

**IN THE DISTRICT COURT
AT INVERCARGILL**

**CRI-2015-025-001070
[2016] NZDC 8580**

THE QUEEN

v

DANIEL JAMES BALLENTYNE

Hearing: 13 May 2016
Appearances: M McClenaghan for the Crown
J Mooney for the Defendant
Judgment: 13 May 2016

NOTES OF JUDGE M J CALLAGHAN ON SENTENCING

[1] Mr Ballentyne, you have accepted a sentence indication which I have just given of twelve months' imprisonment in terms of a number of charges. You were also found guilty by a jury with assault with intent to injure. You have waived the necessity for a presentence report and you asked to be sentenced on both the sentence indication matters which you have accepted and also on the charge of assault with intent to injure and I am prepared to sentence you on that basis today.

[2] The facts are that on 26 April 2016 you were in the centre unit at the Invercargill prison and while in that area, shortly before the due lock up time you were observed by the victim, Mr Pe'a, to mouth something to another officer. Mr Pe'a approached you and said that the behaviour was not to be tolerated and he ordered you to go to your cell. That was a lawful command. You refused and walked away. You were then followed by Mr Pe'a and shadowed towards the cell but you evaded that and moved to the open area of the centre unit. Eventually you

were marshalled again using appropriate gestures towards the cell. When you got to the cell door, you refused to enter and as a result you were pushed by the officer into the cell so that he could close the door. You continued to stand in the doorway and at that stage you grabbed him by the shirt top and pulled him into the cell and ended up in the confined area between the privacy screen and the bunk in the cell. You then wrapped your arm around the gap in the privacy screen and secured your leg through the privacy screen to ensure that you were not restrained by the correction officers that were present.

[3] At that stage, two or three other officers had come into the cell and observed what was happening and to assist Mr Pe'a. Mr Pe'a had you by your shirt and was endeavouring to put you on the ground which is an appropriate restraint procedure. During the course of that you struggled and then you lurched forward and bit him on the left chest area. The bite was through his shirt and t-shirt and left teeth marks and drew blood to his chest area. You maintained at trial that you were defending yourself from a choker type hold that one of the officers had on you but that you had managed to wrangle free from that. That explanation was either rejected by the jury or they accepted that the force that you used was not reasonable in all of the circumstances.

[4] There is a victim impact statement from Mr Pe'a. He had been a corrections officer at the Invercargill prison for about six years and that when you bit him, he said it really hurt and it bled through two layers of clothing. He was in shock after it happened and felt sick about the whole incident. He had some trouble sleeping thinking about this assault and he wondered what it would be like the next day at work as other prisoners were witnesses to what had occurred at the time of the assault. He was not sure how they would react. His family was also stressed about the assault, worried about what could happen to him at work. The assault bruised his chest. It was very sore and the bite marks were evident for a period of time after the incident occurred.

[5] The assault on him was for whatever reason unprovoked in my view and that it warrants a starting point, in respect of your actions, of 14 months' imprisonment because of the fact that this assault was sufficient to bite through two layers of

clothing and leave teeth marks and draw blood. It shows that the bite was obviously done with some force and that you were obviously taking exception to the fact that you were being ordered to do something which you obviously felt you did not have to do or did not want to do. You have previous convictions for assaults and for serious assaults and an uplift is warranted in respect of your previous convictions. An uplift of three months would be applied which would give me an end sentence of 17 months imprisonment. Because you have accepted a sentence indication of 12 months imprisonment, if I add those two together, the end sentence would be one of two years and five months' imprisonment.

[6] I am duty bound to stand back and look at the overall criminality involved here and assess whether or not that sentence in the overall aspect of what occurred here is too high. I form the view that it is and I am prepared to reduce it down on a totality basis to a total sentence of two years' imprisonment, so the sentence that you would get in respect of the assault on Mr Pe'a would be a 12 month sentence of imprisonment and the sentence that you would get on the other matters, on which I have given the sentence indication would be a total sentence of 12 months accumulative on the 12 months which would be a total sentence of two years' imprisonment.

[7] For the assault with intent to injure, you will be sentenced to 12 months' imprisonment and there will be post-detention conditions in respect of that sentence, that:

- (1) You are to attend a psychological assessment with a departmental psychologist as directed by a probation officer and to complete any treatment and/or counselling as recommended by the assessment to the satisfaction of a probation officer and you are to attend and complete any alcohol and drug assessment and any resulting intervention, treatment or programme as directed by and to the satisfaction of a probation officer. The specific details of the appropriate programme will be determined by a probation officer. Those release conditions will last for six months past the end date of the sentence that I have imposed.

- (2) In respect of the charge of assault with a weapon, you will be sentenced to a sentence of twelve months imprisonment and that is accumulative on the twelve months that I have imposed on the assault with a weapon and those same standard and special conditions will apply for six months past the end date of that sentence.
- (3) In respect of the charge of disorderly behaviour you will be convicted and discharged.
- (4) On the charge of intentional damage to the letterbox, you will be ordered to pay reparation of \$37.25.
- (5) In respect of the resisting a police constable you will be sentenced to imprisonment for one month, but that is concurrent with the sentence of 12 months on the assault with a weapon, which is charging document 1481.
- (6) In respect of the taking of a bicycle it will be two months but that is again concurrent with the assault with a weapon and on the charge of assaulting the police you will be sentenced to one month's imprisonment, again concurrent with the 12 months on the assault with a weapon and on the charge of intentional damage of the fence, one month imprisonment, again concurrent with the assault with a weapon.

[8] So the total sentence that you are facing is one of two years imprisonment and the special conditions which I have mentioned apply to both the sentences of 12 months imprisonment.

M J Callaghan
District Court Judge