EDITORIAL NOTE: NO SUPPRESSION APPLIED.

**IN THE DISTRICT COURT**
**AT HAMILTON**

**CRI-2015-019-004292**
**[2016] NZDC 9979**

**THE QUEEN**

v

**JOSEPH KENGIKE**

Hearing: 1 June 2016

Appearances: T Needham for the Crown
C Bean for the Defendant

Judgment: 1 June 2016

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**NOTES OF JUDGE G S COLLIN ON SENTENCING**

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[1] Mr Kengike you appear today on a charge of injuring with intent to injure. This arose out of events that occurred on 25 July 2015. At that time you were living with the victim of your offending with whom you were in a relationship. Present at the house were her two children who were aged seven and six. You went and purchased three boxes of beer each containing 14 bottles. Over the course of the evening you proceeded to drink by yourself the majority of those bottles of beer. In addition to that you smoked cannabis. I completely reject any submission that this comprised medication or self medication. It is alcohol misuse and that led directly to the offending which you find yourself in Court for today.

[2] You apparently blacked out and cannot remember the offending. That is not in any way a mitigating factor or an excuse for what you did. It appears as if you became angry at your partner because she was flirting with the neighbour. As a consequence of that you approached her while she was sitting on the couch in the lounge. You walked towards her and in a completely unprovoked attack as I read the

summary, you punched her in the head on more than one occasion to the point of knocking her unconscious. I have looked at the photographs which have been supplied. Her injuries are significant. She appears in the photographs with two black eyes. One of her eyes is significantly bloodshot. Her teeth or two teeth at least were punched out as a result of your blows. She was knocked unconscious by you. I do not know how long she was on the ground for but she woke from her unconsciousness some time later. Her vision was blurry and she was in pain.

[3] You, when she woke was sitting at the kitchen table eating, having left her there unconscious. It was a heartless thing to do. Not only that she could hear you laughing or chuckling to yourself.

[4] The injuries are severe, the assault is bad. The aggravating features I accept as being extreme violence, an attack to the head with injuries resulting. I accept the submission which is not opposed in any way by your counsel that this falls within category 2 of *Nuku v R* [2012] NZCA 584. There are three at least aggravating features which are present.

[5] There has been some discussion regarding the appropriate starting point. The aggravating features are of course that the assaults were to her head, that she suffered injuries and that the violence was extreme. I add to that the aggravating feature that present at the address were her two children aged six and seven. I do not know what if anything they heard but I do know that they were there and in all likelihood they observed at least later their mother in the condition showing that she had been severely beaten by you. I note also that the assault occurred in her home.

[6] In my assessment a starting point in the range of two years six months' imprisonment is appropriate and I accept the Crown's submission in that regard. The fact is that the assault was serious, injuries were suffered and you showed at the time little or no sympathy to your victim by sitting at the table eating and laughing as a result.

[7] The aggravating features in terms of your personal circumstances are reasonably obvious. You have a previous list of offending which is very serious. A

previous charge of manslaughter which arose from events which are very similar when you killed a partner in very similar circumstances whilst intoxicated.

[8] Your previous list of convictions is extensive. You clearly have difficulties with alcohol and I have no doubt that you are probably an alcoholic. On this occasion you consumed a substantial amount of alcohol. In my view another aggravating factor that you were on bail on a live charge involving excessive consumption of alcohol.

[9] I agree in this case with the Crown's submission that an uplift of 12 months is appropriate having regard to the aggravating features particularly the nature and extent of your previous history.

[10] I have regard to the mitigating factors. I accept that you expressed remorse in the letter that you forwarded to the Judge. This seems to have been expressed by you prior to the completion of the probation report. I do not give significant weight for that reason to the probation report comment that no remorse was expressed by you however I do note that at the time of the offending that you did not display great remorse at the time, although you did appear to get an icepack for your victim sometime later.

[11] I take into account the submissions of Mr Bean regarding the way this matter was dealt with and I accept for that reason that a discount is available to you in the region of 20 percent. In my view given your past history, your extreme violence, the need to protect the community from you and your difficulties with alcohol and the alcohol offending nature of this offence a minimum sentence is also appropriate.

[12] Having regard to all matters therefore that a starting point of two years six months is appropriate uplifted by 12 months for the aggravating features with a discount of 20 percent for the mitigating features which leads to a final sentence of two years and eight months' imprisonment. Half of that is to be served by you.

G S Collin
District Court Judge