

**IN THE DISTRICT COURT
AT DUNEDIN**

**CRI-2016-012-002387
[2017] NZDC 11419**

THE QUEEN

v

CARL JUNIOR BARTLETT

Hearing: 26 May 2017
Appearances: M J Grills for the Crown
M J Scally for the Defendant
Judgment: 26 May 2017

NOTES OF JUDGE K J PHILLIPS ON SENTENCING

[1] Mr Bartlett, you are 21 years of age. You are for sentence before me on a number of charges and re-sentence on three charges. The charges you are for sentence on involve you having received a motor vehicle, which you knew to be stolen; driving that motor vehicle in a dangerous manner, after unlawfully getting into it; driving a motor vehicle when you were disqualified; failing to stop when signalled to do so, and attempting to obstruct or pervert or defeat the course of justice. You are for re-sentence on matters of a very similar kind: driving whilst disqualified and dangerous driving.

[2] The nature of the driving conduct on the day in September last year is just horrifying. It appears you purchased a motor vehicle knowing it to be stolen. Knowing that you were not able to drive the vehicle, you purchased it anyway. You clearly had the intention to drive it. You had been disqualified up until June 2017. However, you got the vehicle. You were driving it in Dunedin along Brighton Road.

Police signalled you to stop. They were in a marked patrol car with its red and blue lights flashing. You immediately saw that as an invitation to take off. Albeit it was a dry road, fine, light traffic, in a semi-residential area, you were driving at 120 kilometres or thereabouts in a 70 kilometre zone. The police were so concerned about your driving conduct they abandoned the chase because when they were chasing you, you just went faster. You were driving intentionally on the wrong side of the road. You told the police after you were apprehended you did that to get them to stop following you. The police could not see from where they were whether there were any oncoming vehicles. It was just a tragedy waiting to happen. They only pursued you for a short period of time over a short distance because of the nature of your driving conduct. However, they carried on and found the car hidden in a bush. There you were. You gave a name which they found out was your brother's and you maintained that until you were fingerprinted. You told the police you knew the vehicle was stolen and you took off; you went faster on the wrong side of the road to get the police to stop chasing you. You did not stop because you knew that you would go to prison; you gave the incorrect name particularly to them to prevent that occurring.

[3] On the re-sentencing, in respect of a sentencing on 18 August last year, dangerous driving, driving whilst disqualified, theft, unlawfully getting into a motor vehicle and breach of release conditions. At the time Judge Flatley, a considerate and concerned Judge, looked at your position and listened very carefully to detailed submissions that were made to him. I note that Mr More was appearing for you. I am sure they were impassioned. They swung the heart of the Judge. Instead of putting you in prison where you belonged, he decided all those things you were saying about how you wanted to be rehabilitated and how you wanted to help yourself, were all true. He gave you an opportunity. He put a very scarce resource in place for you, intensive supervision. Because you were going to change your behaviour it was going to be for such a period of time that when it was all over, Carl Junior Bartlett would never appear in Court again and would be a reformed citizen. The Judge was entirely wrong because you told the probation officer when you spoke to him about these matters (quite alarmingly really) that you said you knew you would go through the process and say all the right things, "But I wasn't going to

do any of the work because I was taking P at the time and it was all going to happen anyway.” In reality the sentence was rejected from the moment the Judge spoke it.

[4] I have a duty today to hold you accountable. I have a particular duty to protect the community from you. You are in a motor vehicle which is a weapon that can bring tragedy, distress and loss of life to people. It is just fortunate that has not happened. I have to get you to understand really that you as a person, even when driving whilst disqualified, have to be responsible and you have to care for the community on whose roads you are driving. Rehabilitation and reintegration with your attitude is not something I have turned my mind to at all. I have read detailed submissions that were made at the time of the sentencing indication, which you rejected. The submission being made by Ms Scally on your behalf is that you should have another opportunity for rehabilitation. In the terms of s 7(1)(h), I consider that a totally ‘waste of space’.

[5] This offending overall is serious and needs to be dealt with on that basis. I note, and have read carefully, Judge Crosbie’s sentencing indication notes when he dealt with that on 30 November 2016. I accept you rejected that indication. That is a decision you made. He described it a bit like ‘Groundhog Day’ because prior to your sentencing by Judge Flatley in August, in December of 2015, you were charged with unlawfully getting into a motor vehicle and there were a number of charges and other matters. You went to prison. The year before that you, on charges of interfering with motor vehicles and burglaries, went to prison. It just goes on and on and on. I note in Youth Court you got supervision with residence on five burglaries. Since then, it has just been ongoing: shoplifting, receiving, unlawfully interfering with motor vehicles, burglary, breach of community detention, driving whilst disqualified and dangerous driving.

[6] As I have said, the pre-sentence report says you knew that it had all failed. You wanted to go to prison. You were using methamphetamine throughout all of this time. I accept the assessment that you are at a high likelihood of re-offending. I do not agree with a medium risk to the public or to other people. You are a high risk. Five times you have had rehabilitative sentencing options. Five times you have rejected them.

