

**IN THE DISTRICT COURT
AT WAITAKERE**

**CRI-2016-090-005978
THREE STRIKES WARNING
[2017] NZDC 3786**

THE QUEEN

v

JAMES JUNIOR HAARE

Hearing: 23 February 2017

Appearances: H Taufalele for the Crown
G Haydn for the Defendant

Judgment: 23 February 2017

NOTES OF JUDGE K J GLUBB ON SENTENCING

[1] James Haare, you are before the Court facing sentence having pleaded guilty to three charges; one of aggravated robbery, one of threats with intent to frighten and one of assault.

[2] Your counsel has made a submission and asked this Court to defer sentencing. He makes that application on the basis that there is now a bed available at Odyssey House and he would ask that you be curfewed to that address and get the opportunity of rehabilitation. He says that this is an opportunity that is available to you, it would give you motivation, it would be in the interests of the community and, therefore, this Court should give consideration to it.

[3] What I do, however, recognise is that if I were to do that it would be holding out false hope for you. I decline to defer sentence. That will be an option that is

available to you in due course with the assistance of the authorities but I decline to defer sentence at this stage.

[4] Dealing with the facts of the offending, first off, at 8.54 am on 19 September 2016 you were at your home address in Kelston. Also there was your sister, the victim in this matter. The pair of you got into an argument over money which escalated when you told her that you would come over there and punch her “fricken head in”. Soon afterwards you grabbed the victim by the shoulder and held her against the wall with one arm for a brief period. She did not suffer any injuries as a result of that incident. Spoken to by police you admitted the facts. I note that you were before the Court on that matter on 19 September 2016 and were admitted to bail.

[5] Then on the afternoon of 27 October 2016 you visited a family member in Kelston. The purpose of that visit was to collect money from that person in order to purchase synthetic cannabis. You were told that that money was not available and an argument ensued. At about 2.00 pm that day you took a knife from the kitchen drawer and you left the family home. You walked straight to the College Suprette on St Leonards Road, Kelston. Upon arrival you approached the sole staff member in the store. Producing that knife you said to her, “Open the till and give me money or I’ll kill you.” She opened the till and you then retrieved approximately \$80 in mixed denominations. You then left the superette and discarded the knife in nearby shrubbery. You then went to a local drug house and purchased two bags of synthetic cannabis with the money you had obtained. When spoken to by the police you acknowledged your offending and said you had robbed the store to get money to buy cannabis. None of that does you any credit.

[6] When I look to the aggravating factors of that offending, first and foremost there is a degree of planning and premeditation. I see it as moderate because it could actually be considered to be more opportunistic but, nonetheless, what you did is you took a knife, you left the address, you planned to go and do as you eventually did and, having deliberately armed yourself for that purpose, went to the dairy and robbed it. I see there is a degree of planning and premeditation involved with that. It is not as high as some but it is still there.

[7] There is the use of a weapon, a knife, highly dangerous and in a stressful situation it can be very unpredictable as events of recent times have shown.

[8] There is the target premises. Small superettes in the suburbs are highly vulnerable to offences such as this. They deserve the protection of this Court and they will get it. Offenders cannot go into these shops and rob them at will.

[9] There is the impact on the victim. I have the benefit of a victim impact statement. What is noted here is that the victim of this was a 52 year old woman, the owner of the business with her husband. She said she was not hurt as a consequence of the incident, she was not sure how much had been taken because they had not counted the float, however in terms of emotional harm she noted, "The robbery has really affected me. I am scared to be at work. Every time I have a customer I get anxious that I'll be robbed. I can't seem to stop thinking about it and I thought he was going to kill me. When I get a customer who is around 20 years of age and male I start to shake, I am so scared. My anxiety has got so bad that we are actually thinking of selling the business. I'm also angry that the children are scared of being at home and at the shop. My children shouldn't have to feel unsafe in their own home." That is an impact that is common in offending such as this, it is one that the Court recognises.

[10] There is the amount of properties taken, \$80 in cash.

[11] When I look to matters which aggravate circumstances for you personally, I note you have a previous conviction history. There is one for burglary, one for threats, three for disorderly behaviour and one for theft. I also note that there are no less than two for breaching your community work. However, nothing as serious as this or involving violence previously.

