

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

**IN THE DISTRICT COURT
AT ROTORUA**

**CRI-2017-063-001365
[2017] NZDC 13518**

THE QUEEN

v

CASSIE RAE LATEMORE

Hearing: 22 June 2017
Appearances: C Macklin for the Crown
M Simpkins for the Defendant
Judgment: 22 June 2017

NOTES OF JUDGE A J S SNELL ON SENTENCING

[1] Ms Latemore, you are for sentence today on one charge of aggravated robbery. That carries a maximum sentence of 14 years imprisonment. You have pleaded guilty at an early opportunity.

[2] The circumstances that arose are that you were 29 years old at the time that this occurred. You are 30 years old now. You are a mother who is unemployed and had the custody of two boys, aged five and seven. At the time of this offending, you were a user of methamphetamine and suffering under the difficulties that that drug creates.

[3] It is said in the summary of facts that you owed a significant amount of money to your drug suppliers and that that was a driving factor in your attempt to procure money in this instance.

[4] The circumstances are that at about 3.30 pm on Tuesday 22 March, you went to the [name deleted] Superette located in Rotorua. You drove there in your car and in the car with you at that time were your two sons and a male associate who is the co-accused. You parked your car outside the line of shops in a carpark furthest away from the superette. You walked over to the superette and you looked under the building eaves checking for surveillance cameras. You then entered and bought a \$1 bag of lollies. Essentially what you were doing was casing the joint and you were checking for the surveillance cameras and seeing how many staff were working. You walked out of the superette, went back to your car and reversed out of the carpark and left the area.

[5] At about 3.38 pm, which is eight minutes later, you drove back to the area and dropped your male co-accused off around the corner from the superette, drove up past the shops and parked about 50 metres up the road. You still had your two children in the back of the car. Your co-accused was armed with a hollow steel pipe about a metre long. Taped to one end of that pipe were two steak knives. You had made that weapon specifically for the purpose of committing this aggravated robbery. You used knives from your kitchen, the pipe from your garage and black insulation tape. Your male associate/co-accused went into the superette and confronted the owner. He pointed the knives at the end of the pipe at him and jabbed those knives towards him. He threw a pillowcase that had been taken in with him and demanded that he put money and tobacco inside the pillowcase. He jabbed the knife end of the pipe towards the shopkeeper again and hit the end of it against the counter and till. The shopkeeper gave him approximately \$400 cash and three packets of tobacco valued at \$45 each. Your co-accused then ran from the shop towards where you had your vehicle waiting as the getaway vehicle and getaway driver. The shopkeeper gave chase. Your male associate tripped and fell to the ground and dropped most of the money. He dropped the pipe with the knives attached and he dropped the beanie that he was wearing on his head. He was disguised effectively wearing a beanie with dark glasses and clothes up around the front of his face. He got into the vehicle and you drove away at high speed, swerving to avoid the shopkeeper and nearly colliding with an oncoming car. Your sons who were in the back throughout this whole enterprise from the casing of the superette to the actual aggravated robbery were particularly upset and traumatised by

the whole episode. The shopkeeper managed to recover the weapon, the beanie and a lot of the money taken. He estimates that the balance of the money actually stolen was about \$120 to \$150.

[6] A diligent member of the public who saw what was going on used a cellular phone to photograph your car as it was leaving the scene. You drove home and you hid the clothing that the male associate was wearing and you hid it under your house. You gave one of the packets of tobacco to your drug supplier as part payment for some of your debt. When you were initially spoken to by the police, you claimed to have no knowledge of the weapon or of the actions of your male associate, saying that you thought he had just stolen something from the shop. There is reparation sought of about \$150 cash, \$135 in tobacco, \$285 in total.

[7] You come before the Court with 14 previous adult convictions since 2006. They include an aggravated robbery conviction that you received for offending in 2007. You were sentenced in 2008 to eight months home detention. The rest of your offending since then has involved violence and dishonesty and you received a three month jail sentence for unlawfully taking a motor vehicle in 2017.