[7] I have read carefully the submissions that have been made to me by the Crown in writing and on sentencing indication. I have noted what Mrs Grills has said. I have noted carefully what Ms Scally said in her written submissions and where she and Mrs Grills place your sentencing on an overall basis. I bring all those matters into account. I have taken into account what Judge Crosbie said.

[8] Your offending calls for a very strong denunciation and deterrence generally, to the public at large, for people minded to do this but for you most significantly and importantly. You are a recidivist offender of this kind and this type, getting into motor vehicles and causing danger. I do not accept the submission being made by Ms Scally in her written submissions that the sentences should be concurrent. I am going to treat as the head or lead offence for all of the offending the charge of receiving the motor vehicle because that is really where it all started. You made a very stupid and unwise criminal decision to purchase this motor vehicle that you knew had been stolen. That led to you of course being pulled over by the police, which you ignored. That led to you driving in a manner that placed anybody in or around Brighton at extreme risk. You were driving while disqualified in that manner. You then lying to try to get yourself out of the predicament you found yourself in.

[9] The receiving is the head or lead charge. When I have regard to that, I consider an appropriate starting point for that charge is one year and six months, on the unlawfully getting into the motor vehicle, taking into account the manner of that, I consider that would be a further six months. The dangerous driving carries a maximum term of imprisonment of three months. I consider, because no doubt there will be somewhere in New Zealand a person driving worse than that although it is hard to imagine, the starting point on that is two months. I cannot stress enough that the attempt to pervert the course of justice, lying to police in an attempt to evade your responsibility for your criminal conduct, is always treated as serious. The position at law is, and it is quite simple, people who do that can expect to go to prison for moderately lengthy periods of time. Taking into account all matters, I consider that to be a merciful starting point of eight months. I take into account totality. By my mathematics (poor as it may be) I consider there an overall starting point of two years and 10 months. I stand back and have further regard to it on the basis of totality. I must then take into account you received the 18 months' intensive

supervision on those four charges for charges of a similar kind. I must take into account your past offending and the matters that are relevant to that.

[10] When I assess totality and have regards to everything, I consider we have the public at risk, the police at risk, total disregard of Court orders and total disregard of sentence, all aggravated by you lying to the police in an attempt to avoid justice. There is also your rejection of rehabilitative sentencing options. On the re-sentencing, I consider six months to be appropriate, as did Judge Flatley. That brings the position to two years and nine months in total. Your prior history calls for an uplift of three months. You were on sentence at the time, adding a further two months, to three years and two months all up. I agree with Mrs Grills, she was being kind in saying you were allowed a discount of 10 percent. I am going to do that because in the overall situation, you did plead guilty. Thus a Judge-alone trial did not need to take place. The end point by my mathematical calculations is two years and 10 months. That is entirely reflective of your overall attitude and the rejection of the intensive supervision in dealing with Judge Flatley's sentence, which was going to help and assist you, by your index finger held high.

[11] But, and it is a big but, you are 21. I am told by authorities and researchers that 21-year-old males' brains have yet to fully develop, particularly in the areas of making appropriate decisions. I find it difficult to understand but they seem to be able to discuss the issues and find that is the position. I do not wish to impose upon you a sentence so crushing that at the end of the day you are hunting around for drugs and when you come out of prison you are so institutionalised that your life is entirely 'flushed down the toilet'. I am not going to do that. I consider an appropriate overall position, therefore, is that you should go to prison for two years and five months. I am sending you to prison on totality for that period of time. I am imposing that sentence on the CRN ending 3304, the charge of receiving. That involved a motor vehicle. You are disqualified for holding or obtaining a driver licence for one year. That disqualification does not start until 16 June 2018. On the wilfully attempting to pervert the course of justice, you are sent to prison for eight months. On the charge of driving whilst disqualified, you are sent to prison for two months and disqualified for six months, commencing on 16 June 2018. On the charge of getting into the motor vehicle, relating to 21 August (CRN ending 2957)

on that charge, you are sentenced to imprisonment for six months and disqualified for six months commencing on 16 June 2018. On the getting into the motor vehicle on 19 September, are sentenced to six months in prison and disqualified from holding or obtaining a driver's licence for six months as from 16 June 2018. On 19 September, dangerous driving, you are sentenced to two months' imprisonment and disqualified for six months, commencing 16 June 2018. All those terms of prison run concurrently. The end result is two years and five months. On the charge of failing to stop when signalled to do so, that is a matter where you are convicted. You must be disqualified. It is mandatory. That disqualification must be on top of any other period of disqualification. On that charge, you are convicted and disqualified for a period of three months. That does not commence, however, until 16 June 2019. You are now disqualified, and I ask that you note it carefully, to 16 September 2019.

[12] On the re-sentencing, on the charge of unlawfully getting into a motor vehicle, you are re-sentenced to six months' imprisonment. On the charge of driving whilst disqualified, you are re-sentenced to two months' imprisonment. On the charge of dangerous driving, you are re-sentenced to two months' imprisonment. Those terms run concurrently.

K J Phillips
District Court Judge