

**IN THE DISTRICT COURT
AT HAMILTON**

**CRI-2017-019-000436
CRI-2016-019-006444
[2017] NZDC 14981**

THE QUEEN

v

BENJAMIN AMBROSE HATI

Hearing: 10 July 2017

Appearances: D McWilliam for the Crown
R Laybourn for the Defendant

Judgment: 10 July 2017

NOTES OF JUDGE K B F SAUNDERS ON SENTENCING

[1] Mr Hati, you are for sentence on 15 charges in the Crown charge notice of 1 May 2017: nine charges of burglary, two charges of theft, intentional damage, driving whilst disqualified third or subsequent with your qualify convictions being 2015 and 2016, failing to stop and reckless driving. In addition, you are for sentence on three trailing police charges: driving whilst disqualified on 2 October 2016, receiving property worth about \$9000 and breach of Court bail.

[2] Your offending is considerable. It was committed over a six week period in December 2016 and January 2017. Broadly speaking, it can be characterised as a series of ram raid burglaries of commercial premises where stolen vehicles were used to gain entry. In some instances, you are charged with others. The value of the property stolen in the burglaries is considerable, as is the cost of the damage. The

reparation schedule I have totals \$227, 437. I will not make any order for reparation because you are simply not in a position to make any reparation.

[3] As to the driving/failing to stop charges, they occurred on 19 January. On that occasion you were the getaway driver and when the police attempted to stop you, a pursuit was initiated. You reached speeds in residential areas of 160 kilometres an hour, travelled on the wrong side of the road, there was a near head-on collision, and you continued even when spikes were used.

[4] The pre-sentence report realistically recommends a sentence of imprisonment. You are assessed as being of medium to high risk of offending.

[5] There is no tariff for burglary, and that is because the range of circumstances in which it can be committed is great. The Crown submits an appropriate starting point is four years' imprisonment and that is the starting point that the defence also accepts. While I acknowledge the need for caution in adopting the *Senior* categorisation of you as a spree burglar, it does appear to still be relevant to some extent and in *Senior v Police*.¹ the Court of Appeal suggested a starting point somewhere in the region of three years to four years' imprisonment. Given this was a ram raid series of burglaries, the decision of Justice Asher in *Tuifua v Police*.² is also pertinent because His Honour described a single ram raid burglary as brazen and deliberate that would attract a starting point of two years and three months' imprisonment. Here, of course, there is significantly more than one offence.

[6] The aggravating factors that are present are the premeditation and planning, specifically targeted commercial premises, stealing cars to facilitate the ram raids. The scale of the offending is quite significant. There were multiple offenders and you used disguises. I agree with the starting point of four years' imprisonment. The Crown submit a modest uplift for your other charges and a credit in the range of 15 to 20 percent. Ms Laybourn, on your behalf, submits that a uplift of three to six months would be sufficient to mark the rest of the charges and submits you are entitled to a full 25 percent credit for your guilty plea and she also seeks to persuade me that you

¹ (2000) 18 CRNZ 340

² [2015] NZHC 2426

are also entitled, in the circumstances, to further credits of up to eight percent for your remorse and health issues, and she has also provided me with a certificate of achievement.

[7] As to the sentencing. This was deliberate offending, as I have said, targeting specific businesses and stolen cars to facilitate that offending, inflicting considerable damage. Starting point is adopted of four years' imprisonment. Your previous convictions, plus the fact you were on bail for the trailing police matters, warrants an uplift of three months' imprisonment. The driving offences on 19 January and the trailing matters warrant a further uplift of five months' imprisonment. That gets me to an end start point of four years and eight months' imprisonment. I will give you a full 25 percent credit for a guilty plea. In the circumstances, I find it was given as early as possible. In terms of remorse, I do give a further discount of around five percent for remorse. I acknowledge the letter that you have written and I acknowledge your health. The difficulties with your health may explain why you committed this offending, but it does not excuse it. So in terms of the discounts, that would get me to an end sentence of imprisonment for three years and two months. I have had regard to totality but for the sheer scale of this offending and the inability to pay reparation, I make no further adjustment for totality.

[8] Now the sentence is made up as follows, then: on charges 2, 4 through to 10 and charge 20, you are convicted and sentenced to imprisonment for three years and two months.

[9] On charges 11, 3 and 19, to six months concurrent.

[10] On charge 21, three months concurrent and you are disqualified from driving for 18 months commencing today.

[11] Charge 22, you are convicted and disqualified from driving for three months, cumulative on the 18 months.

[12] On charge 23, sentenced to two months imprisonment concurrently.

[13] Turning then to the police matters, on the charge of driving whilst disqualified, you are convicted and sentenced to imprisonment for three months concurrent. You are also disqualified from driving for 18 months today, that is concurrent with the 18 months imposed already so 18 months in total. There is also written notice to be provided to the owner of the Toyota sports car, outlining the consequences of possible confiscation.

[14] On the charge of receiving, you are convicted and sentenced to six months' imprisonment concurrently.

[15] On the breach of bail, you are convicted and discharged.

[16] No evidence is offered on charges 1, 12 and 14. They are dismissed.

K B F Saunders
District Court Judge