to give you a greater discount for your age and background. I accept that there appears to be a significant chance of rehabilitation with you, given what you have told Mr Brooking and your participation in a restorative justice conference. Therefore I am of the view that you should have a discount of 18 months for your age, which reduces the sentence to six years' imprisonment.

[54] As you entered guilty pleas to all the charges you are entitled to the maximum discount of 25 percent. This equates to a further discount of 18 months, which leaves an end-point sentence of 54 months, or four years five months' imprisonment.

[55] I am of the view that you are entitled to a further discount for the remorse you have expressed and the steps you have taken on remand. That, in my view, a further discount of five months is appropriate, which leaves an end-point sentence of four years' imprisonment.

[56] I am satisfied that a sentence of four years' imprisonment reflects your overall culpability for the totality of your offending. That sentence will be allocated as follows:

- (a) On the charge of wounding with intent to cause grievous bodily harm, you are convicted and sentenced to imprisonment for four years.
- (b) On the charge of unlawful taking, CRN3101, you are convicted and sentenced to imprisonment for one year.
- (c) On the charge of driving with excess breath alcohol, you are convicted and sentenced to imprisonment for one month. You are also disqualified from holding or obtaining a driver's licence for nine months, commencing today, 7 March 2016.
- (d) On the charge of dangerous driving, you are convicted and sentenced to imprisonment for one month. You are also disqualified from holding or obtaining a driver's licence for nine months, commencing on 7 March 2016.
- (e) On the charge of burglary, you are convicted and sentenced to imprisonment for one year.
- (f) On the charge of unlawful interference with a motor vehicle, you are convicted and sentenced to imprisonment for three months.

- (g) On the charge of assault with intent to injure, CRN1365, you are convicted and sentenced to imprisonment for one year.
- (h) On the charge of disorderly behaviour, you are convicted and discharged.
- (i) On the charge of assault, CRN4734, you are convicted and sentenced to imprisonment for one month.
- (j) On the charge of receiving, you are convicted and sentenced to imprisonment for one month.
- (k) On the charge of theft, you are convicted and sentenced to imprisonment for one month.
- (l) On the charge of male assaults female, you are convicted and sentenced to imprisonment for three months.
- (m) On each of the charges of breach of community work and breach of supervision, you are convicted and discharged.
- (n) On the charge of breach of bail, you are convicted and discharged.

[57] In relation to the application to cancel your sentence of supervision, that application is granted.

[58] On each of the charges of burglary, receiving, unlawfully in an enclosed yard, possession of instruments for burglary and being found without reasonable excuse in an enclosed yard at Wellington Railway Station, on each of those charges you are convicted and sentenced to imprisonment for one month.

[59] I also make an order cancelling the sentence of community work.

[60] I do not make any orders for reparation as it is apparent that you do not have the means to pay any reparation.

[61] All sentences are concurrent.

[62] Therefore you have a total sentence of four years' imprisonment.

[63] Finally, in respect of the charge of wounding with intent to cause grievous bodily harm, I need to give you a stage one warning.

[64] Mr Mihaka, given your conviction for wounding with intent to cause grievous bodily harm, you are now subject to the three strikes law. I am now going to give you a warning of the consequences of another serious violence conviction. You will also be given a written notice outlining these consequences which lists the serious violent offences.

[65] First, if you are convicted of any serious violent offence, except murder, committed after you received the first warning, you will receive a final warning. In addition, if the Judge imposes a sentence of imprisonment for that offence, other than life imprisonment for manslaughter or preventative detention, then you will serve that sentence without parole or early release.

[66] Secondly, if you are convicted of a murder committed after you received the first warning, you will be sentenced to imprisonment for life. You must serve the life sentence without parole unless it would be manifestly unjust to do so. If you receive a life sentence, without parole, you will not be released from prison. If serving the sentence without parole would be manifestly unjust the Judge must specify the minimum term of imprisonment you will serve.

J M Kelly
District Court Judge