EDITORIAL NOTE: NO SUPPRESSION APPLIED.

**IN THE DISTRICT COURT**
**AT NELSON**

**CRI-2016-042-001006**
**[2017] NZDC 7223**

**THE QUEEN**

v

**KEITH DARREN WILLIAMS**

Hearing: 4 April 2017

Appearances: S J Revell for the Crown
M J Vesty for the Defendant

Judgment: 4 April 2017

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**NOTES OF JUDGE A A ZOHRAB ON SENTENCING**

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[1] Mr Williams, you are for sentence aged 25 and you pleaded guilty to the following matters. These are all matters arising from the same incident, charges of assault with intent to injure, common assault, wounding with intent to injure, possession of an offensive weapon and there is also a breach of bail charge as well.

[2] These all arise from an incident on 26 May of last year. You and the principal victim were drinking in the Little Rock Bar with associates on Bridge Street in Nelson. The summary of facts describes an altercation occurring between the two groups. The two groups separated and left the premises. Shortly after that a further altercation occurred between the two groups in the outside drinking area of the Rattle n Hum Bar.

[3] As far as the charge of assault with intent to injure is concerned, the summary records you approaching the principal victim who was talking with two associates

and you are described as punching him with your right fist to the head. The summary records that you continued to assault the victim, pushing him to the corner of the outdoor area, and to the ground. Whilst he was on the ground you have then kicked him repeatedly, before picking up a nearby barstool and striking him with it. Again, the two groups separated and the two groups continued down Bridge Street in Nelson.

[4] About 1.45 in the morning you and the principal victim were arguing in the middle of the road outside the Liquid Bar on Bridge Street. Whilst this was happening the police have arrived and have separated the groups. At one point during this you have punched one of the principal victim's associates in the face with a closed fist, and that forms the basis of the common assault charge.

[5] As I said, at this stage the police had arrived and were trying to bring some order to the scene, but despite their intervention the summary records that you were still aggressive and irate. You were holding a glass bottle in your right hand. You have run towards the principal victim and struck him aggressively in the side of the head with the bottle. The glass bottle smashed on impact causing a severe wound to the victim's face and neck.

[6] You continued to be aggressive, you refused to co-operate and listen to police on instructions to put the broken bottle down. You have confronted the attending officers holding the broken bottle neck in a threatening manner. You charged at police aggressively. You were sprayed with OC spray to no effect and you were eventually Tasered and because of your incapacitation the police were then able to arrest you. That last incident forms the basis of the possession of the offensive weapon charge.

[7] In terms of injuries to the victim, the summary records that the victim received a laceration to his face and a second large, deep laceration to his neck. He was then taken to Nelson Accident and Emergency by ambulance where he underwent surgery on the significant laceration to his neck. The attending officers did not receive injuries but they believed that an assault was imminent from you had you not been Tasered.

[8] In explanation you stated that you were the victim of an assault and it was five against one and you were defending yourself. You saw people getting hit. You went to the main guy and you tried to sort him out.

[9] You are described as not having previously appeared before the Court.

[10] I have a victim impact statement from the principal victim confirming that he was working as a painter. He was happy that he was okay after the incident. He had some initial flash-backs. He had this cut to his neck where he received 10 stitches, and also received stitches to his temple. He stayed in hospital overnight. The pain was easing at the time of the giving of this statement which was in January of this year. He had had some time off work which is mainly what got to him because of the stresses that it put him under. The photographs show the nature of the injury to the neck and one does not need to be medically trained to realise that it was incredibly close to the carotid artery, and there could so easily have been potentially a death as a consequence of your assault on this occasion.

[11] In terms of sentencing today I have got quite a bit of information. I have a probation officer's report which tells me about your background and circumstances. The recommendation is a sentence of intensive supervision, community detention and community work.

[12] I have written submissions from the Crown. They have referred me to the *R v Taueki*[1] case. Mr Revell now accepts that he should have also referred me to the *Nuku v R*[2] decision which was referred to by your lawyer in his written submissions. The Crown have advocated for a start point of between two and a half and three years' imprisonment in their written submissions, that there should be an uplift or an increase for the other violent offending, and that any discounts should reflect the late stage of your plea.

