

EDITORIAL NOTE: SOME NAMES AND/OR DETAILS IN THIS JUDGMENT  
HAVE BEEN ANONYMISED.

**IN THE DISTRICT COURT  
AT PALMERSTON NORTH**

**CRI-2015-054-002398  
[2016] NZDC 20986**

**THE QUEEN**

v

**ANTHONY MICHAEL FOWLES**

Hearing: 21 October 2016  
Appearances: M Blaschke for the Crown  
P Murray for the Defendant  
Judgment: 21 October 2016

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**NOTES OF JUDGE L C ROWE ON SENTENCING**

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[1] Anthony Fowles you appear for sentence having been found guilty by a jury of two charges of demanding with menaces.

**The Facts**

[2] The facts which I accept in this case following the jury's verdicts, are that you came to know of the victim in this matter [Carl Traviss] (whose name is suppressed) because you had previously dropped [the escort], off at his house when Mr [Traviss] had engaged her escort services. You undoubtedly learned from [the escort] that he lived alone and that he smoked cannabis. You may have learned more about him and his vulnerability, but that would be conjecture.

[3] You went to his address just after midnight on 28 June 2015 with an associate intending to extort money from him. The initial attempt was by fraudulent

representations that Mr [Traviss] had given [the escort] HIV and that money was required for her treatment.

[4] When Mr [Traviss] did not accept this, you and your associate threatened Mr [Traviss] to extort money from him. By this stage you had convinced Mr [Traviss] to let you and your associate into his house. The threats to Mr [Traviss] included you making out that your associate had a gun and he played along with this by putting his hand in his jacket as if he was getting a gun out. You told Mr [Traviss] he needed to get money from an ATM for you and Mr [Traviss] agreed and it my assessment that he agreed out of fear of you and your associate and to get this situation to end.

[5] You accompanied Mr [Traviss] to an ATM machine where he withdrew \$200 and then at your insistence a further \$100. You took this money from Mr [Traviss]. You walked Mr [Traviss] part way back to his address and then you left him saying that you would visit him later in the morning and that he was not to contact the police.

[6] You returned alone to Mr [Traviss]'s house at around 10.30 am. By then you had assessed that Mr [Traviss] was someone you could dominate to extort further money from him.

[7] You took a knife with you and you produced it after Mr [Traviss] let you back into his home. You threatened to kill him and you claimed that your partner had tried to kill herself and your baby the previous evening, which of course was untrue. Mr [Traviss] convinced you to put the knife down.

[8] You then tried to get Mr [Traviss] to fight you. He declined and sat down. You then approached him while he was seated and punched him four or five times to the face and head pushing him over in the chair that he was in.

[9] You picked up a nearby broken glass and you threatened to stab Mr [Traviss] with it. You threatened to tie him up with a phone cord and you then demanded that he withdraw more money from an ATM for you. You walked with him to ATM's

where he withdrew \$800 which you pocketed. You went to a supermarket to try and get Mr [Traviss] to withdraw more cash from his credit card but the transaction could not be processed.

[10] You took Mr [Traviss] to a shop where you made him transfer \$1000 to an account from which he could withdraw cash using the shop attendant's smart phone. You then went with him to an ATM where you had him withdraw a further \$1000 cash which you took. You walked him part way back to his house and told him that you would be back that evening.

[11] Mr [Traviss]'s evidence, which I accept, is that he went with you out of fear of you because he was unable to control what was going on and he just wanted the whole thing to end. Mr [Traviss] went home, gathered his belongings and fled his address.

### **Victim Impact**

[12] Mr [Traviss] has given two impact statements. Having read the letter you have provided through your counsel I am not sure you have had the chance to read or digest those victim impact statements.

[13] Mr [Traviss] lived by himself. He worked full-time. He did not know you previously. As a result of your assaults he received bruising and pain to his jaw and mouth which lasted for a number of weeks. He also developed a hernia in his groin area and was referred to a surgeon.

[14] He of course lost \$2100 in cash but really the key harm to him is what he describes as the emotional harm. He has found it very difficult to cope and he is a man who up to that point, was also finding it difficult to cope in the community, given that he suffered longstanding clinical depression.

[15] He has been very paranoid of you or your associates coming back to his house again. He does not go out anymore because of his fear. He suffers anxiety

and depression since this event which means that he just simply stays at home. He has had to increase his medication for his depression.

