

**IN THE DISTRICT COURT
AT PAPA KURA**

**CRI-2016-019-001078
[2017] NZDC 10489**

THE QUEEN

v

HAKI HARRIS

Hearing: 18 May 2017
Appearances: C Piho for the Crown
P Pati for the Defendant
Judgment: 18 May 2017

NOTES OF JUDGE G T WINTER ON SENTENCING

[1] The sentencing of Mr Harris for the aggravated robbery charge he pleaded guilty to under CRN ending 9494 is complicated by a curial process through the Courts that I first have to describe. That curial process can be described as follows:

| Date | Action |
|-------------------|------------------------------------------------------------------------------------------------|
| March 2015 | Arson offence committed |
| 24 September 2015 | Aggravated robbery committed |
| 23 February 2016 | Not guilty plea entered on the aggravated robbery |
| 16 May 2016 | Defendant seeks a sentencing indication on the arson only. My learned sister [Judge] Clark did |

not include the aggravated robbery in her indication judgment.

18 August 2016

Following acceptance of the sentence indication defendant sentenced on the arson and other minor matters to 10 months' home detention which will expire on 18 June 2017.

7 November 2016

The defendant pleads guilty to the aggravated robbery charge.

25 January 2017

The sentence on the aggravated robbery is postponed as there was no transcript received from the Hamilton District Court on the arson matter.

31 January 2017

A similar postponement required because no transcript provided.

18 May 2017

Sentenced on the aggravated robbery

[2] The Sentencing Act 2002 has within it strict obligations upon counsel when seeking a sentence indication. One of those obligations is to disclose to the presiding Judge at the sentencing indication any outstanding charges that the defendant currently faces. Whether in this instance a device was deployed to achieve a more lenient sentence by taking advantage of non-disclosure of the aggravated robbery charge at the time [Judge] Clark gave her indication on the arson, or whether it was simply an administrative oversight I do not know. However, an unsatisfactory position has been reached where the Court must now sentence Mr Harris, bearing in mind the purposes and principles of the Sentencing Act on an aggravated robbery that effectively straddles two separate curial processes in the Hamilton and now Manukau and Papakura Courts.

[3] In preparing for this sentence I had reflected upon the need not just to look at the principles of deterrence, denunciation and holding an offender to account for offending, but importantly the principles of totality and the need to impose a sentence that reflects the least restrictive option upon him. Initially I had thought that the only way to achieve a just sentence would be for me to effectively stand in the shoes of [Judge] Clark and recommence the sentencing exercise from 16 May 2016 as if the aggravated robbery was included in that process.

[4] However, I have determined that is not the correct approach for these reasons. The sentence indication on the arson resulted in a 10 month sentence of home detention, which this defendant has served without breach, and which sentence will now expire in approximately one month's time on 18 June. The aggravated robbery was a distinct and separate offence from the arson. He needs to be sentenced as if he is being sentenced on the aggravated robbery alone. To combine, in an effort at achieving totality, the process historically adopted, would, in my view, not achieve a recognition of all the principles and purposes of the Sentencing Act at play for the sentencing of Mr Harris.

[5] I rather have formed the view that by keeping the two sentencing processes quite distinct that the full purposes and principles of the Sentencing Act can be respected. An important feature of any sentencing is parity of sentencing. This aggravated robbery was not committed by Mr Harris alone. He was accompanied in the event by Cedric Walker. Mr Walker received a sentence of eight months' home detention. By keeping the sentencing processes separate I can also adhere to the need to respect parity. I accordingly proceed upon that basis.

[6] As to the facts, because of time limitation I cannot read them in full in open Court but I will ensure that a copy of the summary of facts is attached to the sentencing remarks. The aggravated robbery involved the two offenders arranging to meet a tattoo artist at the [a motel]. When the group met at the motel the tattoo artist, thinking that he was going there to perform his skill, was confronted by the lead offender who was Mr Walker. That resulted in the complainant losing his cellphone, tattoo kit and some money. The value of the tattoo kit was approximately \$400, the value of the cellphone approximately \$800 and the total including the cash came to

\$1200. The Crown concede that Mr Walker was more involved in this crime than Mr Harris.