[13] In terms of your lawyer's submissions, Ms Vesty has referred to the *Hetherington v Police*[3] decision. He contends that the Crown start point of

[1] *R v Taueki* [2005] 3 NZLR 372 (CA)
[2] *Nuku v R* [2012] NZCA 584, [2013] 2 NZLR 39, (2012) 26 CRNZ 106
[3] *Hetherington v Police* [2015] NZHC 1829 (HC)

two and a half years is too high. He acknowledges that the 18 month start point from *Hetherington v Police* would be too low, he advocates for a two year, two month start point before an uplift of the type suggested by the Crown.

[14] Mr Revell, having had the benefit of considering your lawyer's submissions, accepts that a lower start point and that advocated at around perhaps two and a half years might be appropriate, certainly not the three years which was the top of the range he was suggesting.

[15] In terms of the purposes and principles of sentencing, the relevant purposes that apply are to hold you accountable for the harm done to the victim, to promote in you a sense of responsibility for that harm, to provide for the interests of the victim, to denounce your conduct, and to deter you and others from committing this sort of offending. I have also got to consider the need to protect the community from you, but balanced against that I have also got to consider assisting in your rehabilitation and reintegration and that is something Mr Vesty has emphasised in his written submissions and also his oral submissions.

[16] Whilst he acknowledges that you were perhaps out of control on this particular night, he refers me to the contents of the probation officer's report, and also his written submissions, because he reminds me you have no previous convictions. He reminds me of the positive comments in the report, so what occurred on this night is very much an aberration, in his submission, from the way that you normally conduct yourself. So he urges the Court to consider rehabilitation and reintegration, and he expresses concern about a prison sentence, given your situation.

[17] The relevant principles of sentencing have to be taken into account, including the gravity or seriousness of the offending. I have also got to take into account the general desirability of consistent sentencing, and that is why I have been referred both by the Crown and also your lawyer to similar cases to provide some sort of guidance, though no other cases are on all fours, or exactly the same. I have also been reminded that I need to impose the least restrictive outcome, and that is why if

we get to the two years, both the Crown and also your lawyer acknowledge then that a sentence potentially of home detention would be in play.

[18] In terms of the sentencing authorities, as I say, I have been referred to *Rv Taueki,* but I have also been referred to *Nuku v R* which I am going to adopt as the appropriate case which gives guidance.

[19] In terms of the aggravating features of the offending, the Crown highlight the use of the weapon, the deliberate targeting of the head, the injuries suffered as being serious, and also the element of premeditation.

[20] Mr Vesty, on your behalf, acknowledges those submissions, but urges the Court to reflect upon the fact that in the present case the use of the bottle as a weapon and the fact that it connected with the victim's face, overlap to a degree. He also submitted on your behalf that the extent of the injuries, whilst serious, were not of the gravest type such as would constitute a further aggravating feature, they are really inherent in the charge itself.

[21] Issue is also taken with the degree of premeditation and what he submits is that, in the context of what took place that evening, it is not a case where you were targeting the complainant as such, and that it is open to the Court to conclude that both groups were prepared to fight.

[22] He submits that the present offending straddles band 1, into band 2 as set out in the decision of *Nuku v R*. He draws a distinction between the facts of your case and that of *R v Rowe*[4]which was the principal judgment referred to by the Crown in terms of consistency of sentencing and Mr Vesty suggests on your behalf, that three years would be too high as a start point. He has referred me to, as I say, *Hetherington v Police*. He acknowledges that a six month uplift is appropriate to reflect all of the other violent offending, reminds me of your lack of history and suggests that a 10 percent reduction for your previous good record would be appropriate, and that 20 percent would be appropriate for a plea. The Crown suggests 15 percent for the plea.

[4] *R v Rowe* DC Nelson CRI-2010-042-3983, 132 May 2011

[23] I have reflected carefully upon *Nuku v R* and reference there to the aggravating features as taken from *R v Taueki*. In my view there are several aggravating features in your case. In my view there is a degree of premeditation. Mr Vesty urges caution about that, but in my view it is not coincidental that as far as the wounding with intent to injure charge, the person that you attacked was the same person you have previously punched to the head as part of the earlier assault with intent to injure charge. You pushed him to the corner of the outdoor area, and whilst on the ground you have kicked him repeatedly before picking up a nearby stool and striking him. So it is not coincidental in my view, given what you had already done to this person earlier, that when the police arrive and separate the groups, that you then go and target this person.

