

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

**IN THE DISTRICT COURT
AT NAPIER**

**CRI-2016-020-002434
[2017] NZDC 12992**

**THE QUEEN
NEW ZEALAND POLICE**

v

DALLAS LYNDON ANARU OSBORNE

Hearing: 16 June 2017

Appearances: C Guillidge for the Crown
Sergeant M Lochrie for the Prosecutor New Zealand Police
M M Dixon for the Defendant

Judgment: 16 June 2017

NOTES OF JUDGE G A REA ON SENTENCING

[1] Mr Osborne, you are here for sentence on two separate incidents, really, and the second one is more serious than the first and was also committed while you were on bail for the first of those incidents. I intend to deal with the facts in that initially and then deal with the other matter that you are here for sentence on to follow.

[2] The complainant in this charge of wounding with intent to cause grievous bodily harm lives at an address in rural Hastings where he operates a business. You were also residing at the property in a separate shed approximately 30 metres away. There is a toilet/bathroom attached to the complainant's shed. Access to that is by way of the complainant's work area where a large number of concrete sculptures which he made were stored for sale.

[3] At about midday on 21 October last year, the complainant left his property and there was a trailer that he was unloading partially across the track within his work area. You have attempted to drive to this bathroom, but you found the way was partially blocked by his trailer, so your response was to drive into a number of these sculptures causing them to break. The complainant noticed the damage when he arrived home. He approached you and asked if you had seen anything, or knew anything about it and you told him that you were the one who had smashed the sculptures because of where he had positioned his trailer and how it impeded on your access to the bathroom.

[4] At about 8.30 am the following morning, the complainant was working in his yard and your wife arrived in a vehicle. She was also apparently wanting to drive to this bathroom area. She told the complainant to move his trailer. He told her that he was not prepared to do that because of what had happened the day before. Your wife then used the bathroom and left.

[5] At about 9 o'clock that morning, the complainant was joined by a friend of his who has subsequently become involved as well. At some point, you have arrived in your vehicle. You have approached the complainant who was sitting down outside the shed and you began swearing at him and asking him if he had a problem with you. The other man was inside the shed at the time. When the complainant replied that he did have a problem with you after what had occurred the day before, you threatened to smack him in the head.

[6] You have then struck out at him with a forceful blow which has hit him in the head and immediately rendered him unconscious. If that was not bad enough, Mr Osborne, once he hit the ground and was in no position to defend himself and he was unconscious, you then commenced repeatedly kicking him to the head and it is said that those kicks were forceful.

[7] There was interaction between you and the other man where there was an original allegation of assault against you; however, that has not been proceeded with.

[8] The complainant, who was knocked unconscious, was driven by his friend to Hawke's Bay Regional Hospital. He suffered a laceration five centimetres long to his ear that required stitches to close it. He suffered a black eye and bruising to his lips, face and forehead and he required a CT scan and monitoring due to the blows to his head.

[9] All of that occurred while you were on bail for another matter and you were subsequently convicted by a Judge of male assaults female and assault with intent to injure. The victim in the assault with intent to injure was a person called [name deleted – victim 1] and the victim in the male assaults female a person called [name deleted – victim 2].

[10] You have been involved in some reckless driving. You have then parked your vehicle on the opposite side of the road to where you have been operating and you turned your lights off. You got out and you walked across the road to where the first of the victims was standing beside a crashed vehicle and you have punched this person to the face and knocked him to the ground.

[11] That person's partner tried to pull you off the victim that you were attacking. You have grabbed her by the throat and squeezed tightly. She has tried to remove your hand from her throat by pulling on your arm and you have pulled the victim's arm away from yours. You have dragged her by the throat and pushed her into a tree and she has hit her head on the tree.

[12] The first victim had then stood up and you walked over to him again and you punched him in the face and knocked him to the ground.

[13] You then got in your vehicle and you took off.

[14] As I have said, you were found guilty at a defended hearing by another Judge on those facts. You also have previous convictions for violence that have to be taken into account.

[15] There is little argument, really, amongst the lawyers as to where the starting position is. This is obviously serious violence when you have knocked this man to the ground, he is unconscious and then you continue to kick out at his head. It is accepted that the starting point for that offending alone is a term of imprisonment of five years. You are entitled to a full discount from that for the fact that you have pleaded guilty and the discount is 25 percent which would leave the end sentence on the grievous bodily harm charge as one of three years and nine months' imprisonment.

[16] There needs to be a sentence of 12 months for the other offences. There is no deduction for them because you did not plead, you took it to a defended hearing. There needs to be an uplift there as well of six months to reflect the fact that you were on bail and your previous convictions which would make a starting point of 18 months. Overall, however, I consider that that is too high when the sentence is looked at in its totality and therefore on the balance of the offending, I consider that the appropriate sentence should be 12 months' imprisonment.

[17] Therefore, on the grievous bodily harm charge you will be sentenced to three years and nine months' imprisonment. On the remaining charges, you will be sentenced to 12 months' imprisonment on each. The terms will be concurrent in relation to the second lot of offending, but added to the grievous bodily harm sentence making a total term of imprisonment of four years and nine months.

G A Rea
District Court Judge