

**IN THE DISTRICT COURT  
AT AUCKLAND**

**CRI-2016-004-004346  
[2017] NZDC 3153**

**NEW ZEALAND POLICE**  
Prosecutor

v

**SAMUEL JUNIOR HUTCHINS**  
Defendant

Hearing: 17 February 2017  
Appearances: Sergeant D Luo for the Prosecutor  
B Meyer for the Defendant  
Judgment: 17 February 2017

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**NOTES OF JUDGE K J GLUBB ON SENTENCING**

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[1] Samuel Hutchins, you appear before the Court today for sentence having pleaded guilty to a total of 18 charges. They are two of burglary, six of theft, one unlawfully getting into a motor vehicle, one unlawfully in a building, one of threats likely to cause violence, one of assault on police, one of breach your release conditions and five of failing to answer your bail. The period of time over which this offending occurred was between 3 March 2016 and 3 July 2016, so four months.

[2] The facts are, and I deal with them chronologically, on 3 March 2016 you were at New World supermarket in George Street, Papatoetoe. You picked up an orange hand towel and a pair of socks valued at \$11.48 and also a yellow hand towel, the property of New World. You removed price tags from the towel and left it in the aisle, concealed it and the socks upon you and then proceeded to the checkout area where you paid for the yellow hand towel. You were stopped by supermarket staff

who asked where the socks and orange towel were. You exited the store followed by staff. You ran to the Papatoetoe train station, crossing the railway bridge. A member of staff confronted you there and told you to come back to the store so you could be trespassed. You ran across Station Road to Papatoetoe West School. Several staff confronted you there. You handed over the socks that you had taken.

[3] Between 9.45 pm and 11.30 pm on Friday 29 April 2016 a black Subaru car was stolen from a carpark by Silo Park in Auckland. The value was \$3000. At about 1.10 am on Saturday 30 April 2016 police attempted to conduct a routine traffic stop of that vehicle, having activated its red and blue lights on Khyber Pass Road. The vehicle failed to stop and sped off on the Southern Motorway. A high speed pursuit ensued and speeds over 160 kilometres per hour were reached. During that pursuit there were four occupants in the vehicle which included you as a passenger. The rear passengers of the vehicle, both on the left and right, threw rocks out of the windows which barely missed the pursuing police patrol.

[4] At about 1.28 am the vehicle came to a dead end and stopped in Otahuhu. You got out of the vehicle and ran off through surrounding properties along with the driver and another associate from the back seat. The left rear passenger was apprehended at the scene. With the assistance of the helicopter you and your associates were located shortly thereafter and arrested.

[5] At about 11.50 am on 5 May 2016, you were in Rae Small Drive, Papakura with two associates. One of your associates had entered a dwelling on Rae Small Drive. An off duty police officer who was passing noted this and spoke to your associate. You became enraged and you confronted the detective sergeant. You advanced towards him with your fists held high in a fighting stance, stating that you were going to smash his head in. The detective sergeant told you to stay back. You then continued to advance and the detective sergeant backed away. A police car arrived and you and your associate ran off.

[6] You were located and arrested a short time later and transported back to Papakura Police Station. Constable Petrie then escorted you into the police station and when you walked into the interview room you kicked out at a wall with your

foot and pushed off the wall backwards, shoulder-barging Constable Petrie and knocking him to the ground. As a result he sustained a twisted ankle which was painful and swollen.

[7] At about 2.00 am on 25 May 2016 you were on Lakeside Drive, Pahurehure, which is in South Auckland, and you approached a residential property owned by the victim in this matter and moved towards the rear of that address. You interfered with the security light, tilting it upwards so that it would no longer illuminate the back door. You then pulled open the window that had been left ajar adjacent to that back door. You reached inside the window and removed a number of items from the window sill, placing them on a rubbish bin at the back porch. You then reached back inside the window and opened the back door before entering the address. A visitor bumped into you in the hallway and verbally challenged you. You told the witness, "Give me \$50 and I'll leave." You then ran from the address after being challenged and you were chased by the victim who had also awoken. You had no permission to be in that property and the police dog unit was called and tracked you to an address in Karaka. The police found the back door of that address open and unlocked and searched the address. You were located in a wardrobe, asleep and wrapped in a duvet from one of the beds. You offered no explanation.

[8] At about 8.30 pm on Sunday 19 June 2016 you were inside Garrison's Bar in Sylvia Park. At that time you were extremely intoxicated. You walked over to the till area and picked up a laptop sitting on the counter and you then left the bar and ran through Sylvia Park Mall with the laptop under your t-shirt. The laptop was the property of the bar. You were located inside the Sylvia Park complex by police and the laptop was subsequently located in a bush in the Sylvia Park complex.

[9] At 11.45 am on 21 June 2016 you entered The Warehouse at Sylvia Park Shopping Centre, Mount Wellington and you walked around that shop and picked up a black backpack and put it on your back. You then walked to an area where the personal products are displayed, picked up some Vaseline body lotion, concealed that in your backpack and you then left The Warehouse with the backpack and body lotion without making an attempt to pay for it. The value was \$38.99.