[24] Obviously it is not a huge degree of planning, but as you told the police, you went to the "main guy to try and sort him out". So as I say, there is a reasonable degree of premeditation because you have gone directly to man who you have assaulted previously, with the intent to sort him out. So premeditation is an aggravating feature because it is not a spontaneous, spur of the moment decision, it is a deliberate targeting of someone whom you have previously assaulted shortly before this.

[25] Also, you have run towards him, holding the bottle in your hand and you have deliberately struck him in the head, just like you had struck him in the head previously with the fist to the head, and just as you deliberately targeted him when you had kicked him whilst he was on the ground, and picked up a barstool as well. So those are also aggravating features.

[26] We have got the use of the weapon, and the strike to the head. And as I say, you have gone to him deliberately to sort him out, as you told the police. Also, this is a serious injury, and that is an aggravating feature. It is a nasty gash to the neck, and must have come incredibly close to the carotid artery.

[27] So as *Nuku v R* tells me I need to evaluate the seriousness of the offending, and also your culpability. What I mean by culpability is your degree of fault, or blameworthiness and, as I say, these aggravating features, are each of them serious in

their own right, because there is a reasonable degree of premeditation, there is the conscious targeting of this person, you have rushed towards him, holding this bottle, you struck him in the head, and there is serious injury.

[28] So each of those, in their own right, are serious aggravating features and I am required to assess the seriousness of each of those factors and what I need to do is then stand back and take an overall assessment of the seriousness of the offending, that is what they tell me do in *Nuku v R.*

[29] In my view two and a half years' prison is appropriate as a start point on the lead offence of the wounding with intent to injure.

[30] As far as the other offending is concerned, the violence before that, the charge of assault with intent to injure, the common assault, and the possession of the offensive weapon after the wounding with intent to injure, six months has been suggested by the Crown as appropriate by way of uplift. Your lawyer does not seek to argue otherwise. It seems to me to be a sensible uplift. One could argue or justify more, given the nature of the assault with intent to injure, the vulnerability of the complainant, the use of the weapon after you have had him on the ground kicking him. Also there are the aggravating features later of the possession of the offensive weapon, that is after you have badly assaulted the principal complainant, and it is also an offence which is committed effectively against police officers who have come to intervene in this melee, so I think it is a pretty tempered and moderate suggestion by way of uplift, and I do not think it appropriate for me to uplift it further.

[31] So that would then take me to 36 months or three years. If I stand back and look at it, assess the totality of the offending, that is look at it as a job lot, given the aggravating features with the assault with intent to injure, given the nature of the wounding with intent to injure, the fact that you carried on afterwards, as far as the police are concerned, that seems to me to be an appropriate response, looking at it on a totality basis.

[32] Then in terms of credits, you have no previous convictions, what is suggested is that 10 percent is appropriate by way of credit for you lack of prior history, and based on other cases, that seems to be a fair response. So, I would deduct four months, that then takes me to 32 months.

[33] In terms of credits for a plea, it did not come at the earliest possible opportunity, it came not long before a trial. Balanced against that, whilst the principal charge remained, there was some negotiation on other charges. Your lawyer suggests 20 percent, the Crown suggests 15 percent. You have saved the complainant having to come to Court, you have saved the State the cost of a trial. In my view 20 percent is appropriate. If I were to deduct seven months, that then takes me to 25 months or two years one month.

[34] The issue is whether or not there is scope for any further deductions such as to get you within the range where a sentence of home detention could be considered. I appreciate that the recommendation from Probation is one of intensive supervision, community detention and community work, but that is without considering *Nuku v R* and *R v Taueki*. In my view, prison is the appropriate response. I see no reason to artificially reduce the sentence further.

[35] For each of the deductions I have given, I have given you the benefit of rounding it up or down, depending on which way you look at it, to your benefit, but when I stand back and look at the seriousness of this incident, this was very, very serious offending, there are a number of aggravating features. I appreciate that your life may not have been out of control, but you were totally out of control in this instance. There were a number of opportunities for you to step back and it is incredibly fortunate that this person did not die.

[36] So you will be sentenced as follows:

(a) To two years one months' prison on the lead offence of wounding with intent to injure.

(b) On the possession of an offensive weapon charge, there will be six months' prison.

(c) On the assault with intent to injure, six months' prison.

(d) On the failing to appear, you are convicted and discharged.

(e) And on the Summary Offences assault, there is two months' prison and I will leave, obviously, the contents of the report and the recommendations there for consideration by the Parole Board.

A A Zohrab
District Court Judge