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

IN THE DISTRICT COURT
AT CHRISTCHURCH

CRI-2017-002-000053
[2017] NZDC 9028
THREE STRIKES WARNING

THE QUEEN

v

[AROHA TAME]

Hearing: 3 May 2017

Appearances: E Henderson for the Crown
R Checketts for the Defendant

Judgment: 3 May 2017

NOTES OF JUDGE A D GARLAND ON SENTENCING

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[1] [Aroha Tame], you appear before the Court today for sentencing on charges of aggravated burglary, wilful trespass, and assault with a weapon which you have entered pleas of guilty to.

[2] The facts relating to your offending are as follows. You and the victim in relation to this matter had been in an on and off again relationship. At the time of this incident you had two [children], aged [ages deleted]. You have since had another child.

[3] There have been recorded some 13 domestic incidents that the police have attended at your place between you and your former partner.

[4] On [date deleted] September 2016, a non-notified parenting order was served on the victim which gave you custody of the children. At that time you were also served with a trespass notice to stay away from [address deleted], which was the home of the victim.

[5] You were meant to leave [location deleted] and travel to Christchurch on this particular day but unfortunately you did not do that. You found some accommodation with friends and remained in [location deleted].

[6] You were the subject of a police safety order not to contact the victim. That expired at 7.00 pm on [date deleted]. After that order expired from about 7.20 pm, on [date deleted], you started sending texts to the victim asking him to come outside of his address to see you and the children. The victim did not respond to your texts and contacted the police seeking advice.

[7] At 2.50 am on Saturday morning on [date deleted], the victim received a text saying you were, "By the river near the police station and not to worry as everything will be over real soon." At 4.50 am that morning the victim awoke to find you coming in through the front door of his home. You had a pinch bar, otherwise described as a crowbar in your hand and you came towards the victim telling him, "You're a fucking dead cunt."

[8] You then stood over the victim and you struck him with the pinch bar which hit him a glancing blow on his arm and shoulder area, in other words, the upper portion of his body. Fortunately the victim managed to take the pinch bar off you and pushed you out of his house locking the door.

[9] Not to be deterred, you then re-entered his house gaining entry through the kitchen window which you opened. The victim then was able to restrain you on the floor and thus prevent any further injury to himself. There was some damage in the resulting struggle, however, to the gib lining of an internal wall. I am not told what the cost of repairing that damage has been.

[10] At the time I am told you were pregnant and you started then punching yourself in the abdomen area. The victim restrained you again. The police were called and you were arrested. At the time you made no statement to the police in explanation for your behaviour as you were perfectly entitled to do.

[11] The pre-sentence report indicates you are 25 years of age. You told the probation officer you did intend to leave [location deleted] but you did not have enough money for petrol and food for your children for the journey and so you asked the victim for support, but he declined. You were desperate to come back to Christchurch. You say you became angry and distraught with rage. When speaking to the probation officer you spoke of your remorse for your behaviour. Taking that into account the probation officer assessed you as at low risk of re-offending. Sentencing options were canvassed including electronic monitoring. The probation officer thought that home detention might prove too difficult for you to comply with and so as is common these days, when electronic monitoring is not available in substitution for imprisonment, probation officers as this one has, defaults to a sentence at a much lower level, indeed, at a completely unrealistic level namely one of supervision.

[12] I have read the letter from AVIVA, which tells me that you self-reported to them on [date deleted] October 2016. You were referred to their Women's Family Violence Education Group which is a 10 week course which ran from [Date 1 deleted] until [date 2 deleted]. The course facilitators provided excellent feedback about your participation and engagement during that course. I have also read the letter of apology to the victim that you have recently prepared and made available to me today for this sentencing hearing. As I have said to Mr Checketts, letters of apology to victims carry much more weight if they are prepared and provided to the victims as soon after the alleged offending as reasonably possible. Providing them to the Judge on the day of sentencing lessens the weight that can reasonably be given to such letters.

[13] In sentencing you Ms Tame, I take into account the purposes of sentencing, namely to hold you accountable for the harm that you have caused. I need to promote in you responsibility and an acknowledgement for that harm. I also need to

denounce your conduct and impose a sentence that not only deters you from re-offending in this way, but also deters others who might be like-minded.

[14] The principles of sentencing that I take into account are the gravity of your offending, your level of culpability, the seriousness of the charges to which you have pleaded guilty by comparison with others, the need to impose on you a sentence which is consistent with that imposed on other offenders of like offending, as well as the need to impose the least restrictive outcome appropriate in all the circumstances.

[15] Both the Crown and your counsel, Mr Checketts, have provided very helpful written submissions which I have had the opportunity to peruse and consider. I have also considered the oral submissions that have been made in Court today.

[16] For the Crown, Ms Henderson submits by reference to Court of Appeal decisions in *R v Mako*[1] and *Archibald v R*[2] that a starting point of between three years, nine months' and four years' imprisonment would be appropriate in this case. The Crown accepts that credit approaching full credit for guilty pleas is warranted. Ms Henderson submitted that perhaps 20 percent discount for guilty pleas would be appropriate. The Crown also accepts that I should make some allowance for your personal circumstances. The Crown acknowledges the 12 week Stopping Violence Course that you have engaged in. The Crown also acknowledges that you are the mother of three young children, that you were willing to participate in Restorative Justice, and to pay reparation. However, the Crown submits that even allowing credit for guilty pleas and personal circumstances it would be unlikely that I would reach an end sentence which would enable me to impose a sentence of home detention instead of imprisonment.

