

**IN THE DISTRICT COURT
AT NORTH SHORE**

**CRI-2016-044-004087
[2017] NZDC 5350**

NEW ZEALAND POLICE
Prosecutor

v

WADE JOHN KAKE
Defendant

Hearing: 15 March 2017
Appearances: G Qaisrani for the Prosecutor
P Syddall for the Defendant
Judgment: 15 March 2017

NOTES OF JUDGE P A CUNNINGHAM ON SENTENCING

[1] Wade John Kake appears for sentence today; he faces two charges of burglary, one on 31 July last year and the other on 22 September last year and an excess breath alcohol, which is a third and subsequent on 7 November last year and also driving while disqualified in relation to the same offence. He has also been charged with breaching his post detention conditions; that is failing to report following a sentence of home detention last year, the offence date being between 25 August and 29 September.

[2] The first burglary in time was of the [victim Service Station] in Whangaparaoa at 1.15 in the morning. The glass entrance door was broken, using a hammer. The store was shut.

[3] A number of packets of cigarettes and tobacco were stolen, said to have a value of \$2723. The cost to repair the glass doorway was \$5321.31 bringing the total amount of reparation to just over \$8000.

[4] The earlier burglary, on 31 July, was the [Retail victim] at Snells Beach and that was at 6.15 in the morning when the shop was shut. The method of entrance; smashing a glass pane in the entrance door, using a rock, and then smashing an internal door uplifting two television sets. The two television sets are said to be worth \$1600 but the damage to the two doors was three and a half thousand dollars.

[5] The excess breath alcohol charge was on 7 November when Mr Kake was driving a car on Hibiscus Coast Road. It would appear that a member of the public, who saw you driving erratically, contacted the police. You were located at the Orewa Youth Centre Skate Park, sitting in the driver's seat. Breath testing procedures were carried out producing a result of 1054 micrograms of alcohol per litre of breath, which is two and a half times, almost three times the Court threshold.

[6] You were a disqualified driver at the time so you are also charged with driving while disqualified, in the aggravated form; that is a third and subsequent occasion.

[7] You completed the detention part of a sentence of home detention which was imposed on 3 February 2016, but you failed to report between 11 and 25 August and also on 8, 15, 22 and 29 of September.

[8] You have a criminal history that runs to 12 pages and that includes six previous convictions for driving with excess breath or blood alcohol. You also have one previous conviction for burglary, two convictions in relation to motor vehicles; one unlawfully taking a motor vehicle and one unlawfully interfering with a motor vehicle. You have six shoplifting convictions so a previous history of dishonesty offending. You also have previous convictions for breaching community-based sentences, which are all relevant to the charges currently before the Court.

[9] Given the extent of the damage I have established an 18 months' starting point for the [victim] Service Station including that that was committed while you were on bail. For the other matters, an uplift of four months to reflect the fact that there are two burglaries, a starting point of 12 months for the excess breath alcohol, that involved both a high level and erratic driving which brought you to the attention of the public and then the police and three months for the fact that you have previous convictions for driving while disqualified. That adds up to 37 months and I have added an uplift of six months for your previous convictions which brings the sentence to 43 months.

[10] You are entitled to 25 percent off for your guilty pleas and in rounding that up the end sentence is 32 months or two years eight months in prison.

[11] The individual sentences will be as follows; on the burglary ending 5621 a sentence of two years and eight months' prison. On the other burglary charge ending 5620, one year and six months' prison. On the excess breath alcohol charge one year's prison plus you are subject to s 65 and also s 65(b) which means that you are indefinitely disqualified. This does not mean you can never get your licence back but when you do get it back you will be subject to a zero alcohol licence and you cannot apply for at least one year, which is a bit academic, as it turns out.

[12] That disqualification is to start from today. Six months' prison on that driving while disqualified charge and on the breach of post detention conditions you are convicted and discharged.

[13] Mr Kake applied for entry into the alcohol and other drug treatment Court in Waitakere. That was not entertained because of his address. However, it seems to be, in all other ways, that he is very much a suitable candidate for the alcohol and other drug treatment Court and in fact has had two, effectively siblings, who have been in that Court, one of whom I am aware did extremely well.

[14] He appears to be addicted to both alcohol, and more recently, methamphetamine. He has two children and advises, through his counsel that he has reached the point where he knows he has got to get some help for his addictions,

including that at least the two burglaries were motivated by the need to get money to buy methamphetamine.

[15] While you are in prison I hope that consideration will be given to you completing the drug treatment unit but as I have said to you earlier that probably will not be enough. The best pathway for you would be to transition into a residential treatment facility once you have completed your term of imprisonment or are released on parole.

[16] That is often difficult for people to contemplate, going into a residential treatment facility upon release, because understandably everybody just wants to get out of prison, but if you want to stop the cycle of committing offences and receiving a sentence then the best option for you is to follow that path.

[17] You have the example in your own family of one person who has taken full advantage of the treatment options open to her and she did fabulously well and you can do it too.

[18] There is the issue of reparation and there has been an offer by you to make reparation but given the size of it, which is something like \$14,000, it seems to me that it is not a viable option given that you are going to come out of prison with nothing and particularly if you go into a residential treatment facility, you are going to have little or no income for the time that you are in there. I decline to impose reparation.

[19] I also need to disqualify you for one year and one day commencing today on the driving while disqualified charge. All the best Mr Kake, you make the most of what opportunities are made available to you while you are serving the sentence.

P A Cunningham
District Court Judge