[12] I see no mitigation in this offending.

[13] I have the benefit of a pre-sentence report. What that notes is that you are 29 years of age. Your lawyer has told me today that in actual fact you are 27 years of age. The date of birth it appears is wrong. It records it as 8/12/87. Your lawyer has

said that it is in fact 12/4/89. However, the police confirm that the earlier date of birth is the one on record so that will need to be corrected. I do not have anything with me today to do that, I do not have a birth certificate to prove that, but that is the indication given, which you confirm.

[14] In terms of your risk of re-offending, it is assessed to be medium and your risk of harm to others is also assessed to be medium. What is noted is that you advised that you were heavily under the influence of synthetic cannabis and you were agitated following a verbal altercation with your grandmother.

[15] Now that only serves to raise the risk of harm potentially in this set of circumstances, someone highly charged with synthetic cannabis and in an agitated state committing a robbery in these circumstances is highly unpredictable.

[16] You have indicated a level of remorse and you say that, "I can picture her face. I wasn't going to hurt her but she wouldn't have known that. She would have been so frightened." That is clear in the victim impact statement as well.

[17] Given the nature of this offending the recommendation is one of imprisonment.

[18] The Crown in submissions that have been filed have said a starting point of four years and a discount for plea of 25 percent. Your counsel has said a starting point of 3.5 years, discounts for remorse and rehabilitation prospects of nine months which equates to 25 percent, and a discount for EM bail and then a discount for plea. He asks the Court to get this down to a level where a community-based sentence and particularly home detention could be appropriate.

[19] What I recognise is that the lead authority is *R v Mako*¹ specifically at para [56]. I am satisfied that this is offending which falls squarely within that paragraph. I acknowledge there was no disguise and that the degree of planning was moderate and you acted alone but, nonetheless, it is within that categorisation.

¹ *R v Mako* [2000] 2 NZLR 170 (CA)

[20] Accordingly, looking to that offending the starting point I adopt is one of three years and eight months' imprisonment.

[21] I look to the other offending which in fact predates that offending. I uplift by one month for that, gets me to three years and nine months or 45 months. I do not apply any uplift for your previous conviction history.

[22] I then look to your remorse, as noted some remorse, and I am prepared to give you appropriate credit for that, five percent I will give you for your remorse, and prospects of rehabilitation, five percent, is 2.25, brings me down to 42.75.

[23] I then turn to your plea. It was at the earliest opportunity, I give you full credit for that in relation to both sets of offences, and that is 25 percent. Twenty-five percent on 42.75 is 10.69 which brings me down to 32.06. I round that down in your favour to 32 months.

[24] Mr Haare, on the charge of aggravated robbery today I convict you and sentence you to 32 months of imprisonment. On the two charges of the threats and assault, I do not propose to impose a cumulative sentence on those, I am going to deal with them concurrently, and I simply impose a sentence of one month imprisonment on each.

[25] Mr Haare, you have acknowledged your issues with synthetic cannabis and addiction problems. Do what you can whilst in custody to deal with those and, when you come out, take every opportunity for rehabilitative interventions that are available to you. Let us not see you back before this Court again.

[26] Mr Haare, given your conviction for aggravated robbery you are now subject to what is called the Three Strikes law. I am now going to give you a warning of the consequences of another serious violence conviction. You will be given written notice outlining these consequences which list the serious violent offences.

- (a) If you are convicted of any serious violent offence other than murder committed after this warning and if a Judge imposes a sentence of

imprisonment, then you will serve that sentence without parole or early release.

- (b) Secondly, if you are convicted of murder committed after this warning you must be sentenced to life imprisonment and that will be served without parole unless it would be manifestly unjust. In that event the Judge must sentence you to a minimum term of imprisonment.

[27] What I simply tell you today, Mr Haare, is that the stakes have just gone up for you. You cannot afford to come back before the Court on any more serious violent offending, do you understand that [Yes], because then there can be no parole, you will serve the sentence whatever it might be if it is imprisonment, do you understand.

K J Glubb
District Court Judge