

**IN THE DISTRICT COURT
AT HAMILTON**

**CRI-2016-019-000542
CRI-2015-019-007032
CRI-2015-019-001117
[2016] NZDC 16701**

THE QUEEN

v

KADYN CASSIDY

Hearing: 26 August 2016
Appearances: S Gilbert for the Crown
R Laybourn for the Defendant
Judgment: 26 August 2016

NOTES OF JUDGE M L S F BURNETT ON SENTENCING

[1] Mr Cassidy, you are 21 years of age and you are here today for sentence, having earlier pleaded guilty and been convicted on one charge of aggravated robbery, which carries a maximum penalty of 14 years' imprisonment.

[2] You have already been given your three strikes warning. You were given that on 29 June, when you pleaded guilty.

[3] The summary to which you pleaded guilty discloses that on 27 January 2016 you were the subject at the time of a sentence of home detention for a number of charges, including driving whilst disqualified, behaving threateningly, wilful damage and common assault. You had cut off your bracelet and absconded.

[4] Whilst on that sentence there was a Facebook page offering to buy or sell a scooter. On that day you arranged with the three complainants to meet you and your two brothers at roughly 6.00 pm in the evening at a local park. You were known to the complainants and you were speaking to the complainants.

[5] Together the three of you encouraged the complainants to move further down the hill effectively out of sight and at this point money was asked to be shown. During this time one of your brothers produced a screwdriver. He approached the female complainant demanding that she hand over cash. When she refused to do this your brother hit her repeatedly about the face and took the \$400 cash from her.

[6] During this time you took hold of a kitchen knife and approached the young male demanding that he hand over everything that he had and one of you then kicked this victim in the head and the victim handed over his cellphone.

[7] One of your other brothers then approached the other young male, grabbed him by the shirt telling him to hand over everything he had on him, which this complainant did, including watch and keys. There was then the stand over by the three of you threatening to burn down the house of these complainants should they call the police.

[8] As a result of the attack on the young woman she suffered bruising and swollen face and had to receive hospital treatment. The young male that you attacked received a blow to the head and both of these victims had to be taken to hospital for emergency treatment.

[9] The victim impact statement in relation to the female victim describes the extent of harm that she sustained as a result of this attack. She was a teacher aide for disabled children and had not been able to return to work as of the time you pleaded guilty to this offending. In relation to the aggravating features there was premeditation and planning.

[10] The victims were lured into the park on the pretext of carrying out a transaction and it was done that way to ensure that they would have some cash on them. You were one of three brothers, three offenders. There was use of weapons. One of your brothers produced a screwdriver and you produced a kitchen knife. There was the actual violence when two of the victims were struck, one of them being kicked and followed by the threats to burn down their home should they complain and there was the taking of the cash, the cellphone and the keys.

[11] The starting point for that kind of offending is set out in the guideline decision of *R v Mako*¹. I have heard submissions from Mr Laybourn and from Ms Gilbert for the Crown.

[12] I am aware that your co-offender brother was sentenced earlier on a sentence indication with a starting point of three and a half years. I do take that same starting point. In my view you are equally culpable and you had with you a knife and your victim was kicked in the head.

[13] I have already explained the fact that you were on a sentence of home detention and you absconded without completing that sentence. You have also got relevant previous convictions of some of those I have already referred to, behaving threateningly, three common assault, male assaults female, receiving and wounding with intent to injure, so you have got a significant history and I uplift the starting point by four months' imprisonment.

[14] It is submitted by Mr Laybourn that you should get a full discount of 25 percent. I am going to decline that. I got the impression, supported by Ms Gilbert's submissions today, that your brother, having accepted a sentence indication and been sentenced, then tried to manipulate the process by reducing your liability by way of some sort of affidavit, but that never came to fruition and could not come to fruition because the evidence was so clear.

¹ *R v Mako* [2002] 2 NZLR 170 (CA)

[15] You do get a 20 percent discount although your plea came quite late. That comes down to just over three years but I will settle on three years' imprisonment, cancel your sentence of home detention and re-sentence you on all the other matters, imposing a concurrent sentence of three months and along with your breach of home detention. So I have taken that all into account.

[16] Your end sentence is three years.

M L S F Burnett
District Court Judge