[8] I have a victim impact statement. That reads that the victim says that you are unknown to him. He did not receive any injuries. He says that he lost the cigarettes and the cash, as I have outlined. He says that in terms of emotional harm, it was a very big knife as far as he can recall on the end of the pipe. He was very scared. He found it difficult to sleep at night afterwards. His wife has been very frightened by this. It happened during the daytime close to 4.00 pm and she is often alone in the shop at that time and they are the sort of psychological effects that dairy owners or superette owners have from aggravated robberies such as these. He states that he has had no long term effects, but no doubt he will remain exceedingly wary of these type of events in the future.

[9] I have a pre-sentence report. That is dated 14 June 2017 and that says that you have got a number of previous convictions in the adult Court. They are mainly made up of dishonesty offending. You have got three previous convictions for violence, including assault on a child, common assault and aggravated robbery. Your

offending related factors are your addiction to drugs, your peers and your associates and your attitude to authority, poor decision-making skills and a lack of consequential thinking. Your risk of re-offending is assessed as medium and your risk of harm to the public is assessed as medium.

[10] Within the summary of facts, I record during the course of this sentencing that it indicated you did not accept some features of the summary of facts. I had discussions with your counsel prior to sentencing. I indicated that if that was the case, the matter could go to a disputed fact hearing in terms of the Act that deals with that. I indicated to your counsel that that was available to you and he took the opportunity of having an adjournment to deal with that matter. I have since been advised that you accept the summary of facts in its entirety and I had made it clear when the matter was stood down that if I was to sentence you today, it was on that basis and that it was on the basis that the summary of facts, which you accepted at the time of entering your plea, was accepted by you. Your counsel confirmed that it is accepted by you and I now disregard the comments in the pre-sentence report that are contrary to that. You are said to have accepted responsibility for your offending and you are willing to address your offending needs and behaviours. The report recommends a term of imprisonment.

[11] The Crown in this matter submits that a starting point in the region of four to five years imprisonment is appropriate and from there, by their analysis, they say that there is a discount for your guilty plea and they were not aware of mitigating matters at the time of writing their submissions.

[12] Your counsel had indicated that a three year starting point to be on parity with your co-offender was appropriate. I advised him prior to sentencing that your co-offender had a starting point of four years imprisonment and I indicated that *R v Mako*¹ was the tariff case that would guide where the starting point for your offending was. He accepted that. I offered him a copy of the sentencing decision. He indicated that he did not need to see a copy of that prior to commencing today. His submissions however, with an adjusted starting point in accordance with *R v Mako* which would be somewhere between four and five years imprisonment for

¹ *R v Mako* [2000] 2 NZLR 170

this type of offending, are all valid still and so each of those submissions he makes in terms of, in particular, the mitigating matters, are still valid but just with a different starting point.

[13] In terms of sentencing you today, you need to be held accountable for your offending. The principles of denunciation and deterrence are significant factors that the Court must bear in mind. The robbing of small superettes and one-man businesses is prolific at this current time. I remind myself that you must be sentenced consistently with appropriate sentencing levels for similar offending and that you must receive the least restrictive outcome that is appropriate in all of the circumstances in accordance with the hierarchy of sentences available.

[14] As I said, the lead decision here is the decision of *R v Mako* and in my view, paragraph [56] of that judgment is apt. That says:

“A further example can be given taking another combination of features typical of many aggravated robberies. This envisages a robbery of a small retail shop by demanding money from the till under threat of the use of a weapon such as a knife after ensuring no customers are present, with or without assistance from a lookout or an accomplice waiting to facilitate getaway. The shopkeeper is confronted by one person with face covered. There is no actual violence. A small sum of money is taken. The starting point should be around 4 years. Should the shopkeeper be confined or assaulted, or confronted by multiple offenders, or if more money and other property is taken 5 years, and in bad cases 6 years, should be the starting point.”

[15] When I look at the relevant factors to be considered here in terms of your offending, I consider that there is the threatened violence and the threatened use of the weapon. The co-offender entered. There were two steak knives taped to the end of the pipe. That was presented at the shopkeeper. It was banged on the counter and on the till and it was highly threatening. There is the extent of the loss and harm. That is the fear factor primarily that exists with both the victim and his wife who also helps run the shop. The financial cost is relatively limited, given it is only the value of the cash and the cigarettes. There is the vulnerability of the victim. He was working alone. They are particularly susceptible to this type of aggravated robbery, being small business operators and, in my view, given the frequency with which they

are targeted, that principle that I have spoken of, of deterrence, needs to be kept upper most in mind.