[10] You then went to Pandora jewellery store and reached over the counter into the back of one of the display cabinets and took one silver ring that was on display and concealed it on yourself and left that store without paying. It was valued at \$189.

[11] You then went to Cotton On and you took a pair of beige chino trousers and concealed them in your black backpack and left the store without making an attempt to pay for those either. The chinos were valued at \$39.99.

[12] You then went to JB Hi-Fi. Staff there located an empty box of earphones and identified you from security footage stealing those. Security located you in Sylvia Park shopping centre and asked you to accompany them back to JB Hi-Fi. You became aggressive towards security and police were called. When the police arrived they looked through your backpack and found the Vaseline, the silver ring and the chinos but the earphones were not located.

[13] On 27 June 2016 you went to Kathmandu in Newmarket. There you took items of clothing from the racks and placed them in your gym bag. You then used a jacket that was near the scanners to distract the store worker while you placed the gym bag on the floor containing the items that had been taken. You then left the store without paying for those items in the bag. The value of that property from the reparation schedule is \$1900.

[14] At about 11.40 pm on Sunday 3 July 2016 you entered an address in Oratia with an associate. Your associate was a mover and had helped move the victim's belongings into the address previously. As a result that associate had a key to the victim's house and used it to gain entry. You and your associate went into that house and took items from multiple rooms at the address valued at over \$5000. Those items included bank cards belonging to the victim. At about 2.40 am you used one of the bank cards taken during the burglary at a Z service station in Greenlane and you were captured on CCTV doing so.

[15] None of that catalogue, Mr Hutchins, does you any credit whatsoever. When I look at the aggravating factors of that offending there is the degree of planning and

premeditation. You deliberately targeted domestic dwellings. You did so late at night. You entered while occupants within those addresses were sleeping and at home. You also went to shops and you targeted those and you stole at will as you chose. There is the additional aggravating factor in relation to the burglaries. That is the fact that they are domestic dwellings. That is a recognised aggravating factor for the very reason that occupants can be disturbed and other issues can result from that. Here we have late night burglaries, as I have already indicated, where they were entered at both 2.00 am and 11.30 pm and so I consider that hour of entry in those circumstances as aggravating. You disturbed sleeping occupants in one at least, as detailed in the summary of facts.

[16] There is repeat offending over this period of time. There is the impact on the victims. I had read the victim impact statements in relation to the burglaries. From the Papakura burglary the victim says he did not receive any injuries from the male, "However, it was really scary to see an unknown person had entered my house at that time of the night. He could have done anything to me or my family. Nothing was damaged during the burglary." He says, "I am a hardworking person and do not deserve to go through this. My family has been traumatised by this incident and do not feel safe in the house." That is an understandable sentiment in the circumstances.

[17] The second victim impact statement; he notes he is 56 and lives in Oratia and he said, "I'm still pissed off about what happened. I know I will never hire another moving company because of this. I was still sleeping when it happened, which disgusts me. I still feel very jumpy when I hear noises at night. Even to this day I am extremely angry. I am annoyed at how much I have lost and have to replace because I did not get insurance on all those items."

[18] There is, of course, the value of the property as well. That factors into the impact on the victims, specifically in relation to the second of the burglaries where it is assessed as \$5000. Reparation is sought in the sum of \$700. I make a small reparation award in due course.

[19] I turn then to the assault on the police officer. That is an express aggravating factor in s 9(1)(fa) Sentencing Act 2002 and I also factor into that the disorderly behaviour likely to lead to violence in relation to the detective sergeant that approached your associate on the street. Those police officers are doing their job. They do not deserve to be treated in that way. They deserve the support of this Court and the community for the work they do and they will receive it. I look to the harm done to the officer; sprained ankle, swollen. That is something that should not have happened.

[20] I then look to matters which aggravate circumstances for you personally, Mr Hutchins. There is your previous conviction history. That is reasonably short in New Zealand. It includes one for burglary with the result being 3 June 2015 for which you were sentenced to one year and 10 months' imprisonment. At the same time you were also convicted of possession of a knife, unlawfully getting into a motor vehicle and injury with intent to injure.

[21] In addition to that I have before me a conviction list from Australia. That makes more depressing reading. It includes two for what appears to be aggravated robbery, described as robbery with actual violence and one for grievous bodily harm and two for theft. The most recent of those for grievous bodily harm has a result recorded on 19 April 2012 where you were sentenced to five years' imprisonment. I can only infer from that that you have been returned to New Zealand as a consequence of that conviction as have many others.

[22] I see no mitigating factors in this offending.

[23] I have the benefit of a pre-sentence report. You are 23 years of age. What the report writer notes is that you have little remorse for your offending. That is addressed by your counsel. He submits that there may have been some confusion. You were talking about an offence which you did not recall and that may have been why you were assessed in that way. He says that in his experience you have expressed real remorse and that I should factor that in.

