

**IN THE DISTRICT COURT
AT NAPIER**

**CRI-2017-020-000160
CRI-2016-020-001665
[2017] NZDC 10523**

THE QUEEN

v

TUTURUKITOMARAMATANGA TANGAROA WALFORD

Hearing: 19 May 2017

Appearances: C R Stuart for the Crown
W R Hawkins for the Defendant

Judgment: 19 May 2017

NOTES OF JUDGE A JADEANE ON SENTENCING

[1] Mr Walford has just turned 19 years of age. He is now before the Court for sentence on a charge of robbery. He is further for re-sentence on an earlier charge of robbery and he has in the intervening period also been found in possession of an offensive weapon. The relevant narrative, however, goes back rather further than either of these two offences.

[2] On 13 October 2015, Mr Walford, then 17 years of age, was sentenced to 100 hours of community work after a charge of robbery of a motorcycle was reduced to a charge of theft. Almost a year to the day after that, that sentence of community work was cancelled when he was convicted of a further charge of robbery. The first-mentioned charge had been reduced to theft and the sentence imposed for it was quite understandable, but in October 2016 Mr Walford was back before the Court for robbery involving clothing and a personal stereo item. The sentence of community

work which had not properly been carried out was increased to one of 180 hours and Mr Walford was given a first strike warning, the effect of which was that if he committed any further robbery he would be sentenced and if sentenced to imprisonment would have to serve the whole of the imprisonment term without parole.

[3] At the time of this strike offence, he was also dealt with for other offending which had occurred between the 2015 sentence and the 2016 sentence including dangerous driving, cannabis possession, assaulting police, escaping from custody, drunk and disqualified and dangerous driving, breach of community work, breach of supervision and breaches of bail. That sort of miscellany of offending gives a very clear impression of the standard of Mr Walford's citizenship at that time.

[4] The sentence imposed for the robbery offence was a lenient one and the obvious risks implicit in it would have been weighed against Mr Walford's youth and hopes that he might be reformed if the opportunity was given to him. Mr Walford's reaction to that is exactly what a sceptic would have predicted. He breached the community work which was imposed for the robbery, he ignored the supervision sentence and on 26 November last year, barely two months after the sentence for robbery had been imposed, he was found in public armed with an offensive weapon in the form of a pair of scissors. While on Court bail for that, he then followed and beset another young man, robbing him of his watch under threat that he was carrying a knife and would produce it if the other young man did not hand over his property.

[5] The circumstances invoke para (59) in the guideline case of *R v Mako*.¹ This latest robbery involved a measure of premeditation and planning, there were threats and intimidation and there was a second party present and encouraging Mr Walford; though the charge, I remind myself, is robbery and not aggravated robbery. The view I have reached concerning the most recent robbery is that it requires a starting point of two years' imprisonment.

¹ *R v Mako* [2000] 2 NZLR 170

[6] Then there is a request for re-sentencing. I allow it only insofar as the earlier robbery is concerned. That offending on its own would have called for a starting point of 18 months' imprisonment, reduced by 25 percent for each of the defendant's guilty plea to it and his youth at that time. That earlier robbery would, accordingly, now that a sentence of imprisonment needs necessarily to be determined, be a sentence of nine months' imprisonment.

[7] Finally, there is the defiance of the earlier sentences and the decision to re-offend by carrying an offensive weapon while on a sentence for an earlier charge of robbery. An uplift for that of three months' imprisonment would be required. I refrain from any uplift for the previous robbery and theft matters so as to avoid double-counting around re-sentencing, but the re-sentencing must follow in respect of the earlier robbery charge.

[8] I decline on the most recent robbery to make any allowance for youth against that offending. That has already been factored into the re-sentencing exercise and a further allowance would be inappropriate for reasons articulated in *R v Churchward*² at para (84), robbery is an inherently dangerous and society-threatening activity and the defendant is obviously inclined to commit robberies as and when the whim takes him. Society's disapproval for it must be demonstrated. There has been an early guilty plea.

[9] In the circumstances, all matters taken into account and those uplifts factored in:

- (a) For the present robbery a sentence of two years and three months' imprisonment is imposed.
- (b) All other sentences are concurrent given the structure of the sentence, namely:
 - (i) three months' imprisonment for the most recent possession of offensive weapon;

² *R v Churchward* CA 439/05, 2 March 2006

- (ii) nine months' concurrently on the re-sentencing matter for the robbery only;
- (iii) the community work and supervision breaches are met with conviction and discharge and cancellation of the balance of the sentence; and
- (iv) he is convicted and discharged for the shoplifting charge.

[10] The effective sentence is one of two years and three months' imprisonment.

A J Adeane
District Court Judge