

**IN THE DISTRICT COURT
AT DUNEDIN**

**CRI-2016-012-002013
[2016] NZDC 20917**

NEW ZEALAND POLICE
Prosecutor

v

DAVID LESLIE BOWLES
Defendant

Hearing: 20 October 2016
Appearances: T R Hambleton for the Prosecutor
J A Westgate for the Defendant
Judgment: 20 October 2016

NOTES OF JUDGE M A CROSBIE ON SENTENCING

[1] Mr Bowles, you are 41. You are for sentence today on a charge of burglary, maximum penalty 10 years, unlawfully taking a motor vehicle, maximum penalty seven years. These things occurred in August of this year. Prior to that there was a wilful damage.

[2] I have heard briefly from Mr Westgate. I have a letter written to me from you and I will come to that. I have a probation report. I also have a victim impact report.

[3] In terms of the wilful damage, on 4 June, you and your partner were in the Ranfurly Lion Hotel. You were asked to leave by the duty manager after a verbal altercation with another patron. You and your partner left. You went outside to where your vehicle was parked, removed a knife from the vehicle and walked towards the courtesy vehicle of the hotel parked in a lane around past the hotel, which was the property of the hotel. You picked up a rock from the footpath, used it

to smash the windscreen of the vehicle and also slashed all four tyres with the knife you had in your possession.

[4] On 7 August, the owner of a Toyota Surf, valued at \$10,000, parked that vehicle at the Brighton Surf Club. Between 1.00 and 3.00 pm, you were in Brighton. You approached that vehicle and gained entry by breaking the driver's side window. At 3.00 pm that day, the owner returned to find both the Toyota Surf and the contents gone. There was broken glass where the vehicle had been parked. Contents, including two mobile phones, a wallet, clothing, surfboard and bag of butchered meat had been taken.

[5] You drove that vehicle to Carnforth Street in Green Island and then gained entry to a commercial workshop by twisting the lock handle on the rear garage door with force. You took a log-splitter valued at \$5000 and hitched it to the back of the Toyota Surf. You removed the surfboard from the back of the Toyota Surf and loaded two new chain mowers, five chainsaws and a pair of chaps, valued at \$2208.49, into the back of the Toyota Surf. You left the surfboard at the scene of the burglary.

[6] You then drove the Toyota Surf, towing the log-splitter, to an associate's address in Palmerston, where you asked him to store it. While at the address, police have arrived and you have run from the scene, leaving the vehicle and the log-splitter. In explanation you said, "Do we have to talk about this?" but acknowledged the taking of the Toyota Surf and the burglary. You said, "We both know what we're talking about so no need to get anyone else involved. They're good people."

[7] In terms of the business you broke into, the owner said most of the items taken belonged to the business but two of them were there being repaired. The only item that was recovered was the log-splitter. All other items need to be replaced at a cost of \$2208.49.

[8] I had better clarify reparation in that respect. Reparation is sought in quite an amount. \$1000 plus that sum of \$2208.49. Vehicle repairs of \$3122.07. Further excess in respect of \$300 and in terms of the Ranfurly Lion Hotel, \$1432.46. It is

not suggested reparation should not be paid and I will make those orders. It will take you some time to pay them but pay them you should.

[9] In terms of the purposes and principles today, Mr Bowles, you are 41 and you have been in the system a long time.

[10] The highlight of counsel's submissions today is you have been out of trouble for a while as far as dishonesty is concerned, since 2012. But at 2012, you had 57 convictions for dishonesty: burglaries, unlawfully taking motor vehicles, thefts of motor vehicles. Since then, you have had an injury with intent and breaches of community work. You have not had a sentence of imprisonment, it would seem, since 2007. You were going at it quite hard with respect to dishonesty back in the 90s. You were in and out of prison almost constantly. It is not suggested prison will not be the end result today. It is just a question of how long that it is going to be.

[11] Today is about holding you to account. You are choosing this time to enter back into your old ways. You picked the wrong time to do it because with your record, sentences are just going to get longer and longer.