[24] The report writer also notes that you are a high risk of re-offending and a medium risk of harm to others. He also notes that you are currently subject to release conditions and there is also little compliance towards the sentence. He notes the offending supportive factors are your lack of problem-solving ability, attitude towards authority, use of alcohol and drugs and your associates. The recommendation is imprisonment.

[25] I just return briefly to the aggravating factors personal to you. I did not factor into that the fact of offending whilst on bail. The first offence was committed on 3 March 2016. You were apprehended and brought before the Court. The subsequent offending was all committed whilst you were on bail from that Court.

[26] I also factor in that you are subject to a sentence. That is another personal aggravating factor.

[27] Defence, in written submissions, have said that I should take a starting point of 12 to 15 months and an uplift for the initial offending and then give you a 25 percent discount for plea. I discussed that with Mr Meyer. He acknowledges the starting point of 18 months in *Arahanga v R*<sup>1</sup> and in oral submissions suggests I adopt that instead. The police also say a starting point of 18 months and uplifts for the additional offending and a discount for pleas. I recognise is that the authorities in this regard are *Arahanga v R*, where a starting point of between 18 months and two and a half years is appropriate for domestic dwelling burglaries has been adopted.

[28] I also take account of *Columbus v R*<sup>2</sup> but also the most recent decision of *Gorgus v R*<sup>3</sup> where that Court expressly says:

“[11] Ms Goodlet cited a number of sentences in the High Court which she submitted mandated a lower starting point. We simply note that, to the extent that the approach adopted by the High Court in those cases might differ from

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<sup>1</sup> *Arahanga v R* [2012] NZCA 480

<sup>2</sup> *R v Columbus* [2008] NZCA 192

<sup>3</sup> *Gorgus v R* [2016] NZCA 508

the approach approved in *Columbus* and *Arahanga*, those decisions should not be followed.”

[29] The starting point I adopt for you, Mr Hutchins, is one of 18 months and I adopt that on the first of the burglary charges. I then look to the second. That, strictly speaking, could also warrant a starting point of 18 months’ imprisonment given the circumstances. That would arrive at a sentence of 36 months for those alone. I am satisfied, however, on the basis of totality that is too high and I reduce the uplift that I am applying for the second burglary to 10 months, which gets me to 28 months or two years and four months.

[30] I then look to the balance of the dishonesty offending. For that I uplift by what I consider to be the minimum appropriate which is four months which gets me to 32 months.

[31] I then look to the assault on police and the disorderly behaviour. For that offending I uplift by a further two months which gets me to 34 months.

[32] I then look to your failure to answer bail and your breach of release conditions; no less than five failures to answer bail (this matter took a long time to come before this Court) and your release conditions. For that I uplift by two months as well which gets me to 36 months.

[33] Finally I turn to your previous conviction history, your offending on bail and your offending whilst subject to a sentence. I uplift by the minimum there, by three months, which gets me to a total of 39 months.

[34] I note that you are 23 years of age however I do not give any discount for youth. I do not see this as youthful indiscretion. It is deliberate and planned offending over a period of time by you. Your counsel has submitted that I should give a discount of 25 percent. I am satisfied that your pleas were not entered at the earliest opportunity and in fact it took a long time for these matters to resolve. However, I will give you 20 percent. Twenty percent on 39 months is 7.8 which

brings that 39 months down to 31.2 months. I round that down in your favour to 31 months.

[35] I gave consideration to applying a lead sentence and then applying cumulative sentences for others. Given the period of time over which this offending occurred I have opted for a lead sentence on the burglaries and all other sentences concurrently.

[36] On both burglary charges, Mr Hutchins, you are sentenced to 31 months' imprisonment or two years and seven months.

[37] On the burglary at Oratia I order you to pay reparations in the sum of \$400.

[38] On the theft of the laptop and the Kathmandu clothing, on each of those I convict you and sentence you to imprisonment for a term of six months.

[39] I order you to pay reparations in the sum of \$800 to Kathmandu.

[40] On the unlawfully getting into a motor vehicle I convict you and sentence you to imprisonment for a term of three months.

[41] On the balance of the charges, that is the four remaining thefts, the assault on the constable, the disorderly behaviour likely to lead to violence, being found unlawfully in a building, the breach of release conditions and the five charges of failing to answer your bail, I convict you and sentence you to two months' imprisonment on each.

[42] Mr Hutchins, I have of course factored into this sentencing what you said in your letter. I have read that. I have taken account of that in the sentence I have arrived at. You say you are sorry for what you did and you would like to apologise and that you want to get on and do some courses and not come back before this Court again. I wish you every success with that. Make the most of the time that you have whilst you are in custody. Do as many courses as possible but whatever you do, do not come back before this Court on any further offending. Can you do it? [Yeah] Good on you.

K J Glubb  
District Court Judge