

**IN THE DISTRICT COURT
AT HUNTLY**

**CRI-2014-019-005753
[2016] NZDC 9495**

NEW ZEALAND POLICE
Prosecutor

v

MATA TARARO
Defendant

Hearing: 18 May 2016
Appearances: B Hilton for the Prosecutor
R Nicholson for the Defendant
Judgment: 18 May 2016

NOTES OF JUDGE M L S F BURNETT ON SENTENCING

[1] You are 44 years of age and you are here today for sentence, having been found guilty and convicted following a Judge alone trial, of one charge of threatening to kill, which carries a maximum penalty of seven years' imprisonment. One of assault with intent to injure, carries a maximum penalty of three years' imprisonment. One of possession of an offensive weapon, which also carries a maximum of three years' imprisonment and one of common assault, which carries a maximum penalty of one year imprisonment.

[2] The victims in this offending were your longstanding partner and her mother. On 19 October 2014, you and your partner were consuming alcohol. You began to argue together, you grabbed her by the hair and dragged her down, forcing her down to the ground. You then lay across her, using your hands to cover her nose and mouth. You applied downward pressure.

[3] At one point you also used your left hand to squeeze her throat. She was struggling to breathe, she turned blue then purple and her vision went black, in other words she lost the ability to be able to see and she lost consciousness. At this point, you were yelling out that you were going to kill her.

[4] Her mother arrived and attempted to intervene. You pushed the mother away and continued with your hand around the first victim's neck, your partner's neck and her mother made numerous attempts to intervene. There were of course children in the household.

[5] You then later punched her in the head, your partner, and kicked her in the head when she was on the floor. Her mother ran from the property with one of her grandchildren, one of your children, and your partner ran to her vehicle and locked herself inside. You were so enraged, you followed her outside, you picked up a pickaxe from your truck and as she was reversing, you struck the windscreen four times, driving the axe deeper into the glass. The victim eventually managed to reach a neighbour property and police arrived.

[6] The pre-sentence report which has been prepared assessed you as having a medium risk of re-offending and of being a very high risk of harm to others. A sentence of imprisonment with release conditions is recommended. The aggravating features of the offending are the actual violence, the threatened violence and the level of violence. You prevented the victim from breathing, to the point of loss of vision and consciousness.

[7] There is the use of a weapon, the extent of the harm inflicted and an element of the vulnerable victim and breach of trust, there were young children in the house and she is the mother of the young children. There are no mitigating features of the offending.

[8] Now, there are no guideline judgments for this type of offending, however, *Nuku v R* [2012] NZCA 584, [2013] 2 NZLR 39, which is a Court of Appeal decision of 2013 does provide assistance with starting points needed to be adjusted to reflect the lesser maximum penalty under s 193 Crimes Act 1961. The following principles

are of assistance in *R v Chiyabi* [2008] NZCA 10 where it states that in relation to threatening to kill, where such threats are uttered with an intent that they be taken seriously are diverse and it is an area in which aggravated features can take on real significance. Here, you had your hand over the victim's nose and mouth, your hand around her neck and forced her into unconsciousness. It is a high aggravating feature and takes on real significance when you are threatening to kill under those circumstances.

[9] Other decisions in relation to threatening to kill are *Faaleaga v R* [2011] NZCA 495; *R v Puke* [2009] NZCA 582 and with assault with intent to injure, *Kahika v Police* [2015] NZHC 1262.

[10] I am of the view that as these charges arose out of one event, even though there are two victims, that a concurrent approach is appropriate with a starting point in the range of two and a half years' imprisonment. The offending circumstances are very, very similar to *R v Puke* with three factors to note. *R v Puke* involved a charge of injuring with intent, which is more serious than the assault charge currently faced by you. Secondly, *R v Puke* was partially decided under a previous authority, *R v Harris* [2008] NZCA 528 which has been replaced by *Nuku v R*. Finally, *R v Puke* was described as arguably severe.

[11] Taking all of these factors together, a starting point of two and a half years' imprisonment is appropriate, with an uplift of six months for the possession of the offensive weapon, which of course included the attack on the vehicle in which the victim was in and common assault on the second victim.

[12] No discount for any guilty plea or other mitigating features as there are none and the end sentence is three years' imprisonment.

M L S F Burnett
District Court Judge