[16] In the earlier victim impact statement he said that the effects of what occurred made him suicidal. He has had to see the community mental health team and as I say he finds it very difficult to go out in public now.

[17] He describes this incident as completely turning his world upside down. He has had to sell his house because you knew where he lived, as would any associates of yours, including the person who went with you on the first occasion and he has lost money on the re-sale of his house. He has had to throw out a lot of his gear in order to move.

[18] The victim impact statements are entirely consistent with the way that Mr [Traviss] gave evidence in this case. He gave evidence as a person who was embarrassed about what had occurred. He gave an unembellished account of what had occurred. I have no doubt he told the truth about what had occurred, including your use of weapons which I find were instrumental in your domination of him on the second occasion and explained why he did not seek help, even when he was in a position to do so.

[19] His explanation, which I accept is that he was overwhelmed by you and the situation you put him in by your actual and threatened violence. He was completely out of his depth, and he was scared not only of you but what you might do if he did not comply with your demands, both then and subsequently.

### **Culpability**

[20] There are eight factors which I consider important in assessing your culpability when setting a sentence.

[21] Firstly I find that there was premeditation in this case. The first incident started as a premeditated effort to fraudulently obtain money but then became a demanding with menaces. It is characterised by your counsel as crude and

unsophisticated, and that may be true, but that nevertheless does not hide the fact that you went to that address initially in order to extort money from someone who you knew was living on his own.

[22] The second incident is far more concerning and far more premeditated. By then you had worked him out. You took the knife intending to extort money from him by violence or threats of violence.

[23] Secondly, I regard Mr [Traviss] as a vulnerable person in our community. He lived alone, he suffered depression and as I say I believe you had worked out that you could easily exploit him. I find that your conduct towards him, in that position, was somewhat predatory.

[24] Thirdly, your use of actual violence, weapons and threats to kill are important in the context of this case.

[25] Fourthly, and also importantly, the threats and violence occurred in Mr [Traviss]'s home where he was entitled to feel safe. He let you into his home because he was out of his depth. Further, going into his home in these circumstances was instrumental to Mr [Traviss] giving in to your demands to obtain money and not obtaining help. Your conduct let him know that he was not safe, even in his own home.

[26] Fifthly, this offending involved two incidents, although to some extent that is a factor taken into account in the premeditation factor.

[27] Sixthly, two of you were involved in the first incident and you worked in unison or as a team when intimidating Mr [Traviss].

[28] Seventhly, the sum involved was not insignificant, particularly given Mr [Traviss]'s circumstances.

[29] Finally there is the emotional and psychological harm to Mr [Traviss] which I regard in this case as serious.

[30] The combination of these factors places your case into the more serious category for this type of offence.

### **Authorities**

[31] I have been referred to cases by your counsel and by the Crown. They include the case of *Parker*,<sup>1</sup> *Joblin*<sup>2</sup> and *Winn*.<sup>3</sup>

[32] The case of *Parker* involved a starting point sentence of four years nine months for prolonged assaults tantamount to torture. Your case is not in that serious category.

[33] The case of *Joblin* involved starting point sentences for the people concerned of three years three months and four years. It was a single incident, more serious assaults occurred, weapons were brandished. The higher starting point in that case was for the party who actually brandished weapons.

[34] In the case of *Winn* a starting point of four years was applied for the most serious offender for a number of instances of demanding with menaces of an elderly man. That offending was clearly worse than the present case.

### **Starting Point**

[35] When I look at what the starting point sentence should be for you, against those cases and against the factors that I have identified, I have regard to the need for consistency with other cases but also to have regard to the combination of factors here, especially those involved in the second incident which I regard as somewhat worse than the first.

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<sup>1</sup> *Parker v R* [2015] NZHC 81

<sup>2</sup> *Joblin v R* [2011] NZCA 585

<sup>3</sup> *Winn* HC Auckland, CRI-2009-090-012003, 11 February 2011

[36] I also have regard to the purposes of sentencing in this case which are primarily to denounce this sort of conduct and this sort of predatory behaviour towards a vulnerable member of our community.

[37] Having regard to all of those factors and the cases that I have referred to, I fix a starting point in this case of three years six months' imprisonment. I find that the Crown's initial suggestion of four to five years is inappropriate and too high having regard to the comparable cases.

