EDITORIAL NOTE: NO SUPPRESSION APPLIED.

IN THE DISTRICT COURT
AT ROTORUA

CRI-2016-063-002465
[2017] NZDC 11301

THE QUEEN

v

MIRU MARK

Hearing: 26 May 2017

Appearances: C Macklin for the Crown
B Foote for the Defendant

Judgment: 26 May 2017

NOTES OF JUDGE A J S SNELL ON SENTENCING

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[1] Mr Mark, you are for sentence today on two charges. The first is wounding with intent to cause grievous bodily harm under s 188(1) Crimes Act 1961. It is punishable by 14 years imprisonment. The second is a charge of attempting to pervert the course of justice under s 117 Crimes Act which has a maximum penalty of seven years imprisonment.

[2] The circumstances are as follows. You are the president of the Mangu Kaha gang and allegedly had an issue with another man. You were in a motor vehicle travelling with a prospect who gave evidence in the trial. You noticed a motorbike which you believed was being ridden by the person that you had an issue with. You made the decision to deliberately crash into that motorbike after chasing it in an effort to cause harm to the rider, thinking it was somebody that it was not. This was done on the bend of a corner in the road and has been documented extensively with photographs. The vehicle you were driving was extensively damaged. The

motorbike was run off the road and the victim was significantly injured. He was taken to hospital with a dislocated shoulder. This required surgery. He had a sprained ankle and a laceration to his back requiring stitches.

[3] Associates of yours attempted to remove evidence linking you to the scene and the next day, the other passenger in the motor vehicle was directed by you to go to the police station to falsely confess. He did confess, except that the police did not believe the confession and he was never charged for the offending. Subsequently, he recanted and actually gave evidence against you, saying that you had told him to take responsibility for being the driver so that you would not be the person being charged.

[4] You have 25 previous convictions since 2001. The most relevant of those is a manslaughter conviction for which you received a lengthy term of imprisonment in 2001, although you have also been a burglar with a weapon in 2011 and have a lot of non-compliance.

[5] In relation to this matter, I was not provided with a victim impact statement. The complainant in this matter is reluctant to talk to the police and one is not before the Court. Usually I would be assisted by a pre-sentence report, however in this instance, the report writer has indicated that you have said that you wish to challenge your conviction and that you politely declined to be involved in the preparation of a pre-sentence report and therefore, given your stance on this matter, I am not assisted at all by any pre-sentence report.

[6] I have received comprehensive submissions from the Crown on this matter. In essence, they submit that this offending falls within the lower end of band 2 of the decision of *R v Taueki*[1] and they submit a starting point of around six years imprisonment is appropriate with an uplift for the perverting the course of justice charge.

[7] Your counsel, in brief submissions, recognising your stance in matters, accepts that band 2 of *R v Taueki* is the appropriate identification of this offending. He submits that within band 2 of *R v Taueki*, the appropriate sentencing starting point

[1] *R v Taueki* [2005] 3 NZLR 372

is somewhere between five and six years, noting that band 2 of *R v Taueki* covers a period between five and 10 years. He submits an uplift for the perverting charge of three months is appropriate.

[8] When it comes to sentencing you, holding you accountable for your actions, promoting in you a sense of responsibility for what you have done, upholding the interests of the victim, and deterrence and denunciation are uppermost in my mind as appropriate in this case. Of course I have to sentence you consistently with appropriate sentencing levels for similar offending, and the least restrictive outcome as is appropriate in all the circumstances must be applied to you.

[9] As I have alluded to, the tariff case for wounding with intent to cause grievous bodily harm charges is the case of *R v Taueki.* That sets out three bands, depending on the number of aggravating features. Band 1 is three to six years, appropriate for offending involving lower level violence. Band 2 is five to 10 years, appropriate to grievous bodily harm offending featuring two or three aggravating features, and band 3, 9 to 14 years.

[10] I consider the aggravating features of this case are the use of the weapon. That is a significant aggravating feature because of the potential deadly consequences. A motor vehicle in circumstances where you are chasing a motorbike and running the motorbike off the road by driving into it, could easily be a deadly weapon. A motorcyclist is clearly far more vulnerable on the road.

[11] The second feature of this case is that significant injuries were caused. There is the dislocated shoulder, the surgery required in relation to that. There is the injury to the ankle and also the laceration to his back, which, as the evidence recorded, required him to be taken to Waikato Hospital because of concerns that it may have affected his spine. The outcome was that it had not.

[12] The third matter, in my view, is that there is a level of pre-meditation involved here because there was a chase for a very short period of time, the evidence at the trial was that you had clearly indicated to your passenger what you were going to do and so, while I accept that it was opportunist in that the situation did not arise

until you mistakenly identified the person on the motorbike, once you had identified them, you certainly made a clear choice to go and do what you did do. I agree with both of your counsel. This falls squarely within band 2 of *R v Taueki.*

[13] I have been referred to a number of cases. They include *R v Wilson*[2], the cases of *R v Clarke*[3], *Denney v R*[4], *R v Goyen*[5], and *R v Wallis*[6]. I have taken the time to read all of those cases and to consider the similarities and differences between those cases and your case. In my view, every case has to be dealt with on its own merits and yours will be. I consider that a starting point of five years, six months is appropriate within the band for this offending.

[14] I turn then to how that will be affected by the perverting the course of justice charge. It seems to me that the perverting the course of justice charge is a serious charge in its own right. It is blatant and was done with the deliberate intention of you avoiding responsibility for what is a very serious assault, which is the lead charge for sentencing today. I had reviewed the authorities in relation to the second charge and I consider that a starting point of anywhere between six and 18 months imprisonment would be appropriate. However, I must consider that in terms of totality and I would have settled on a starting point of 12 months imprisonment. However, when totality is taken into account, I simply uplift by six months the original starting point of five years, six months to one of six years.

[15] I turn then to any personal aggravating features. I have given careful consideration to your previous convictions, particularly the manslaughter conviction. However, in all of the circumstances, I consider that no uplift is appropriate in this case. That is by a narrow margin.

[16] I look to mitigating matters. I am not aware of any mitigating matters, nor has your counsel put forward any mitigating matters. There is a dearth of information from your counsel and from yourself because you did not complete the report and I understand the reasons that you have done that, but I cannot give you

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[2] *R v Wilson* [2015] NZHC 900
[3] *R v Clarke* HC Auckland CRI-2010-090-001184, 7 April 2011
[4] *Denney v R* [2017] NZCA 80
[5] *R v Goyen* CA285/05, 1 May 2006
[6] *R v Wallis* [2014] NZHC 2479

credit for something that I am not aware about or that has not been put in front of me. On that basis, there is no discount for personal mitigating factors because none have been put forward by either yourself or your counsel or been made aware to me. There is no discount available for a plea because you defended this matter and were found guilty at a Judge alone trial.

[17] In those circumstances, your sentence is one of six years imprisonment on the grievous bodily harm charge and it is one of six months imprisonment concurrently on the perverting the course of justice charge.

A J S Snell
District Court Judge