

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

**IN THE DISTRICT COURT
AT DUNEDIN**

**CRI-2016-012-001644
CRI-2016-012-002450
[2017] NZDC 6005**

THE QUEEN

v

JEREMY MARK CHING

Hearing: 21 March 2017
Appearances: R D Smith for the Crown
A J Stevens for the Defendant
Judgment: 21 March 2017

NOTES OF JUDGE K J PHILLIPS ON SENTENCING

[1] Mr Ching, you are before me for sentence. I note at the outset that I understand that you are in Invercargill. I am sentencing you in the Dunedin Court. You are appearing via AVL which is not the happiest of ways for sentencing to be completed. You are represented by Mrs Stevens. Mr Smith represents the Crown.

[2] I have been assisted by both counsels' submissions that were originally put together for the purposes of the sentencing indication. I have read the submissions and I have heard from both counsel today. Both say a lot of things that I agree with. I note what they have told me.

[3] In the end the charges must be considered carefully and in light of the summary of facts that relate to each of the charges. You have after an adjournment, accepted that you are to be sentenced in accordance with the summary of facts.

[4] The first charge is a charge that you on 28 June 2016 with intent to injure wounded [the victim]. It appears that the day before that occurred, you had rented a room to [the victim] at your property. It appears that there were issues the following day, where you were accusing the victim of stealing an air rifle. It went to the extent of where the victim decided he would move out of the room. He told you that he did not want the room anymore. That certainly did not impress you at all.

[5] The victim was moving some of his equipment from his room, including a whiskey still. He was carrying that as he walked down the stairs towards his car. He was confronted by you carrying a hunting knife. You made threats to stab him. There was an argument and then there were four thrusts made by you with the knife cutting the fabric of a jacket the victim was wearing. The fifth thrust cut through the jacket and went into his left shoulder. As I understand it it was about 2.5 centimetres long and 8 millimetres deep. Mrs Stevens says, "Not a serious cut," but it was to the man's upper shoulder. I think it would be serious enough. It happened with a knife and has caused him difficulties. He went to the nearby police station. You denied that the stabbing had occurred.

[6] Earlier you had, on 30 June, been walking down a road in Mosgiel. At about 11.15 am, the victim was walking along. All of a sudden, when you came up to him, without warning, you produced and presented a knife at the victim. You were pushing the knife backwards and forwards and towards him. In the direction of the victim. You were telling the victim to leave the property. He left and called the police.

[7] The victim impact statements describe the impact of this type of offending. The victim of the wounding charge, who had rented the room, said it was a chance meeting that day. He has become very anxious and is on edge. He has had to buy a new jacket and t-shirt. He is worried about retribution. He carries a permanent scar on his arm.

[8] The victim impact statement in relation to the person you presented a knife at earlier in the street is to the point of effect that he now feels unsafe walking around Mosgiel. He is also scared about repercussions.

[9] You have prior convictions for violence in 2014 – assault with a weapon. You have other matters involving a knife. I think overall there are some prior four or five convictions back to 2003 and up to 2009 involving possession of knives, weapons and similar such matters. It is clear you are a recidivist shoplifter. There are 13 breaches of community detention on your history.

[10] I note that restorative justice could not take place. I note also that I could not get an emotional harm reparation report as there has been no contact from the victim. You have no surplus funds anyway.

[11] The pre-sentence report notes your significant history; your inability to decide problems to a satisfactory level and in the right direction. I note that your principal argument is that you use threats of violence rather than actual violence. That the offensive weapon charge arose because you were supporting a friend. You had no intention to stab the victim at all. You just wanted to frighten him. You certainly succeeded in doing that.

[12] In relation to the wounding, you thought the victim had stolen from you and that he was going to return the next day and steal other property. You also say that you were being threatened by him. You say you used the knife to protect yourself.

[13] It is clear that you are a sickness beneficiary without disposal income. Enough money to live on only.

[14] Both counsel will agree here that the tariff decision *Nuku v R*¹ is to be used for sentencing. The point that needs to be made (as it was by Mr Smith) is that the charge you face is under s 182 Crimes Act 1961 of wounding, carries an extra two years in its maximum sentence over injuring with intent to injure. The banding is to be looked at in that regard.

[15] Mr Smith submits the use of a weapon; the nature of the weapon (a knife, it cuts); and the victim was vulnerable in that he was carrying a still and had his hands full.

¹ *Nuku v R* [2012] NZCA 584, [2013] 2 NZLR 39

[16] A number of cases are discussed by the Crown. They are used to arrive at a starting point submission to me of two years to two years six months. There is an uplift for the possession of the offensive weapon of six months. Your prior convictions of violence, an uplift of two months. The fact you were on sentence, a further uplift of two months. The Crown's position is overall that the only credit you can get is for the guilty plea of 25 percent.

[17] Mrs Stevens for you says the victim was not vulnerable. There were issues raised but there is no longer a disputed facts matter. She puts it at the bottom of band 2 of *Nuku*, the extent of the wound being relatively minor; that the victim was able to leave at any point. Overall she submits that a starting point for that offending with the knife and the wounding, would be 18 months' imprisonment. She accepts a six month uplift for the possession of the offensive weapon. Overall a total two year starting point with a guilty plea credit of 25 percent.

[18] As I said I have considered the matters that have been raised.

[19] I have duties under the Sentencing Act 2002 Mr Ching. I, in the terms of s 7 in sentencing you, must view the purposes are to hold you accountable; promote a sense of responsibility; take into account the interests of the victim; denunciation and deterrence stand high in this sentencing. Protection of the community does as well. There is no doubt that to bring a knife into an argument or discussion and then to thrust it five times, finally causing the injury on the fifth thrust, is serious offending. I need to take into account the issues of consistency.

[20] I consider that the sentence starting with the wounding, with a starting point is two years' imprisonment. I acknowledge at once what Mrs Stevens has said to me about what you have done and what you have been doing prior to these events occurring. I have read your letter. I note how disappointed in yourself you were, realising you had let all that "hard yacker", as you say, disappear. You have not, quite obviously because you are seized today on remand in prison with the opportunity to advantage yourself as well. I look at how you can draw. You have an amazing talent Mr Ching. You need (I think Mrs Stevens is saying to me) to promote it, develop it. I am quite sure that you can do all of those things. There you

bring to life that man's face. I give you credit for those matters. Mr Smith has seen them. I am sure he agrees with me that you have got these talents that you hide with your criminality.

[21] So, in the end, we come to two years plus six months for the possession of an offensive weapon. I think the further six months takes into account totality in my view. I agree with the Crown. I look at your prior history of violent offending. It needs to be brought home to you I think, you cannot bring violence into such discussions. A merciful uplift is two months after hearing from Mrs Stevens. I was intending to make it more. That means that the overall position, prior to credits, is two years and eight months. I give you full credit for your guilty plea.

[22] On the charge of wounding with intent to injure I send you to prison on that charge for a total period of two years.

[23] I impose standard release conditions for a period of six months from sentence expiry date and I also impose special release conditions that you will complete psychologist assessments, continuing counselling or treatment to the satisfaction of a probation officer and you will live where directed. Other than that there are no conditions.

[24] On the charge of possession of the offensive weapon, six months, but that is served concurrently.

[25] Spend the time developing those skills. People who have an ability in art as you do amaze me.

K J Phillips
District Court Judge