

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

**IN THE DISTRICT COURT
AT WAITAKERE**

**CRI-2015-004-001135
[2017] NZDC 10749**

NEW ZEALAND POLICE
Prosecutor

v

[APUTI AFAKASI]
Defendant

Hearing: 22 May 2017

Appearances: P Eastwood for the Prosecutor
G Gallagher for the Defendant

Judgment: 22 May 2017

NOTES OF JUDGE A C ROBERTS ON SENTENCING

[1] [Aputi Afakasi], you are for sentence today on charges and I will list these chronologically. 1 October 2012 driving while disqualified in its aggravated form, common assault. Your first appearance on this matter was 24 October 2012. You pleaded on 21 November 2012. Thereafter the offending continues. 19 November 2012, assault. 14 December 2012, breach community work. 27 May 2013, driving while disqualified again in aggravated form.

[2] 10 July 2014, breach of bail. 29 October 2014, as between that date and 2 February 2015 receiving a motor vehicle. 24 February 2015, breach bail. 7 April 2015, breach bail. Between 4 May and 22 May 2015, breach bail. 31 May 2015, driving while forbidden. 9 June 2015, false information. 8 June 2015, breach bail. 23 July 2015, false information. 4 September 2015, unlawful taking.

[3] This afternoon I have other matters more recent and some from some time ago put before me. 4 September 2015, breach bail and on 2 April 2017 resisting a police constable, possession of a methamphetamine pipe and driving whilst forbidden.

[4] It has been unending. How it could be the bail grants were extended you repeatedly when you reoffended and reoffended and reoffended is beyond me. Previous convictions include convictions for breach of sentence, breach of periodic detention December 1999, breach community work three as between March 2010 and June 2012. Convictions for violence, common assault. October 1999, assault with intent to injure and common assault in July 2009. Driving while disqualified, October 2000 and February 2001.

[5] An initial report was prepared and made available to the Court. That was dated 23 April. You were then 40 years of age. The initial recital relates to your failure to present at interview on 22 February. It was a bail condition. A letter was sent to your address prior to that time. Efforts were made to contact you by telephone and text message to no avail. You have been subject to a sentence of community work since July 2012. You have completed but 30 hours and there is a balance of 59 and a half hours today outstanding. You last attended on 18 August 2015. You did present on 25 January this year and arrange ostensibly to attend weekly but you have not done so. Imprisonment is the recommended sentence.

[6] I have looked at the various summaries of facts. There is no need in my mind to go over again the trifling ones amongst them. There is however an assault on your partner, perhaps not at the upper end when one considers these on a daily basis. You pushed her to the edge and she fell backwards and hit her head on the wall. The assault on the storekeeper was nasty. You had entered a shop with an associate. You had asked about the purchase of a bottle of Coke. You had left without purchase and kicked over a sign. The victim remonstrated with you. You pushed him into the glass window and punched him several times about the face and chest area.

[7] The driving while disqualifieds well they do not tend to draw much in the way of associated offending. As I indicated to Mr Eastwood when he was addressing me the receiving charge is not trifling. As between 28 October and 29 October 2014, a Ponsonby address in Sarsfield Street was burgled. Property was taken including two motor vehicles. Four days later a call is received from a wreckage yard where another person is trying to sell a Toyota. The police arranged to attend at the wreckage yard and meet with the seller. That vehicle was driven into Beasley Avenue and police stopped and arrested the driver. You were travelling in tandem. You were driving the black Audi, the vehicle had dealer's plates on it and that according to the charging document was worth over \$100,000. Of course, we have the regular breaches of bail that pepper your history since your first appearance. What I am endeavouring to labour is that all of the offending subsequent to that initial offending, the driving while disqualified and the assault, constitutes offending while on bail.

[8] There is another focus on a motor vehicle. In September of last year, another man asked you to work on his Holden motor vehicle. He was unable to get in contact with you and he had paid you \$400 to do work. He attended at your address to find that you had moved on and understandably he alerted the police. More recent offending really does not add much. You resisted a police officer after you were found driving a motor vehicle whilst forbidden. You were in possession of a pipe for smoking methamphetamine.

[9] Your counsel, Mr Eastwood, has drawn to my attention the fact that you have not previously served a prison sentence. I had seen the file that related to your bail application. I had read the similar letter that you addressed to me. You claim almost overnight enlightenment. You claim now that if you are given the opportunity you will be more responsible with your life choices. You claim now that you wish to return home so that you can assume a responsible role within your family.

