

**IN THE DISTRICT COURT
AT MANUKAU**

**CRI-2016-092-005984
[2017] NZDC 4292**

NEW ZEALAND POLICE
Prosecutor

v

ERIC HIKU
Defendant

Hearing: 2 March 2017
Appearances: R Parker for the Prosecutor
P Le'Au'Anae for the Defendant
Judgment: 2 March 2017

NOTES OF JUDGE S PATEL ON SENTENCING

[1] Mr Hiku, you appear for sentence having pleaded guilty to charges of assault with intent to injure, three representative charges of assaulting a child and a stand-alone charge of assaulting a child.

[2] The facts are that as set out in the agreed summary of facts, but I will, in open Court, go into the salient features of the offending.

[3] In relation to the assault with intent to injure charge, the victim in that case was [victim 1]. She was arguing with you. During the course of that argument, you pushed her against a wall near the front door of the property where this took place. That caused her to fall to the ground. She tried to get up, but you held her down holding onto her by her hair. You then punched her about the face before pushing her back inside the house.

[4] In relation to the assault child charge, CRN ending 6770, the victim in that case was [victim 2]. That offending involved you kicking [victim 2] in the backside and you would put on shoes before you did that and that occurred on at least four occasions.

[5] The charge assault child CRN ending 6772, the victim again was [victim 2]. You got angry at the victim, picked him by his clothes around the collar area and lifted him up high above your head. You then dropped him directly onto the floor before picking him up and dropping him again from the same height.

[6] In relation to the other assault child charges, namely CRN 6767 and 6769, the victim in that case is [victim 3]. That involved you slapping her twice to the head using your hand. It also involved you slapping both [victim 3] and [victim 2] five times each on their head using both of your hands.

[7] As a result of being punched, [victim 1] received bruising to her back and a red bloodshot eye, but fortunately the other offending did not involve injuries to the victims.

[8] In sentencing you today, I take into account the principles and purposes of the Sentencing Act 2002, that is to deter you and other people from offending of this nature, to hold you accountable for the harm that you have caused the victims, also to be consistent with other cases that are of a like nature, but I also must bear in mind that I am required to impose a sentence that aids in your rehabilitation and a sentence that is the least restrictive outcome in the circumstances.

[9] I should also add that I have had full recognition of the victim impact statements that have been provided. I also make specific reference to s 9A Sentencing Act which applies specifically to offending against children who are under the age of 14.

[10] In terms of the aggravating features of this offending, it involves multiple complainants. It is repetitive. It involves attacks to the head by you. I agree with Ms Parker when she says that the lead charge, one of assault with intent to injure

does involve extreme violence for it involved a punch to the face of a child, and I consider that to be extreme violence.

[11] Fortunately, there was no long lasting injury and the other offending is for want of a better term, “lower end” violence, however, I do not suggest for any moment that any violence that is involving children is insignificant.

[12] The sentencing process involves me first, adopting a starting point of sentence on the lead charge. I have had very helpful submissions from Ms Parker on this. There is no tariff or guideline offence, but the Court is assisted by the Court of Appeal case of *R v Nuku*, however, I do acknowledge that it is not strictly applicable, however, there is guidance that I glean from that in terms of the aggravating features. I consider that an appropriate starting point for the charge of assault with intent to injure is 14 months’ imprisonment. I then need to uplift that bearing in mind the other offending. I consider that an additional uplift for the other charges, bearing in mind the aggravating features that I have already identified to be one of 14 months’ imprisonment also.

[13] So, therefore, the starting point is one of 28 months’ imprisonment, but I do not adjust downwards for totality for I consider that a sentence of 28 months’ imprisonment is one that reflects the overall criminality of your offending.

[14] There are no uplifts in terms of aggravating features relating to, however, I do note comments of yours in the pre-sentence report that you are not remorseful and you claim that some of the offending was fabricated. That does not fill me with a great degree of confidence, however, that is a lack of a mitigating factor as opposed to an aggravating factor.

[15] I then make an adjustment for a plea of guilty. It was not by any means by the first available opportunity, but I do give you a 15 percent discount, namely four months’ imprisonment for that. So that brings me to a final sentence of 24 months’ imprisonment.

[16] I then turn my mind as to whether that ought to be converted to home detention and I consider that it ought to. There is nothing to indicate that you would not be a good candidate for home detention and secondly, I consider by the slimmest of margins that the purposes and principles of the Sentencing Act can be met by a sentence of home detention. I say by the slimmest of margins because I take into account that there is absolutely no remorse on your part for this offending and that is a matter I weighed with some care, but you have tipped the balance and I consider that home detention ought to be imposed.

[17] So I am dealing with you in this way, on the charge of assault with intent to injure, you are convicted and sentenced to home detention for 12 months.

[18] The terms of your home detention sentence are these: You are to travel directly from Court to [address deleted], Weymouth and there await the arrival of the probation officer and the monitoring company. You are to reside there and not move without prior written approval of the probation officer. You are not to possess consume or use any alcohol or drugs that are not prescribed to you for the duration of the home detention sentence. You are to undertake and complete the Friendship House Living Without Violence Programme and abide by the rules of the programme to the satisfaction of a probation officer. You are to undertake and complete [other programme details deleted] as directed by the probation officer. You are to attend an assessment for any other rehabilitative programme including a departmental rehabilitative programme as directed by the probation officer, to attend and complete any counselling, treatment or programme as recommended by the assessment if directed and to the satisfaction of the probation officer, and not to have contact either directly or indirectly with the victims without prior written approval of the probation officer.

[19] The standard and special post detention conditions are to remain in force for 12 months following the completion of your sentence.

[20] I should also add that I have taken into account that you do a considerable amount of community work within your church community and I have taken that into account in coming to an appropriate sentence today.

[21] In relation to all of the other assault child charges you face, you are convicted and sentenced to a term of home detention for six months. They will run concurrently with the 12 month home detention sentence. So overall, a final sentence of 12 months' home detention.

S Patel
District Court Judge