[12] I am told by you that you had been living well in the community and working two jobs. You had your own house but at some point you became a victim yourself and were beaten up, at which point you had to hide out. You lost contact with your nurse and medications you were on and at that time you would drink to fill in the loneliness. You could not be with your partner. You were of very low mood and depressed and resorted to the offending that has you back before the Court and maybe, Mr Bowles, that does explain the gap.

[13] The recommendation is one of imprisonment. The report does not tell me much about you and it cannot because you were not terribly co-operative with them when they first went to write it.

[14] Today is about denouncing your conduct. Mr Westgate says it is not a residential burglary and that is true but have you ever had your car stolen? Yes? You will know what it is like to park your car somewhere safe, particularly out by

Brighton, come back and find a lump of glass with everything you own gone. It has a horrible effect. It should not be lost on you or anyone in the criminal community that unlawfully taking a motor vehicle has a maximum of seven years' imprisonment.

[15] I find it hard to rationalise sometimes sentences that are imposed in respect of that offence. Maybe it is because there are so many vehicles and so much offending and so many people doing it that it is minimised. But if you take someone's motor vehicle, it is often their most precious practical possession outside of their home. It is the one they use to get to work. It is the one they use to work from sometimes. To take that vehicle out of circulation, to put them through the hassle of going through insurance, has a really bad effect and it is felt very personally by people who have their vehicles stolen. You should not lose sight of the fact it has a significant maximum penalty.

[16] The vehicle you took, you used to commit the burglary. You used the vehicle to take very high value items. This was not just any burglary. It was, for whatever was going on in your personal life, a business that you targeted. You took items of high value and you can see from the reparation amounts I have referred to there was a lot lost.

[17] Mr Westgate says a starting point of about one year and with all due respect to him, he has been around a long time, I cannot rationalise that when I look at this offending. We have burglary decisions such as *Arahanga v R*¹ but the fact is we have two offences. They are different offences committed within hours of each other. I am obliged to take into account the totality principle, which sometimes reads as a discount for bulk, but what the Court is required to do is to sit back and look at what is an overall total and just response to what you have done.

[18] I have to denounce your conduct for what it is. You have badly affected the lives of some people by acts motivated because you were going through an issue with your life. In doing so, you have created issues for their life.

¹ *Arahanga v R* [2012] NZCA 480; [2013] 1 NZLR 189; (2012) 26 CRNZ 63

[19] Deterrence is important today. You are back at it again. You have a significant criminal history. I cannot entirely ignore dishonesty offences from 2011 and 2012. You did settle down there for a while but in my view there is a need for something of an uplift.

[20] The aggravating and mitigating features today are two offences, high value items and huge inconvenience to those who have been involved. There are no mitigating features of the offending. Aggravating of course is you used the vehicle in the commission of the burglary. I am going to deal with that, as I am entitled to, by disqualifying you as well.

[21] As to you, you have entered a guilty plea. You entered a guilty plea as far as the burglary was concerned very early on. There is no reason at all why you are not entitled to 25 percent on all matters.

[22] The real issue for me is where to start and where to finish. The Toyota Surf was recovered, so that is an aspect, and the log-splitter was recovered.

[23] I think what I am looking at for you, Mr Bowles, on a totality is 18 months on each. That is three years. I have to give you a totality discount for that, which I am going to round down to two years and six months.

[24] I am going to uplift that by three months for your previous convictions, which are relevant, and in fact the wilful damage is about as serious as it can get for one of those. It only has a maximum of three but I am going to raise that by two. I come out to a point of two years and 11 months.

[25] I am going to give you credit for three things: one, the reparation you will pay; two, your very early guilty pleas on everything; three, the state you were in at the time.

[26] I sentence you in all respects right on the button to two years' imprisonment.

[27] There will be special conditions six months past. You will take such treatment, counselling, programme or intervention as may be directed, including for mental health and any other addiction.

[28] There will be reparation of the amounts sought. You will be disqualified for a period of two years from today and on the intentional damage, there will be one month to be served concurrent. That means at the same time.

M A Crosbie
District Court Judge