

**IN THE DISTRICT COURT  
AT PALMERSTON NORTH**

**CRI-2016-054-001943  
[2016] NZDC 17416**

**NEW ZEALAND POLICE**  
Prosecutor

v

**SAMUEL HEMI KUNAITI**  
Defendant

Hearing: 6 September 2016  
Appearances: Sergeant M Lyons for the Prosecutor  
D Flinn for the Defendant  
Judgment: 6 September 2016

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**NOTES OF JUDGE S B EDWARDS ON SENTENCING**

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[1] Samuel Kunaiti, you appear for sentence on seven charges of burglary. The burglaries were all committed at night between 20 June and 1 July this year. Five of them were committed overnight on 1 July.

[2] They were of commercial premises, although in reality small businesses. The total amount of reparation sought for the items you stole and the damage you caused is \$5,681.35. I do not have any victim impact statements from the business owners. Five of them were contacted by the Restorative Justice Co-ordinator but did not wish to engage in Restorative Justice with you.

[3] The purposes and principles I must take into account in sentencing you today are the need to hold you accountable for the harm your offending has done to the community, to promote in you a sense of responsibility for what you have done, to

provide reparation if possible, and to denounce the conduct you were involved in. Importantly, I must impose a sentence which acts to deter you and others from similar offending and serves to protect the community. I must also, however, impose the least restrictive outcome that is appropriate in the circumstances, taking into account similar cases.

[4] I have taken into account the guidance provided in *Senior v Police*<sup>1</sup> and *R v Southon*<sup>2</sup> in determining the appropriate starting point for your offending. Although the seven burglaries are aptly described as a “spree”, you primarily fit into the category of a recidivist burglar. This means the need to protect the community from you and your offending must take priority.

[5] Each of these burglaries involved you breaking into the premises of a small business at night, gaining entry by smashing doors or forcing windows, and taking petty cash boxes, cell phones or tablets. You had some form of tool with you in order to force windows open and in one of the premises you smashed the overhead lights to conceal what you were doing from public view. This was a florist shop on Broadway Avenue so it would have been quite visible to the public.

[6] You have 38 previous convictions for burglary between 1994 and 2011. The most recent sentence imposed on you for five burglaries, together with some theft and family violence charges, was three years and nine months' imprisonment in 2011. You also have an extensive history of other dishonesty related convictions including 24 convictions for using a document dishonestly, 24 convictions for unlawfully getting into a motor vehicle and around 26 theft convictions.

[7] The burglaries you are to be sentenced for today were committed only around a month after you were released from prison in May. You had been serving a short sentence imposed on you in April for two charges of dishonestly using a document. You were still subject to prison release conditions from an earlier sentence imposed on you in December 2015. You were released from that sentence on 27 January 2016, subject to release conditions for 12 months.

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<sup>1</sup> *Senior v Police* (2000) 18 CRNZ 340.

<sup>2</sup> *R v Southon* (2003) 20 CRNZ 104.

[8] I consider that in all the circumstances the appropriate overall starting point is four and a half years' imprisonment. With recidivist burglary offending, the overall starting point often takes into account previous convictions for similar offending. The seven burglaries themselves, taking into account the amounts taken and the damage that you caused to these small businesses, warrant a starting point of three years' imprisonment. An uplift of 18 months is justified to reflect your previous convictions and the fact you were subject to release conditions when you offended.

[9] You are entitled to the maximum available credit of 25 percent for your guilty pleas. Mr Flinn urges me to make further allowance for your remorse and willingness to attend restorative justice and for the difficulties you faced on leaving prison and the positive steps you took to find employment. However, I am not prepared to reduce your sentence for those factors.

[10] While I acknowledge your remorse is genuine, you currently owe over \$12,500 in outstanding reparation from earlier offences. Your offer to meet the victims in this case is nothing more than symbolic. They will be interested in receiving compensation for the losses you caused them and the damage you did to their property but the reality is, Mr Kunaiti, you have nothing to offer them. You still have to pay off the reparation you owe to earlier victims.

[11] These people are small business owners who cannot afford to bear those losses and the other likely consequences of your offending including the inconvenience, interruption to their business while they made the necessary repairs and in all likelihood increased insurance premiums in the future.

[12] I also acknowledge and am sympathetic about the difficulties you faced when you left prison. Because of your history you are going to experience the same difficulties in the future. Mr Flinn has outlined the efforts you went to to find employment on your release and stressed that you committed these burglaries when you were without any income, including a benefit. However, I note that during the period you say you were working for a 90 day trial period for the food manufacturing plant, you committed the two dishonest use of a document offences which resulted in your being imprisoned in May. This says to me that even when

you were earning with that employer, you were still offending. That points against me allowing you credit for your efforts to stay on the straight and narrow.

[13] You are fortunate to now have some support in the community because you will need that when you get parole and face the same difficulties in the future. It is clear from the letter I have today, that there are people and agencies willing to help you. You in turn appear to have much to offer them including, according to this letter, a future role working with, and passing on your skills to, at-risk youth. But, Mr Kunaiti, you cannot expect that support to continue in the future if you, to use your own words said to Mr Flinn, “throw it back in people’s faces by re-offending.”

[14] The choices and pathways for you and your future are clear. There are people and agencies willing to assist you and ensure that you do not get into the sort of difficulties you got into in May and June this year but what you do with that help is a matter for you.

[15] As I said though, you are entitled to the maximum available discount for your guilty pleas which were entered at a very early opportunity. From the starting point of four and a half years, a 25 percent discount results in an end sentence of three years and four months' imprisonment. That is the sentence I impose on each of these burglary charges. The issue of release conditions will be a matter for the Parole Board.

S B Edwards  
District Court Judge