[7] The aggravating factors of the offending include a degree of planning and premeditation in that the offenders arranged to meet the victim at night in a motel room for tattoo work. The offender already knew the victim because previous tattoo work had been done, and on arrival at the scene it was clear that the complainant was made to believe that there were weapons involved. This degree of effort by the two offenders indicates a moderate degree of premeditation and planning to rob the complainant.

[8] As to violence Mr Walker, the lead offender, pulled the victim into him and poked him in the side of the ribs with what the victim believed to be a gun. I indicate immediately it was not. However, shortly after that demonstration by Mr Walker the victim's tattoo kit and cellphone were taken and then there were further threats of taking the complainant to a pad, in other words indicating that he was going to be at the very least "roughed up". Those actions show a degree of violence. The impact on the victim is clear from his statement where he describes the incident as soul destroying. He has needed to see a counsellor to improve his mental health. The tattoo kit and cellphone were valued at \$400 and \$800 respectively. Neither item was recovered.

[9] The Crown and the defence are largely in agreement about the appropriate starting point drawn as it is from the guideline decision of *R v Mako* [2000] 2 NZLR 170. The starting point adopted for the co-offender was two years and six months. The Crown have submitted that Mr Harris' culpability is slightly lower than that of Mr Walker, the co-offender, as it was Mr Walker that actually employed the violence associated with the event. However, I keep in mind it was Mr Harris who had prior contact with the tattoo artist. I am satisfied that all things considered a starting point of two years and two months would reflect the difference in involvement in the offending.

[10] There has to be an uplift in respect of an unrelated motor vehicle theft charge that has accompanied the more serious aggravated robbery. I speak then of the

matter ending in CRN 26184 where a vehicle was effectively taken overnight, recovered the next morning undamaged. That was a modest piece of offending that might see on a totality adjusted basis another two months added taking the total to 28 months.

[11] The question then that the Court has to consider is the applicability of a youth discount. I have reminded myself of the decision of *Churchwood v R* but as against that in *Marko* the Court of Appeal discussing discounts for youth at paragraph 65 and 66 indicates that while an uplift would usually be appropriate to account for Mr Harris' criminal history in this instance it should be offset by his relative youth as he was only 20 years old at the time of the offending. That would leave then an end sentence of imprisonment of 28 months. If I take into account the issue of remorse I am satisfied that remorse coupled with a very low discount for plea entered on the eve of trial, would see the matter reach a 24 month sentence of imprisonment.

[12] That then leaves me with consideration of what to do at the intersect of the arson sentence and the prospect of home detention for the aggravated robbery. At present Mr Harris is serving home detention. He is on a sentence of 10 months in respect of the arson imposed on 18 August last year. He has approximately a month left. He has served that sentence well I am advised by Madam Probation Officer. His co-offender received a sentence of eight months' home detention. Parity would mean that on the aggravated robbery alone I should similarly sentence Mr Harris. I am satisfied that he has demonstrated that he is amendable to a home detention sentence. I am satisfied that such a sentence would meet the purposes and principles of the Sentencing Act, and accordingly I am satisfied that an end sentence of home detention aggravated robbery is appropriate.

[13] I adopt a very practical approach to his existing sentence on the arson where it meets my proposed sentence on the aggravated robbery. Accordingly I have determined that on the application for review that has been filed, that is an application to review the sentence on the arson, that not being opposed I will grant it. The original sentence is cancelled and it is substituted by a concurrent sentence, that is concurrent with the sentence imposed on the aggravated robbery.

[14] I have determined that to meet the difference between the two offenders, Mr Harris having the motor vehicle charge as well and the fact that he has about a month left to serve on his arson that the appropriate sentence of home detention should therefore be 12 months. I realise that is the maximum but in achieving that sentence I am satisfied that I have met the need for consistency, parity, deterrence yet also respecting the principles of totality and the need to impose the least restrictive option.

[15] There will be a need for post-release conditions and that will be 12 months.

G T Winter
District Court Judge