[17] Mr Checketts has made extensive submissions on your behalf. He submits by reference to the Court of Appeal decision in *R v Patrick*[3] that a starting point of three years and nine months' imprisonment would be appropriate. Initially he suggested a starting point of three years and six months' imprisonment because I apprehend he is doing his utmost to try to bring the sentence down to a level where I

[1] R v Mako [2000] 2 NZLR 170 (CA)
[2] Archibald v R
[3] R v Patrick

might have jurisdiction to consider home detention. However, in Court he acknowledged that having regard to the circumstances of the offending in *R v Patrick*, a starting point of not less than three years, nine months' imprisonment would be appropriate.

[18] Mr Checketts submitted that if I was to allow a credit of up to 25 percent for guilty pleas, another credit of 15 percent for remorse, and a further reduction of three months because of your personal circumstances, that I could reach an end sentence of 22 months' imprisonment which would leave me with discretion to consider a community-based sentence which I apprehend he submits would be home detention. However, Mr Checketts acknowledges that this is by no means an easy sentencing exercise and that it would be difficult, I think, to get down to a level of two years or below.

[19] The maximum penalty for the lead offence which is aggravated burglary is 14 years' imprisonment. The Court of Appeal has confirmed in the guideline sentencing decision for aggravated robbery, *R v Mako* that it may be applied by analogy to the offence of aggravated burglary. In *R v Mako* the Court identified a number of culpability assessment factors which might be taken into account in determining the seriousness of the offending. I will deal with those factors shortly. I agree with counsel that none of the examples of various aggravated robberies given by the Court of Appeal in *R v Mako* are particularly on point in relation to your offending. I have, however, considered the cases referred to by both counsel namely *Archibald v R, R v Patrick* and *R v Drewett*[4].

[20] The factors relevant to assessment of your culpability in this case in my view are as follows. First, I agree that there was little planning or premeditation in this case. This appears to have been more of a spontaneous reaction in an emotionally charged relationship context that had turned sour. There was only one participant. There were no disguises. Both you and the victim were well known to each other in a domestic relationship context. Only one weapon was taken to the premises and used by you. It was a metal pinch bar or crowbar, which was capable of doing very serious harm to the victim. The target premises was a domestic dwelling where your

[4] R v Drewett [2007] NZCA 48

former partner resided. He had trespassed you from that premises. No other persons were present apart, of course, from your young children who were waiting out in the car. By your words and conduct you evinced a clear intention to cause serious injury to the victim. The blow that you struck the victim with connected with his arm and shoulder area which as I said earlier, is the upper part of his torso, getting close to the head region. Fortunately you did not connect with his head and he was not seriously injured. Counsel suggests he was able to easily disarm you but I have no information to suggest that that was so. He certainly was able to disarm you and he was able to evict you from the premises.

[21] When you entered the house a second time, you were prevented from causing injury to the victim because once again he was able to restrain you and he called the police for assistance. No property was stolen. Both entries into the premises were in breach of the trespass notice. There was no gang involvement. The impact of your offending on the victim has been significant. He was not physically injured but the emotional harm appears to have been considerable. In his victim impact statement he says, "As a result of the attack, I was blown away. I have trouble getting my head around her behaviour. It's caused me many sleepless nights." He asks for a protection order against you.

[22] There is obviously a clear need for deterrence. While there were two entries into the victim's residence, only one was with a weapon and both incidents in my view were part and parcel of the one incident. When I have regard to those factors I assess the level of culpability involved in this offending as being at a similar level to that in *R v Patrick.* In that regard I find myself in agreement with both counsel. I, therefore, adopt a starting point of three years and nine months' imprisonment having regard to the totality of your offending. I turn to the aggravating and mitigating factors personal to you. First of all the aggravating factors. You only have two prior convictions and those are for driving offences. I agree with Mr Checketts, that no uplift is warranted. Turning now to the mitigating factors. Your guilty plea was entered to these charges at the case review hearing after the Crown agreed to pursue only one aggravated burglary charge and to withdraw the intentional damage charge. You could have and perhaps should have entered guilty pleas to the remaining charges much earlier. In the circumstances I am prepared to

allow a reduction of 10 months which is approximately equivalent to a 22 percent reduction.

[23] I turn to your personal circumstances. While you should not be permitted to use your children as a shield against the consequences of your offending behaviour, it is right that I take into account the difficulties experienced by you with your separation from the victim, and your responsibilities for the children both born and unborn at the time, and also the greater difficulty that you will encounter as a consequence of serving a term of imprisonment. I, therefore, allow a reduction of a further six months.

[24] Stand up please. That gives the following result, Ms [Tame]. On the charge of aggravated burglary you are sentenced to two years and five months' imprisonment. On the charge of assault with a weapon, you are sentenced to one year imprisonment. On the charge of trespass, you are sentenced to one month imprisonment. All terms are imposed concurrently which means that the total term is one of two years and five months' imprisonment.

[25] Now that you have been convicted of aggravated burglary, you are subject to the three strikes law. I am now going to give you a warning of the consequences of another serious violence conviction. You will also be given a written notice outlining these consequences which lists the serious violent offences. If you are convicted of any serious violent offences other than murder committed after this warning and if a Judge imposes a sentence of imprisonment, then you will serve that sentence without parole or early release. If you are convicted of murder committed after this warning, then you must be sentenced to life imprisonment. That will be served without parole unless it would be manifestly unjust. In that event the Judge must sentence you to a minimum term of imprisonment.

[26] Mr Checketts tells me that you do not oppose the making of a protection order in favour of the victim. I am satisfied that this is an appropriate case where I

should make such an order. I, therefore, direct that a protection order is to issue in favour of the victim.

A D Garland
District Court Judge