

EDITORIAL NOTE: NAMES AND/OR DETAILS IN THIS JUDGMENT HAVE BEEN ANONYMISED.

**IN THE DISTRICT COURT
AT DUNEDIN**

**CRI-2015-012-002390
[2016] NZDC 4565**

NEW ZEALAND POLICE
Prosecutor

v

LUCAS ROWE
Defendant

Hearing: 15 March 2016
Appearances: T Hambleton for the Prosecutor
J Westgate for the Defendant
Judgment: 15 March 2016

NOTES OF JUDGE M B T TURNER ON SENTENCING

[1] Lucas Rowe, you are 23 years of age and you appear for sentence this afternoon having pleaded guilty to a charge of injuring in circumstances where if the victim, Ms Morrison, had died you would have been guilty of manslaughter. The charge carries a maximum sentence of three years' imprisonment.

Facts

[2] The summary of facts, which is not seriously disputed by you, reveals that you and the victim had been involved in what is described as an on and off again relationship [relationship details deleted]. About 5.30 pm on Friday, 18 September, you were at her home in [location deleted]. She went into the bedroom to change out of her work clothes and closed the bedroom door. Soon after you burst into the bedroom in an angry and agitated state. You then began arguing with her as she had not offered you a cup of coffee.

[3] At that point you pushed the victim with both hands to her chest area causing her to fall back into an open wardrobe and then onto the ground. She became wedged in a box on the floor of the wardrobe. She repeatedly attempted to stand up only to find you in front of her pushing her back down again. Eventually she got to her feet and made her way to the lounge where you followed, shouting abuse. You then stood over her as she sat on the couch and placed her hands around her upper arms, applying pressure. That caused her pain. You held her down onto the couch and did not release her when she requested you do so. In defence of herself she kicked out at you. You then grabbed her by the ankles and forcefully pulled her onto the floor causing her pain in her tailbone area. That pain radiated up into her spine. She was unable to move due to the pain and lay on the floor for a number of minutes before making her way back to the couch.

[4] At this point it seems you left the address but remained on or near the property, pleading through a window for her to drive you home. It is said that at about 40 minutes later she made her way to her car outside the address to retrieve her cellphone. At that point you were standing on the street and you went back onto the property, began banging on the window of the car, on the side she was sitting, yelling abuse at her. This caused her to lock the doors for her own protection.

[5] As result of the assault the victim received injuries which included bruising to her neck, shoulders, upper arms, wrists, hip and legs. She says the pain in her tailbone lasted for about three hours. She was emotionally distraught, crying and unable to move freely.

[6] When police spoke to you, you declined to make any comment. You, at 23 years of age, are no stranger to the criminal justice system having a number of convictions which involve convictions for breaching Court sentences and particularly relevant, for common assault and threatening behaviour in 2013 which involved the same complainant.

Victim

[7] I stood the matter down briefly to enable Mr Westgate to read the victim impact statement which has been filed. That refers to the physical injuries sustained; numerous bruises about her body some of which were visible. She lied to her work colleagues about those because she was embarrassed. She also refers to friction burns and pain. Emotionally, she is terrified of you and feels unsafe. She does not oppose the making of a protection order. In all of those circumstances it is hardly surprising she was unwilling to attend a restorative justice conference but I note you were prepared to meet with her.

Pre-sentence Report

[8] The pre-sentence report describes you as being at medium risk of re-offending; that is based on your 14 convictions since turning 17 years of age. Your risk of harming others is also assessed as medium, the probation report noting that you showed no acceptance of responsibility for your conduct, no remorse and in fact you transferred blame to the victim saying that she was the principal aggressor. In those circumstances the recommendation, which you do not challenge, is one of imprisonment.

Gravity

[9] In terms of the gravity or the seriousness of your offending, this was a prolonged and unprovoked attack. It involved both physical and psychological abuse of the victim. She sustained a number of injuries, not life threatening nor permanent, but clearly painful and visible for some period of time.

[10] You must be deterred from behaving in this way in the future towards her or anyone else. Personal deterrence and denunciation are the prime sentencing principles in this case. The sentence also needs to hold you accountable to the harm you have caused to this victim and your community generally.

Starting Point and Adjustments

[11] Mr Westgate has noted that there is no tariff case (no guideline case) for offending of this nature. Three years is the maximum sentence. He submits, and I accept, that the starting point for this offending is in the range of 10 to 12 months. I adopt 10 months. I uplift that by two months for your previous conviction concerning this complainant, the assault on her in 2013.

[12] Mr Westgate submits you are a young man and credit should be given to you for that. Balanced against that, however, are your 14 convictions. You are not young in that sense; you are not young and naive. You have chosen a path which has brought you into conflict with the law.

[13] You expressed no real remorse and I do not give you any credit for remorse beyond that which is inherent in your guilty plea.

[14] I make allowance for your willingness to attend a restorative justice conference.

[15] You did not enter a guilty plea at the earliest opportunity and you do not therefore get the benefit of the full credit that is available. I allow you 20 percent.

[16] When those credits are taken into account, the end sentence is one of 10 months' imprisonment.

Home Detention

[17] Mr Westgate accepted that imprisonment was the only outcome available and did not submit for the commutation of the sentence to home detention. I would not have commuted the sentence to home detention in any event because I do not consider that home detention would meet the purposes and principles of sentencing you in the circumstances of this case.

Protection Order

[18] This is now the second occasion within two and a half or three years when you have assaulted the victim. She does not oppose the making of a protection order. In my assessment the relevant criteria to permit the Court to make such an order have been met in this case.

The qualifying relationship

- (a) You and the victim were in or have been in an on and off again close personal relationship for [relationship details deleted].

Qualifying violence

- (b) This conviction establishes the necessary violence.

Not objected to

- (c) That the complainant does not object to the making of the protection order. In this case she does not.

Necessity

- (d) In my assessment the order is necessary for her ongoing protection from you.

[19] Accordingly, I make a protection order against you in favour of the victim. You are to remain in the custody of the Court for up to two hours today while the order is prepared, served and explained to you.

Result

[20] The result, therefore, Mr Rowe is this:

- (a) On the injuring charge, you are convicted and sentenced to imprisonment for 10 months. There is no leave to apply for a substituted sentence.
- (b) You are subject to standard release conditions and special release conditions for six months after the sentence expiry date as set out in the pre-sentence report:
 - (i) To attend and complete any treatment, programme or counselling to address alcohol and drug related issues.
 - (ii) To attend and complete a domestic violence related programme as directed by your probation officer to the satisfaction of the programme provider.
 - (iii) To attend and complete a Departmental rehabilitative programme to the satisfaction of the probation officer.
 - (iv) To attend to any other treatment, counselling or intervention deemed appropriate by the probation officer and as may be directed by the probation officer.
- (c) I make a protection order in favour of the victim.

Fines

[21] You have outstanding fines of \$2796.89. I impose a substituted sentence for those fines. You are convicted and sentenced to imprisonment for one month; that is concurrent (runs at the same time as the other sentence) but is otherwise on the same terms.

[22] Upon your release you will still need to pay outstanding reparation of \$2937.96.

M B T Turner
District Court Judge