

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

**IN THE DISTRICT COURT
AT AUCKLAND**

**CRI-2016-004-001714
THREE STRIKES WARNING
[2017] NZDC 10614**

THE QUEEN

v

[PITA NATANA]

Hearing: 22 May 2017

Appearances: H Steele for the Crown
K Trotter for the Defendant

Judgment: 22 May 2017

NOTES OF JUDGE E M THOMAS ON SENTENCING

- A. Sentenced to three years imprisonment.**
 - B. Three strikes warning (Stage 1) given.**
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REASONS

Starting point

[1] Mr [Natana], you have pleaded guilty to a number of charges. The most serious of those as you know are the ones which relate to events on 6 September last year. You at the time were involved in a relationship with Ms [Terere]. She herself faces charges as a result of what happened on this particular occasion.

[2] She had been selling sexual services to the victim, A. They arranged on this particular occasion to meet again. He purchased some food at McDonald's for her on the way back to the home that she shared with you. Upon arrival at home she was upset at him not providing more food for her. The two of them got into a discussion about how much money he may or may not have had.

[3] You were home. You came out and you got involved at that point. A had decided to leave. You came out when Ms [Terere] called out to you and you started to attack him. You punched him to the face numerous times and as you did so Ms [Terere] demanded property from him. She demanded his phone, his keys, his wallet. He attempted to reason with you and with her. But she would not accept that and began punching him herself as well.

[4] Eventually A handed over some property including a cap, a wallet, his phone and his car keys. With his wallet he handed over his driver's licence, an ASB Bank card and some money. And all the personal jewellery that he had on him. Ms [Terere] demanded that he hand over the PIN to the bank card. She left in his vehicle to go and try to get some money out of the account. Your job was to detain him. To make sure that A did not escape and to make sure that A was not able to obtain assistance or raise the alarm.

[5] Ms [Terere] returned. She had been unable to get any money out of the account. She made threats to A when he said that that was because there was no money in his account. She started to punch him again. She demanded that he remove his clothing. Then together you and she bound him and blindfolded him.

The two of you took him to his own vehicle and put him in the boot. You assaulted him, both of you, any time that he spoke. The two of you then drove him out of town. You told him to get out of the vehicle, climb a fence and you went with him.

[6] You threatened his family if he were to get the police involved. You ordered him to lie down. Once on the ground you kicked him repeatedly to the head and body. He pretended to pass out. You fell for that and you left. He must have been absolutely terrified. He must have thought “today is the day.”

Starting point

[7] There is no tariff case for kidnapping. By that I mean there is no case which sets out what you get for kidnapping someone or detaining someone and that is because the circumstances are so varied. There is a tariff case for aggravated robbery which is what you and Ms [Terere] did while you both assaulted him at your house and took his property.

[8] The Court of Appeal has looked at sentences for that kind of offending in a case called *R v Mako*.¹ This sort of incident though does not fit neatly into any of those categories. It is higher than a street robbery. It is different from a dairy robbery or a service station robbery. It has some similarities to the robbery of a taxi driver because while a taxi driver is being robbed he or she is being detained in their own vehicle. What makes this worse than the robbery of a taxi driver however is that A was not in his vehicle. He was not on his turf. He was holed up inside your house. He had absolutely no way of raising the alarm. He had absolutely no way of escaping, and he had absolutely no idea of what was going to happen.

[9] As if that was not bad enough you then kidnapped him in the more well known sense of putting him in the boot of his own car and driving him out to a secluded area. As if that was not enough you then assaulted him there.

[10] The Crown in reference to a number of cases suggest a starting point for that particular incident of five years' imprisonment. It is very hard to argue with that.

¹ *R v Mako* [2000] 2 NZLR 170 (CA)

You do not argue with that and I adopt that looking at all four of those offences all together.

[11] I need to look at your other offending. Four times you have breached the protection order against Ms [Terere]. You have assaulted her repeatedly and violently. You face a charge of assault with intent to injure, two of male assaults female, four of breaching the protection order and one of threatening to kill. You have punched her and otherwise struck her on three separate occasions. But the most serious aspects, and you have done it more than once, is restricting her breathing.

[12] You have done that in different ways. But the most sinister ones of course are those incidents that involve choking. You do not need to choke someone to the point where they are passing out or dying. But there is a distressing and disturbing connection between that kind of act and the exertion of power and the exertion of fear and the exertion of terror. There are of course potentially very serious consequences from holding someone in that way. But quite apart from those serious physical consequences, the psychological ones are deep. It is for those reasons there will always be a very strong reaction from a Court if you hold or attack anyone in that way.

[13] For those instances of violence that you perpetrated against Ms [Terere], if I was sentencing you on those charges on their own, that would be worth a starting point of two years' imprisonment.

[14] You have also pleaded guilty to burglary. You broke into a woman's home while she was in the back yard. You went inside and you helped yourself to her property and you left. Now you break into someone's house when they are not home and there is no chance of any confrontation and you take some property, you get a starting point of somewhere upwards of 14 or 15 months' imprisonment. The moment there is any realistic chance of a confrontation with the owner that starts rising quite rapidly.

[15] Again, if I was sentencing you just for that burglary on its own that would be worth 18 months' imprisonment. Imagine what that woman must now feel knowing

that at any time, anyone can walk into her house whether she is home or whether she is not. Imagine how she feels knowing that her home is now no longer safe and never will she be safe in her own home. That is what you took from her.

[16] You have also failed on one occasion to answer your bail.

[17] So you can see that we are looking at some fairly significant prison terms. We do not just add one sentence to another sentence to another though. That would result in a sentence that is too high and not fair to you. I need to stand back and look at something against all of the offending that is a little fairer. I take a starting point to reflect everything of six years' imprisonment.

Discounts

[18] You are a young man and you were at the time of this offending and I recognise that. I recognise the inability of the immature to make sensible decisions about certain things. I recognise also that you have got no previous convictions. All of that is worthy of a significant discount and I reduce the starting point to four years to reflect that.

[19] You have pleaded guilty and acknowledged that and you have done all of that early enough to get the maximum discount I can give you.

Result

[20] On each of the kidnapping and aggravated robbery charges I sentence you to three years' imprisonment. On each of the remaining charges I sentence you to 12 months. Those sentences are concurrent.

Three strikes warning

[21] Given your convictions now for kidnapping and aggravated robbery, you are subject to the three strikes law. I am going to give you a warning now for the consequences for you of another serious violence conviction. We will give you a notice in writing that sets out these consequences and which also identifies for you

which are the serious violence offences. If you are convicted of any serious violence offence other than murder, committed after this warning, and if you are sentenced to imprisonment for that offence then you will serve that term of imprisonment without parole or early release. If you are convicted of murder committed after this warning then you must be sentenced to life imprisonment. Again you would serve that without parole unless that would be manifestly unjust, in which case the sentencing Judge would impose a minimum period of imprisonment.

E M Thomas
District Court Judge