

**IN THE DISTRICT COURT  
AT PORIRUA**

**CRI-2017-085-001196  
[2017] NZDC 15656**

**THE QUEEN**

v

**JAMIE ALLAN GRAY**

Hearing: 17 July 2017  
Appearances: H Savage for the Crown  
M Bott for the Defendant  
Judgment: 17 July 2017

---

**NOTES OF JUDGE J A R JOHNSTON ON SENTENCING**

---

[1] Jamie Allan Gray, you are 33 years old and you appear today for sentence, having pleaded guilty to one charge of aggravated robbery pursuant to s 235(c) Crimes Act 1961. The maximum penalty for this offence is 14 years' imprisonment.

[2] The facts are that the victim in this matter is the owner of [the victim small retail shop] situated in Wellington. On the evening of Thursday 4 May this year she was working alone at the dairy. At about 6.55 pm you entered the store with the lower half of your face covered. You approached the counter with a small syringe needle in your hand, gestured with it threateningly to the female dairy owner and demanded cash and cigarettes. You said at the time "Give me the money or you will get a disease." When the victim handed you a small denomination you said "I want the

bigger notes.” You then demanded tobacco products and the victim gave you four packets of cigarettes.

[3] You left the store with an unconfirmed quantity of cash and the four packets of cigarettes. You were located by police a short time later a short distance from the scene. When searched by police you were found to be in possession of syringe needles, four packets of cigarettes and \$385 in cash which was concealed in your underpants.

[4] You received a sentencing indication on 29 June 2017 for this offending and accepted it on 11 July. You have waived your right to a pre-sentence report and wish to be sentenced today.

[5] The Crown in submissions have referred to the leading appellate guideline decision in *R v Mako*.<sup>1</sup> Ms Savage, and earlier Mr Georgiou on behalf of the Crown, had submitted that the present offending falls within the example given at paragraph 56 of the *Mako* case of the aggravated robbery of a small retail shop. The Crown submits that a sentence starting point of four years is appropriate and also that there should be a small uplift from the starting point of two months which is appropriate because of the aggravating factor of your previous convictions.

[6] The Crown also acknowledges that you are entitled to a discount of 25 percent for your guilty plea and that a small discount be given also for your remorse. The Crown also seeks orders for the return of the cigarettes and the money located.

[7] Mr Bott on your behalf accepts the starting point of four years’ imprisonment. He did not, however, consider that there should be an uplift for your previous convictions and that there are mitigating factors relating to your years as a drug addict to be taken into account. He submits today that you have been to the Bridge programme. Unfortunately that did not go well for you. You overdosed and shortly thereafter have committed this crime.

---

<sup>1</sup> *R v Mako* [2000] 2 NZLR 170 (CA)

[8] One significant thing in your favour Mr Gray is the support of your family, and I am sure long-suffering support, but they are here today to support you and that is something which I trust you are grateful for.

[9] You also have health issues. I am told that you have Hepatitis C and Mr Bott really hits the nail on the head, with his submission that unless you sort yourself out things look pretty grim for you.

[10] I am pleased to hear that you have completed the drug intervention programme on remand and that there is further insight on your part. I also acknowledge and take into account the letter that you have prepared and that is in front of the Court.

[11] Mr Bott agrees with you being given the full discount for your guilty plea and for the orders returning the cigarettes and the money located.

[12] Having considered the sentencing submissions on behalf of the Crown and on your behalf I consider Mr Gray that your offending does come within paragraph 56 of the *Mako* case. That is because of your offending in this matter and that it involves a small retail shop that was robbed by you as a single offender armed with a weapon, in this instance a syringe, and making threatening gestures both with the weapon and verbally. You also made some effort to conceal your identity by wearing a bandana over the bottom part of your face.

[13] In assessing an appropriate starting point to reflect the nature and seriousness of your offending and your culpability on the charge I must assess the aggravating and mitigating factors relating to your offending.

[14] The aggravating factors relating to the offence in my view are these. First the degree of planning and premeditation. There was a degree of planning and premeditation as you arrived at the dairy with the syringe to back up the threat and had covered the lower part of your face. I do accept, however, that this was unsophisticated and did utilise items normally in your possession.

[15] Second the type of weapon used and how it was brandished. You approached the counter holding a small syringe in your hand in a threatening manner and also threatened the complainant verbally. I take into account here the impact that your actions in having that weapon had on the victim.

[16] Third the target person and premises. You targeted the shop for cash and cigarettes. There were no other customers in the store at the time.

[17] Fourth the property stolen. You were found with the four packets of cigarettes and \$385 concealed in your clothing.

[18] I find that there are no mitigating factors relating to the offence.

[19] On that basis I consider a starting point of four years' imprisonment to be appropriate in this case.

[20] I now need to consider whether your offending was aggravated or mitigated by your personal circumstances. I agree as far as aggravating factors are concerned with the Crown's submission that there should be a small uplift for your relevant dishonesty convictions, namely the three convictions for theft, the most recent in August of last year, for burglary in 2013 and shoplifting also in 2013. Those matters I agree appear to be escalating. In my view that fact does require a modest uplift of two months' imprisonment. That gets to a total of 50 months or four years and two months.

[21] There are mitigating factors relating to you. There should be a discount for remorse and you are entitled in my view to a discount of five percent or 2.5 months for that remorse. You are also entitled to a discount for your guilty plea of 25 percent, a total of 12.5 months. That would leave an end point sentence of 35 months or two years and 11 months' imprisonment.

[22] I am satisfied on the basis of the applicable authorities and statutory factors that in these circumstances a sentence of imprisonment is required and that the purposes for which this sentence is being imposed cannot be achieved by any less

restrictive sentence or combination of other sentences. As I say the appropriate starting point would be a sentence of four years' imprisonment. The aggravating factors, in particular your prior record, justify an increase of two months from that starting point to account for those factors and a discount of 12.5 months or 25 percent is allowed for your guilty plea. A discount of 2.5 months is allowed for your remorse.

[23] You are accordingly sentenced to imprisonment for two years and 11 months.

[24] I also order the return of the cigarettes and the money located to the complainant.

[25] I have already given you the first strike warning on your conviction on 11 July 2017.

J A R Johnston  
District Court Judge