### **Uplift for Previous Convictions**

[38] There has been some discussion of whether there should be any uplift of that point having regard to your previous convictions.

[39] Your previous convictions are serious and concerning but your counsel has urged me to put those convictions into perspective, particularly as you were 15 years old when some of the more serious convictions were incurred. They were convictions for aggravated robbery, assault with intent to injure, burglary, and another aggravated robbery. You received sentences of three years' imprisonment for the last of the aggravated robberies and aggravated assault. You had previously received imprisonment with release conditions when you were younger. You have more recently incurred other convictions for assault, wilful damage, breach of release conditions and escaping custody.

[40] I regard some uplift as being required to reflect both the seriousness of the previous convictions as they relate to your risk to the community when we look at the present offending, but also because it is clear that the penalties that were imposed previously, including release conditions that would have been designed to help you, did not deter you from offending in this way. But I agree with your counsel that any uplift needs to be moderated by the length of time since those convictions were incurred and your youth when they were incurred.

[41] For those reasons the uplift is required but I fix it at three months only. My overall starting point for all of this offending therefore is three years nine months' imprisonment.

### **Mitigation**

[42] I then have regard to the matters that have been raised in mitigation on your behalf. I have read your letter. I have read [your partner]'s letter. I have read the reference that came from the Koha Shed which you assisted when you were on bail.

[43] I also have regard to the pre-sentence report which amongst other things said that you had moved away from some of the more negative influences in your life which I appreciate would take a great deal of courage.

[44] There are matters in your letter which really cause me concern, particularly when I have a look at the MIRP programme you undertook.

[45] The matters that are of concern to me are the way in which you deny and continue to deny responsibility for this offending and suggest that this was a failed drug deal. The words in your letter are that you "can only assume [Carl Traviss] gave untrue evidence to make himself feel better having grown hate towards you for making profitable gains of his addiction and seeing you in a better off position". This is a complete misrepresentation of what happened and why.

[46] When I look at the MIRP programme that you have provided me, the feedback on the very first line is something I want you to reflect on. It says that what you were doing well on that programme and were accepting full responsibility for past behaviours. Your letter tells me that you have not accepted full responsibility for past behaviours.

[47] But that is not all that can be said about you because I hear what [your partner] said and I have also particularly had regard to what was said by the Koha Shed administration team.

[48] I am also encouraged by the pre-sentence report where you say that you are interested in attending programmes that could assist you with reconnecting to your iwi, Ngapuhi, and to your taha Māori. Programmes will be available for you to try and do that and I hope you take advantage of them. It does at least tell me that there is a pro-social element to you.

[49] I hope this is the last time you come before the Court for behaving in this way and I do not regard that as just blind hope or an exercise in blind faith.

[50] Your counsel asks that there be a reduction to take into account the period spent on electronic bail and it is proper I do that. Usually it is not much of a discount or it is a discount that is tempered by the fact that you were not in custody at the time. It is not the same as being in jail. But you did, as I assess it, make very good use of your time and demonstrate that there is another side to you and that has led me to two conclusions.

[51] The first is I should discount the sentence for those factors which I propose to do on a month to month basis. In other words the four months that you usefully spent in the community I propose to deduct from the three years nine months that I got to.

[52] Secondly, I had given consideration to whether I ought to be imposing a minimum term of imprisonment for this offending given your previous convictions, your risk to the community and your failure to take responsibility for your offending. But I think the positive things that are being said about you leave me in a position that it is better the Parole Board assess your risk and the steps that you can take to be a somewhat more constructive member of the community. So I am not going to impose a minimum term, I am going to leave that for the Parole Board.

[53] But I also think if you are to true to the MIRP programme you need to be completely honest. The starting point is taking responsibility for your offending. I find that your letter to me does not do that and that is something that I think is relevant to your risk and is something the Parole Board will want to assess.

## **End Sentence**

[54] The sentence that I impose therefore on what I regard as the lead charge, which is charge two, of demanding with menaces, is three years five months' imprisonment.

[55] On charge one I impose two years six months' imprisonment concurrently so the overall sentence is three years five months' imprisonment.

[56] Please make good use of your time. Seek out programmes that can help you, particularly if you mean it about reconnecting with your iwi and taha Māori. I suspect that is a constructive way in which you can build a better future for yourself.

LC Rowe  
District Court Judge