

**IN THE DISTRICT COURT
AT WHANGAREI**

**CRI-2014-088-002669
CRI-2016-027-000934
[2016] NZDC 16673**

THE QUEEN

v

BAILEY DESMOND SANDERS

Hearing: 30 August 2016
Appearances: J Wall for the Crown
A Fairley for the Defendant
Judgment: 30 August 2016

NOTES OF JUDGE P W COOPER ON SENTENCING

[1] Mr Sanders, you have pleaded guilty to charges of assault with a weapon and injuring with intent to injure. The most serious of those two charges is the injuring with intent to injure and what the summary of facts says there is that on 7 March 2016, you were in custody at the Auckland Regional Corrections Facility and the complainant, who is a prison guard, had forbidden you from taking some ripped up pieces of sheet into your cell. You became upset about that and you began swearing and abusing him and the summary of facts says that you punched him once to the head. That forced him back into the cell, where you punched him one or two more times, causing his head to hit into a bed frame which knocked him out. He suffered a concussion as a result of that, a large contusion to the back of his head, bruising to his face and cuts to the inside of his top and bottom lip.

[2] The assault with a weapon charge relates to an incident that happened on 13 September 2014. You and others were drinking at an address and were all

affected by alcohol. You took exception to the fact that the complainant was talking to your girlfriend. You had a vegetable knife in your hand and you grabbed him by the scruff of the neck and held it to his neck, making a comment about his actions towards your girlfriend and telling him that he was lucky and you pulled the knife away. So, apart from the threat with the knife, there was no actual physical assault with the knife and there were no injuries inflicted. In fact, you were the one who ultimately received injuries in that incident, because the complainant's response to this was to strike you with a broken bottle, which caused you injuries to your shoulder and arm.

[3] You have got numerous previous convictions for violent offending commencing in 2002 and going through to 2014 and on 14 July 2016, you were sentenced to a total of two years and eight months imprisonment on charges of wounding with intent to injure and assault on a prison officer.

[4] I have seen the pre-sentence report, which tells me that you are 20 years of age. It says that you do not show any remorse for this offending. That is not an aggravating feature of the case, but it is simply something that I cannot give you credit for had you shown remorse. It says that you have got no interest in doing any rehabilitative programmes. It tells me that you are on medication to assist you in controlling your behaviour. It says you are at high risk of re-offending.

[5] Unfortunately, I have not seen a victim impact report in respect of either of these two matters. One may have been requested, but they are not available to the Court and I do not want to postpone sentencing today.

[6] The Court of Appeal, in a guideline judgement, has given this Court guidance on sentencing in this area and that case is *Nuku v R*¹. That judgment requires the Court to undertake an evaluative exercise, looking at the particular factors involved in the case in order to arrive at the appropriate starting point.

¹ *Nuku v R* [2012] NZCA 584

[7] Counsel has also referred to a case of *Gillies v R*² as an example of sentencing in a case where there was a quite significant attack on a prison officer and it has got to be said that there are some similarities between your case and that case. In that case, the Court took a starting point of three years imprisonment and increased it by nine months because of Mr Gillies' previous convictions for violence.

[8] In my view, the charge of injuring with intent to injure in relation to the prison officer in your case comes within the upper end of band 2 in *Nuku*. I say that because of the particular features of an attack to the head and that the complainant was a prison officer, a public official carrying out his duties. His injuries were moderately serious. They were not in the extremely serious range.

[9] In my view, the starting point should be a little less than in the case of *Gillies*, because in Mr Gillies' case, there was an additional feature of attacking the prison officer while he was lying prone on the ground.

[10] So, I take the starting point for you, in that case of injuring the prison officer, of two and a half years imprisonment. I increase it by six months because of your previous convictions. Again, your previous convictions, while significant, are not as extensive as that of John Gillies. He was the man who you might remember had attacked and injured Constable Hendrix.

[11] So from that starting point of three years imprisonment, I give you full credit for your plea of guilty and that would reduce the sentence by nine months down to two years and three months imprisonment.

[12] In respect of the charge of assault with a weapon, I take the starting point of six months imprisonment. I give you credit for one month, which will bring the sentence down to five months imprisonment. I take into account the totality principle and although the sentence of two years and three months imprisonment will be cumulative on your existing sentence of two years and eight months, a sentence of five months imprisonment for the assault with a weapon will be concurrent. If I was to add that on yet again, it would be imposing a sentence which would be too harsh.

² *Gillies v R* [2014] NZCA 115

[13] So, the result today will be a total sentence of two years and three months on top of your existing sentence of two years and eight months.

P W Cooper
District Court Judge