[16] Next is the presence of your children and under no circumstances should you have your two children with you when you go casing a place to rob it and, secondly, as you go about actually completing the aggravated robbery. That is an appalling action by you on that occasion and it is not the actions of somebody who is a good mother to those children at all. So your behaviour on that occasion was not at all good and represents, in my view, a significant aggravating feature. You put them at risk and in your urgency to get away, you nearly hit another car. They were in the back seat of your car and have suffered significantly and been traumatised through your offending. It is outrageous behaviour really by you.

[17] There is the premeditation involved and you are at a high level in regard to this. You cased the place, looked for the security cameras. You made a homemade weapon to be used by your associate. You went into the store to check for cameras and you then returned. You also were involved afterwards in hiding the disguise; the hoodie, the beanie and the sunglasses that your co-offender wore.

[18] Within the *Mako* decision, it says at paragraph [62] that there is no justification for treating those assigned roles other than of confronting the victim as less culpable unless they are truly less than full participants. So this is addressing the issue of you being the so called getaway driver as compared to the person that went into the superette. The lookout or getaway driver may in fact be the ringleader. In *R v Royal*², which cited *R v Wongchiu*³, the Court of Appeal noted that generally the criminal responsibility of those who drive a getaway vehicle is not less than that of their companions who actually enter premises and commit a robbery there.

[19] In my view, if I looked at the aggravated robbery without your involvement effectively at the beginning of it and casing the premises, making the weapon and also taking your children along, I would have said that it was a four year starting point. When I add those extra factors in, I consider that the starting point is

² *R v Royal* [2009] NZCA 65

³ *R v Wongchiu* CA171/87, 2 December 1987

four years and six months. In my view, not only are you not a lesser participant in this, I consider you to be a greater participant than your co-accused and greater aggravating features are identified applicable to you. It was your car used, you took your children, you did the planning, you did the casing and you did the getaway driving and hid the clothes. Four years, six months is the starting point that I settle upon and that represents the differing role between you and your co-accused and in your particular case, even though you were the getaway driver, I find as a matter of fact on the information before me that not only were you a full participant, you were the lead participant and had higher aggravating features particularly relating to your children than your co-offender.

[20] Now I have considered whether there are any personal aggravating features that would uplift the sentence. It would seem to me that potentially you were on bail or on the run from the police when this occurred, because you have a charge of unlawfully taking a motor vehicle and escaping custody which both seem to have occurred shortly before this offence and for which you were sentenced to imprisonment shortly afterwards. So it is either offending while you were on the run or on bail. I do not know and it has not been submitted to me by the Crown, so I do not intend uplifting your sentence for those matters, but I raised them because they can be raised with you when you become eligible for parole on this matter. However, I am cognisant of your previous convictions. There are significant earlier convictions for dishonesty and you have an aggravated robbery previously. In respect of those matters, you receive a four month uplift. The Court on that instance treated you leniently with a sentence of eight months home detention. You cannot expect to get lenience on a second occasion. That takes your start point to four years and 10 months.

[21] I accept in terms of personal mitigation that you were a drug addict at the time. You are suffering the effects of that now. I also accept that you are genuinely remorseful for your behaviour towards the shopkeeper, for your involvement in this offending and for the dramatic effect that that has had on your children. I accept your remorse is genuine in relation to all of that. I also accept that you have been willing to undertake courses and are willing to undertake intervention if that is offered to you when you are in prison.

[22] You will be given a six month discount to reflect that. That takes your starting point from four years, 10 months down to four years and four months. Over and above that, you are entitled to a separate and discrete discount of 25 percent for your early guilty plea. That equates to one year and one month from the four year, four month point that I had reached and your final sentence in Court today is three years, three months imprisonment.

[23] I will cancel any existing sentences.

A J S Snell
District Court Judge