

**IN THE DISTRICT COURT
AT MANUKAU**

**CRI-2015-004-012117
[2016] NZDC 16722**

NEW ZEALAND POLICE
Prosecutor

v

PATRICK THOMAS WILLIAM SYLVA
Defendant

Hearing: 30 August 2016
Appearances: Sergeant J O'Donoghue for the Prosecutor
M Tuilotolava for the Defendant
Judgment: 30 August 2016

NOTES OF JUDGE J BERGSENG ON SENTENCING

[1] Patrick Sylva, you appear today for sentence having pleaded guilty to a charge of being found in an enclosed yard without a reasonable excuse from August 2015, burglary and unlawfully getting into a motor vehicle from November 2015, breach of bail from February 2016, and then a further burglary from March of this year. You were granted bail on 10 August 2015, so the two charges of burglary were offences committed while on bail.

[2] The summaries of fact are not in dispute. The lead charge for the purposes of sentencing today is the burglary from 26 November. Around 9.00 pm on 25 November a vehicle was taken from Papatoetoe. You were with Mr Sadlier and a [details deleted] associate. Mr Sadlier broke into the vehicle. You then became the driver. You drove to Coates Avenue in Orakei. The vehicle was then reversed at speed into the front door of Pinchos Bar. The impact of the car smashed the door and a security screen. That created a hole large enough for people to climb through.

The top of the serving bar shattered and all of the equipment under the bar, including fridges, an ice machine and a dishwasher, were knocked out of their mountings. You and your associates got out of the vehicle. Ten bottles of alcohol were then taken from the shop. You left the scene. You drove to Mr Sadlier's residence nearby. You were located there by the police. \$1200 worth of alcohol was taken.

[3] In respect of the burglary from Kaitaia, that was of a residential dwelling. You told the police that you were thirsty so you went around the back of a house to get a drink. When you noticed the light was on you opened a door to the property. You entered. You took the cigarettes that were on a bench top. You were located by the police shortly after. There were people in the house at the time of the burglary, including a 13 year old girl who, no doubt, would have been terrified by what was going on.

[4] You do not have any previous convictions from New Zealand. However, you have a number of convictions from Australia. You were deported from Australia. You received a sentence of three years' imprisonment for a charge of aggravated breaking and entering. That was in June of 2013.

[5] There is a Provision of Advice Report. There are two of these, dated 15 June and 17 August. On both occasions you declined to be interviewed. What the reports do tell me is that you arrived back in New Zealand on 14 July 2015. Because of the nature of your offending, the assessment made is that you are at a high risk of re-offending.

[6] The police have filed written submissions on sentence today. The submission is that Pinchos Bar is the lead charge for sentencing. The starting point should be between 18 months and 20 months. They have referred me to two cases, *Tuifua v Police*¹ and *Wi v Police*². Both of those are ram-raid burglaries. *Tuifua v Police* had a starting point of two years, three months; *Wi v Police* had a starting point of two years. It is acknowledged that those may be more serious than your offending, given that two vehicles were involved and, therefore, a possibility

¹ *Tuifua v Police* [2015] NZHC 2426.

² *Wi v Police* HC Hamilton CRI-2005-419-94, 10 August 2005.

that your offending had a lesser degree of planning. The police submission is that there should be an uplift of three to four months for the unlawful taking and the breach of bail, two to three months for the fact that this was offending while on bail and your previous convictions. After giving credit for a guilty plea, it is submitted that an end sentence of 22 to 27 months' imprisonment is appropriate.

[7] Your counsel has made submissions on your behalf. She has identified the issues that you have had since your deportation from Australia. You have an alcohol and a drug problem. You have lost family support because of those issues. It is noted that you have been remanded in custody for five months. I am advised that your co-offender, Mr Sadlier, received an end sentence of 20 months' imprisonment and that there was no reparation imposed.

[8] In sentencing you today, I need to take into account the purposes and principles of sentencing: holding you accountable, denunciation and deterrence. Your rehabilitation and reintegration are also relevant. I need to impose the least restrictive outcome that is appropriate in the circumstances, but I also need to consider the gravity of the offending and the effect of your offending on your victims.

[9] There are three victim impact statements that I have received from the police. The owner of Pinchos Bar notes that he has been open for about seven years. As a result of the raid he lost \$1200 worth of alcohol. He estimated over \$100,000 worth of damage to the bar. I do not know if that was the end result as there is no further information regarding that. His concern was that he did not know whether his business would recover and whether he would be able to reopen. His bar was required to be closed at the busiest time of the year, leading up to Christmas. The police have since noted that he has reopened the bar.

[10] As for the Kaitaia burglary, it notes that that was a burglary that took place while the occupants were at home. They felt horrible knowing that somebody had come into the safety of their own home, taking things from them. The most impact has been on the 13 year old daughter. She was required to watch you come into the house and steal. She was shaken up but has, over time, come to terms with what has

happened. There are other victim impact statements which also convey the effect of your offending.

[11] I have considered the case of *Tuifua v Police* as being relevant in terms of your offending. That case involved ram raiding of a liquor store. Mr Tuifua in that case was 17 years old. A motor vehicle was stolen and that was then used to ram through the front doors of the store. In the High Court, a starting point of two years and three months was noted as being appropriate. Given the police submission, that there is somewhat less planning in your case, I am going to adopt a slightly lower starting point. In your case, however, there was a degree of planning. I have no doubt that the car was stolen for the purposes of use in the burglary of the liquor store, therefore, there was premeditation. It was potentially a dangerous situation and there is a significant impact on the business. The starting point I adopt on that charge is one of two years' imprisonment.

[12] The residential burglary is completely separate. That has its own aggravating features. That took place at a time when the occupants of the house were at home. That attracts a sentence of 18 months.

[13] I then need to consider the totality of your offending. That involves being in an enclosed yard and the breach of bail. That is a further uplift of three months. I have not taken into account the unlawfully getting into a motor vehicle because I have factored that into the starting point for the ram-raid offence. That takes me to three years and nine months.

[14] I then need to consider the overall totality of the offending, and I reduce the sentence by six months. That takes me to three years and three months.

[15] Your previous convictions are relevant, and that will be an uplift of three months.

[16] You are entitled to full credit for your plea of guilty. That would be 10.5 months. I will round that up to 11 months. The end sentence is one of two years and seven months' imprisonment.

[17] In the circumstances, I will not be imposing a sentence of reparation.

[18] The individual sentences, therefore, are: on the unlawfully in an enclosed yard, three months' imprisonment; burglary on 26 November, two years and seven months' imprisonment; unlawfully getting into the motor vehicle, three months' imprisonment; breach of bail, three months' imprisonment; and, the sentence of burglary from Kaitaia is 18 months' imprisonment. All sentences are concurrent.

J Bergseng
District Court Judge