

**IN THE DISTRICT COURT  
AT CHRISTCHURCH**

**CRI-2016-009-001046  
[2016] NZDC 4954**

**NEW ZEALAND POLICE**  
Prosecutor

v

**GERALD WAYNE MOANA**  
Defendant

Hearing: 21 March 2016  
Appearances: A Trinder for the Prosecutor  
D Dickson for the Defendant  
Judgment: 21 March 2016

---

**NOTES OF JUDGE P R KELLAR ON SENTENCING**

---

[1] Mr Moana you are for sentence on charges of driving while disqualified on 29 December 2015 and 20 January 2016 and a charge of male assaults female on that latter date, namely 20 January 2016.

[2] On 20 January at about quarter to seven in the evening you went to the address of the victim of the male assaults female charge. Her two children then aged two and four were also present. She was talking to the children's father on the phone. Apparently this made you angry. You grabbed the phone and threw it onto the ground then you picked the phone up and left the house. The victim locked the outside doors and took the children to an upstairs bedroom where there was another phone. You came back about 10 minutes later. You forced open the back gate to gain access to the property and entered the house through a window that had already been broken. The victim heard you coming upstairs. She sat on the floor behind the

door in an attempt to prevent you from getting into the room. In the meantime, the children were sitting on the bed. You forced the door open, you threw the victim face down onto the floor and tried to prise her fingers open to get her to release the phone. She managed to keep hold of the phone and ran out of the house to call police. You followed and grabbed her from behind. You held her by the neck which is clearly an aggravating factor and waist. You were still trying to get the phone while she screamed for help. A passersby heard her screaming. You released the victim when you saw them and you drove off giving rise to the driving while disqualified offence of that day but clearly the aggravating factor in the male assaults female is the level of violence and, as I mentioned, the holding her by the neck with all the potential for harm that that carries with it. As far as the driving while disqualified offending is concerned, you have one of the worst records for driving while disqualified that I have seen in recent times. This offending represents your 18<sup>th</sup> and 19<sup>th</sup> convictions for that offending since 1995. Indeed you were sentenced to imprisonment in April 2015 for a driving while disqualified. That seems not to have adequately deterred you.

[3] The principles of sentencing that are relevant are to hold you accountable, particularly for the male assaults female offending for reasons I will get onto in a moment. I am very mindful of the interests of the victim. The sentence should very much deter or serve to deter you from continuing to offend both violently and in breach of Court orders disqualifying you. That said the sentence needs to try and promote your rehabilitation and reintegration back into the community.

[4] I have been helped by both Ms Trinder and Mr Dixon in terms of appropriate starting points for the driving while disqualified offending and that certainly is consistent with my own researches. I have to impose on you the very least restrictive outcome that is appropriate in the circumstances. I understand that you are also on release conditions at the time of the offending but I am not going to impose any separate uplift in respect of that.

[5] Cumulative sentences are appropriate in respect of the driving while disqualified offending that were committed on separate dates. The starting point for that offending incorporates your appalling history for disqualified driving. As to the

first of the disqualified driving offences a starting point of one year and three months is appropriate uplifted by one year and six months in respect of the second offence. A further uplift, perhaps modest in the circumstances, of six months for the male assaults female and three months for your history of violent offending is appropriate. I say that because the pre-sentence report does not make for happy reading as far as you are concerned. That somewhat bluntly says that you are a violent man and in the past decade your violence has been directed at your partners and children. You first came to notice in 1994 for cruelty to an animal and, as so often happens where offending of that nature is committed, you accrued six more violent convictions until 2006. Since 2006 you have amassed six convictions for male assaults female, two for assault on a child, one for assault with intent to injure and an aggravated assault. You have assaulted your current partner and two previous partners.

[6] It is fair to say that you have had every opportunity to address what appeared to be key offending factors. Alcohol is a part and a tendency to be violent but you have not taken advantage of those opportunities. You were sentenced to supervision in 2014. You did not even complete the assessment process for alcohol treatment. You have received sentences of imprisonment that has not done one thing to produce a change in behaviour, indeed nor have five supervision sentences and three releases on various conditions.

[7] It is perhaps unfair of the report writer to note it but it is true that there is low statistical probability of being apprehended for driving whilst disqualified. Of course, that is not a relevant factor in sentencing but your prior convictions, some 17 prior convictions before these matters suggest that you have paid very little regard, if any, to Court orders in that regard. That said you have undoubtedly driven on past occasions due to work pressures. The report writer, and again somewhat bluntly, expresses a concern that you have used violence across relationships and you are able to justify that to yourself which makes further offending of that nature the more likely. The report writer assesses you at being a high risk of further offending and a medium risk of further harm. Indeed, the report writer goes so far as to say, "Your present partner could well be the target of future violent behaviour." All of that serves to underscore the need for a sentence of imprisonment to act as an adequate deterrent.

[8] The overall starting point I have adopted including the uplift for your history of violent offending is 42 months' imprisonment. You are entitled to credit for your pleas of guilty given the timing of them, the strength of the overall prosecution case and so forth of some 10 months. That would leave an overall end sentence of two years and eight months' imprisonment on a totality basis, that is to make sure that the overall sentence is not wholly disproportionate to the seriousness of the offending. I have reduced that to two years and six months. On the driving while disqualified charges you are sentenced to concurrent terms of imprisonment of one year and 10 months. You are also disqualified from holding or obtaining a driver licence for one year and six months commencing 1 April 2016 and I direct that notice be given to the owner of the car you are driving under s 129B Sentencing Act 2002. You are sentenced to a cumulative term of imprisonment on the male assaults female charge of eight months.

P R Kellar  
District Court Judge