[10] Your counsel, Mr Eastwood, urges me to construct a sentence that would enable you to serve it by way of home detention. He suggests too that drug and alcohol counselling is part and parcel of that sentence may have been of some merit and use. He asks me to have regard to the fact that your history of driving without a

licence might possibly have afforded you the opportunity to be processed without disqualification. I am not enthusiastic about the submission. If I were to do that a sentence of community work would need to be imposed but you do not like community work and the chances we would have collectively of you serving that sentence are tantamount to non-existent.

[11] I accept without reservation the materials being put before me that you had a daughter with a serious medical complaint but that is something you should have given more attention to while you were running riot within the community, because that is exactly what you were doing. I have noted too that you have made a bail application to Judge Johns on 19 April and that was refused. You made a second application that came before Judge Jelas on the basis of an electronically-monitored remand.

[12] Judge Jelas did note within her determination to decline you that indulgence that, "Imprisonment is the start point and likely end sentence." You were seen then as unsuited to e-bail given your history of breaching Court orders. The e-bail constraints are not far removed from home detention. How on earth could we seek or hope for compliance with your atrocious record of disregarding Court orders. For the greater part of the last four years you have sought to position yourself but one step ahead of the authorities. It was not a situation either where you kept your head down or stayed out of trouble. It seems to have been business as usual.

[13] As I have said, the offending has been unrelenting. You were constantly on the lookout for opportunity to generate some income by dishonest means. You are a man with infinite excuses. The letter you wrote me is in exactly the same terms as the letter you wrote to the earlier Judges suggesting now that the custodial remand has been a wake up for you. You imposed the greater part of this delay on a system that regrettably allowed you to continue stringing these things along. Time has well and truly caught up with you.

[14] A community-based sentence despite the pleadings on your behalf by your counsel, Mr Eastwood, is quite out of the question. You had the opportunity since the beginning of the year to craft for yourself perhaps a more responsible image

dealing with sentences but you could not bring yourself to the next step to actually attend community work. The issue today is the length of the prison sentence. For the purpose of sentence construction, I have made groupings.

[15] I deal with the driving matters. I count two prior like convictions. This offence is not a trifle, disqualification orders are the only means to keep persons for the moment unfit to drive motor vehicles off the roadway. For these your third and fourth conviction I have a sentence of nine months' imprisonment. It is a significantly aggravating factor that the offending on 27 May 2013 was committed while you were on bail for like offending.

[16] The violent offending. You have a history but nothing of consequence in the past eight years. I focus on the assault on the shopkeeper. This was an unprovoked attack on a man who had challenged you. You had, he believed, taken your associate and taken various drinks without payment and you kicked over a sign. For his trouble, he was struck repeatedly in the head. The incidents of domestic violence involved a push. There is no victim impact statement. I am aware that your partner was happy to live with you thereafter and I am told she is here present in Court.

[17] Were you to be sentenced to home detention you would be as of necessity under the same roof as her. Here I have a six month sentence on the assault on the shopkeeper. A four month sentence for the assault on your wife but that sentence runs concurrently with the other. Dishonesty offending will include the receiving and the unlawful taking. You cannot help yourself. You are well connected and very close to the burglar if you are not the burglar. Within four days of a significant burglary you and another are in possession of the vehicles taken. To many persons the motor vehicle they own is their most valuable asset aside from their house property.

[18] I do recognise that you have no seriously compromising convictions in this regard. Weighing all matters and focusing on the receiving charge, I have a prison sentence of nine months' imprisonment. That will be elevated by three months to accommodate the unlawful taking.

[19] With those determinations, I have a sentence already of two years and three months. I come now to the breaches of Court orders. The sentence of community work was a modest one indeed, 90 hours. That was imposed on 26 July 2012. Close to 60 hours were unfulfilled. That community work sentence I will cancel and remit the outstanding hours. The sentence was not an optional one. It had to be performed and you have a history of breach. You know the rules.

[20] There will be a further six months' elevation to accommodate the breach and the most recent offending. That is to say, breach of bail, the resisting of the police constable, the possession of the pipe, the driving whilst forbidden is a fines only matter.

[21] To accommodate totality I will discount the extent of that elevation by a period of two months. The five breaches of bail are evidence in themselves of the delays you imposed on this process. You were able to protract these matters to the point that four and a half years later you are being brought to account for offending on 1 October. I do not in the circumstances consider that any concession to reflect plea is therefore appropriate.

[22] Bail breaches would probably justify a further six months on top of the calculations that I have already made. If a plea concession was afforded you, it might only serve to cancel out that same elevation. The result would be the same. Now, by my figures there is something like a two year, nine month sentence. To accommodate the principle of totality I will further reduce that to two years and six months. The end sentence is two years and six months. The issue of home detention does not arise.

A C Roberts
District Court Judge