

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN  
[SQUARE BRACKETS].

**IN THE DISTRICT COURT  
AT HASTINGS**

**I TE KŌTI-Ā-ROHE  
KI HERETAUNGA**

**CRI-2019-220-000027  
[2019] NZDC 13793**

**THE QUEEN**

v

**USHER IHATA WAIRAMA**

Hearing: 17 July 2019

Appearances: A V Bryant for the Crown  
N M Graham on behalf of K Monk for the Defendant

Judgment: 17 July 2019

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**NOTES OF JUDGE B M MACKINTOSH ON SENTENCING**

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[1] Usher, you are 17, having turned 17 on 14 March this year. You appear before the Court today on some very serious offending. We have already traversed quite a bit of the issues in and around all of this in the Youth Court because the issue about sentencing was discussed there, and whether or not it would be appropriately dealt with in the Youth Court or in the District Court. However, I gave a decision in relation to that and decided that for the reasons given then, that the matter would be appropriately dealt with in the Youth Court.

[2] So, essentially you fall to be sentenced today for two rounds of offending, an unlawful taking of a motor vehicle and failing to stop that occurred just in January this year, not long after you had already finished a Youth Court sentence and were on a

supervision order, and then, when on bail for that, this offending arose, and this is a serious offending.

[3] What happened there was that on [date deleted], you and [ML] went to [service station 1]. You arrived there in a stolen car which had been stolen earlier in the evening from Havelock North. You both went up to the main doors of [service station 1] where you were disguised. The idea was to rob the place. The shop assistant did not let you in, and when that happened, [ML] smashed the door with a hammer and you could not get in, so you left.

[4] Then, at about 2.30 am on the same morning, you and another person went to [service station 2]. You went in the main doors. Your face was not covered, but you requested to be let in to get some items, so the shop assistant let you in. When the door opened, you and the other person rushed through the door, and he was wielding a baseball bat and then you demanded some money. The shop assistant managed to activate the fog cannon which made you enter the counter from another point, and then before it became overbearing, [ML] made the shop assistant open the till. Anyway, you battled the fog, removed about six or seven packets of cigarettes and then left. When you were arrested on that you have been remanded in custody down in Palmerston North.

[5] I have had an opportunity to consider the submissions from the victims that were handed up at the family group conference. They did not appear in person but the victim, the person whose car was stolen, obviously just expresses the normal inconvenience, upset and distress that occurs when you get your car stolen. They seemed to be reasonably philosophical about that, but were quite irritated that for a couple of hours joyride for you, they ended up with a massive inconvenience, and you know, we can understand that, can't we?

[6] As far as the victim from [service station 1], she was the owner and very upset actually about the whole situation. She had quite a bit to say, and I suspect this was all read out at the family group conference, so I am sure you have heard what she had to say, and she certainly was not happy at all. The person who actually was in the service station when you went in, also has filed, I believe, a victim impact statement

and it was distressing for him. You know, these people that work these jobs, they are very vulnerable. They are on their own, it is the middle of the night, they call it the graveyard shift, I think, don't they? It is very upsetting for them to be made to feel vulnerable in their own workplace. I mean, they need the job and that is why they are doing it, and it is just not fair when this happens to them.

[7] I have already read the social worker's report that was prepared for the Youth Court hearing, so I do know quite a bit about your background. I think that deep down you do know that this is wrong, that you need to settle down. You, I think, have got some actual quite bad learning difficulties, so you do not perhaps appreciate things in the way that others do, who have had the benefit of better education and have been attending and learning in the way that people should, so you are actually at quite a disadvantage in that regard.

[8] You have written a letter today and you do say sorry and that is positive. I do not think you really do want to go to jail, but the reality is that if you do not sort yourself out, that is where you are going to end up. I could sentence you to imprisonment today, but it may not come to that, despite what the Crown are saying, because they say that because you were basically on a supervision order for similar offending, you have been given enough opportunity and, really in terms of the public interest, you should be sentenced to a term of imprisonment.

[9] As far as aggravating features are concerned in relation to this sort of offending, for some of it you were disguised. You were determined to commit some sort of robbery that night because when you were not successful at the first one, you went onto have a go and complete the second one. There has obviously been some planning and agreement between you and the others what you were going to be doing that evening. It is very disappointing of course that you were on a supervision order for aggravated robbery when this happened, so I do not quite frankly know what on earth you were thinking about, and then also you were on bail. In many respects you were just not complying at all with what the system had asked you to do. So, you have got some proving to do to all of us to make sure that you can actually comply, and you can do what you are supposed to do. That would be one of the reasons why the Crown are opposing home detention because I think they would say that there may be a real

prospect of you not actually complying with the sentence because you have not shown that you are very good at complying with orders in the past.

[10] Now, the starting point for this kind of offending, in terms of the authorities actually, would be in and around five years. Because of your age, the only charge that I can effectively deal with today is impose a sentence of imprisonment, is the aggravated robbery charge. The other matters do not enable me to uplift. If I was uplifting, the other offending could well uplift up to around eight years' imprisonment starting point for this sort of behaviour, but as I say, because your age I am not going to be doing that today, but just so you know what you are getting yourself into, if you think about doing this kind of thing again.

[11] From a starting point of five years' imprisonment, because of your youth, you would be entitled I believe to a 25 percent discount for that. You would also be entitled I think now, having read your letter, having further reflected on your own personal situation in terms of cognitive ability, that means the ability to sort of learn and understand, and remorse, another 15 percent. That is a 40 percent discount. From 60 months that gets us a discount of 24 months. You would also be entitled to 25 percent discount for your guilty plea in relation to that charge, so that gives you from 36 months, another nine months discount, that gets us back around to 27 months. So, you are still at this point, outside the range for home detention. However, I am conscious that you have spent four months in custody and that does equate effectively to an eight month sentence, so I am prepared to factor that in. So, that gets us back in and around 20 months. That brings it under two years. Home detention is the sentence that is recommended. As I say, the Crown do not believe it is appropriate. They are saying that it does not sufficiently reflect the seriousness of the offending or the public interest. It seems to me that because of your age, and because there is a suitable address, and because there looks to be a good framework that can be worked out for you under a sentence of home detention, that I am prepared to deal with this by way of a sentence of home detention.

[12] On the aggravated robbery charge, you will be sentenced to home detention for 10 months. The conditions are that:

- (a) You are to travel immediately from Court to [address deleted].
- (b) You are to reside there for the duration of the sentence.
- (c) You are not to consume or be in possession of any alcohol or non-prescription drugs unless a doctor gives you something because you are unwell.
- (d) You are to undertake a number of programmes while you are on home detention, a short motivational programme, a tikanga programme, because I understand that you do like and you would like to learn more about all of that.
- (e) An alcohol and drug assessment and also to work with your probation officer to gain work and living skills, experiences.

[13] There will be post detention conditions that extend six months post-expiry, so you will effectively be on this sentence for 16 months. They are just simply the conditions that are set out in the report and they basically just mean that you can complete anything that you have started while you are on a sentence of home detention. All right, so do you understand all of that?

[14] Look, Usher, you know, this is really the last chance. So, if there is any more of this kind of behaviour, then you know where you will be going, and it will not be on home detention, it will be to Mangaroa. If there are any breaches of the home detention, it will come back to the Court, a Judge will be reviewing it and there is nowhere else to go. So, you have got to be very careful about doing what you are supposed to do and making the most of this opportunity, all right? So, do not let us down, okay?

B M Mackintosh  
District Court Judge