

**IN THE DISTRICT COURT
AT CHRISTCHURCH**

**CRI-2016-009-001147
CRI-2016-009-007670
CRI-2015-055-000902
[2017] NZDC 16473**

**THE QUEEN
DEPARTMENT OF CORRECTIONS**

v

**RIHIMONA MATTHEW JOSEPH COLLIER
VANATEE ZULEIKA TAMATI**

Hearing: 26 July 2017

Appearances: C Bernhardt for the Crown
S Anderson for the Department of Corrections
A McKenzie for the Defendant Collier
M Starling for the Defendant Tamati

Judgment: 26 July 2017

NOTES OF JUDGE P R KELLAR ON SENTENCING

[1] Mr Collier and Ms Tamati, you have both been represented extremely well by Mr McKenzie and Mr Starling respectively who have provided me with good written submissions and they have backed that up in Court today. I think it is fair to say that they have advanced everything that could be said.

[2] You are both for sentence on a charge of aggravated robbery, it is a strikeable offence and you have both already received your strike warnings. Mr Collier you are

also for sentence on three charges of breaching release conditions and Ms Tamati you are for sentence also on a charge of breaching an intensive supervision sentence.

[3] The lead charge obviously is the aggravated robbery. There is some issue about the circumstances but I am proceeding on this basis. At just before 7.30 pm as long ago as 28 December 2015 both of you, and another person who has not been identified, went to an address in Claymore Street, Christchurch. The property is in two flats. The summary of facts says that you went there in the mistaken belief that the house was a drug house and intended to rip it off. Both of your counsel have informed me that your instructions, and there is some other support for this, are that you had bought bad drugs from the address and were returning there to obtain a refund. In any event, what is not in issue is that you went first to the front flat and spoke to a woman who lived there and it was at that point that you realised that was not the right address and you went to the back flat.

[4] The Crown summary of facts records that you have forced your way into the address. Mr McKenzie has drawn my attention to the evidence of the woman who lived in the front flat to the effect that the door was opened and you entered it. Hence the submission is made that you did not force your way into the house, that you were let in. It is not a matter of great moment. Once inside the living room you spoke to two women who were there, apparently they were watching a movie. Mr Collier you asked if there was just the two of them there and at that stage a man emerged from his bedroom and came into the lounge.

[5] The Crown summary of facts records that Mr Collier you told him to get on the couch and demanded drugs. The people in the house said that they did not do drugs and there were no drugs in the house. At that point Mr Collier you punched the man in the face and forced him to the floor where you stomped on his head as he was on the floor and kicked him in the body. The other man who was there, who you have not identified of course, remained at the door watching what was going on.

[6] Ms Tamati, at that stage you went through the bedrooms filling bags with various things. Once again Mr Collier you demanded drugs but the people in the house said they did not have any. There was a number of things taken, electronic goods,

some jewellery, make-up, a bit of cash, some keys and the like. On leaving Mr Collier you said to the people in the house that if they called police you knew where they lived and would come back for them. At that point you left. So those are the circumstances of this sorry offending.

[7] A sentencing Judge has to examine what are the serious aspects of the offending and there seems to be a number of them:

- (a) The one is the actual violence that you used Mr Collier. As I have mentioned you punched the male victim in the head, pushed him to the ground and stomped on his head. That is a serious aspect to the offence.
- (b) Furthermore, despite your position that you were let into the house the offending involved an unlawful entry into and presence in that home. The home invasion provisions of the legislation have gone but unlawful entry and presence into a dwelling house is an aggravating factor of offending under the Sentencing Act 2002.
- (c) The third serious aspect of the offending is the extent of harm that has resulted. There is the physical harm to the male victim of course. He has, no doubt, recovered from that but the emotional trauma that something like this causes is significant and will be long lasting from the victim's point of view.
- (d) Perhaps the last serious aspect of the offending is one that I do not make too much of and that is the degree of planning or premeditation. There is hardly a high degree of planning involved in this but it can be distinguished from something that was on the spur of the moment.

[8] Mr McKenzie in particular has filed some very helpful submissions with reference to cases that preceded the guideline judgment but he submits, and I think fairly, inform the starting point still. I am governed by a guideline decision of *R v Mako*.¹ At para (58) of that decision the Court outlined an appropriate starting

¹ *R v Mako* [2000] 2 NZLR 170 (CA)

point where there is forced entry into premises by a number of offenders seeking money or drugs, there is violence against the victims where weapons are brandished. The Court said that in those sorts of instances a starting point of seven years is justified increased to as much as 10 years where a private house is entered.

[9] This case does not involve all of those elements of course. The entry may or may not have been forced, there is some issue about that so I do not make too much of that. There was the three of you, only two of whom of course are for sentence. There is a demand for drugs or other property. There was certainly violence against the one male victim. Of course there is no suggestion that weapons were involved but it does involve entry into someone's home. So that guideline judgment informs me as to the appropriate starting point, as I have acknowledged. The submissions that Mr McKenzie put forward in his written submissions that led up to that guideline decision have also helped me.

[10] In terms of your respective personal circumstances Mr Collier you have got quite a history. I think - I did not add them up but the Probation report records that you have got 109 convictions. There are a number for violence including a conviction for a violent offence within a year of this offending, although it is fair to say nothing as serious as this. Ms Tamati you have got some prior convictions as well, I think mainly for dishonesty offending. Mr Collier you were on release conditions at the time of this offending and Ms Tamati I think you were on the sentence of intensive supervision. But you are for sentence in respect of those charges so I have to be careful not to double count them.

[11] There are a number of factors that have provided me with helpful information in the reports from Corrections. Unsurprisingly in your case Mr Collier things such as your lifestyle at that time, drug use, the decisions that you were making all underpinned this offending. You have been in custody for a while now but drug dependence had been a big feature of your life and, of course, as goes with that the need to obtain funds in order to fuel it.

[12] Helpfully the report states that you now present with an attitude change and a decision to adopt a pro-social lifestyle which consists of steady employment and

ceasing taking drugs. Proof of that will be in the pudding of course. Your risk of offending is assessed as being high. That would be based on your criminal history. Likewise you are assessed at being a high level of harm, that is due to the nature of this charge and the presence of other violent offences in your past.

[13] You undertook a screening test for substance abuse. You were assessed at being a high risk of drug use. Methamphetamine and to a much lesser extent cannabis were concerned followed closely by cocaine and other hallucinogens but you have expressed a wish to enter alcohol and other drug programmes. So all of those things are helpful and will, no doubt, be considered by the Board in due course.

[14] Ms Tamati the factors that underlie your offending are much the same sort of things, your lifestyle, people you hang out with and particularly drug use but the report contains a number of positives. You have expressed remorse for the offending. The report writer states that that appears genuine. You said that you were sorry, you were very aware of your actions and how the victims could be feeling. You, too, are motivated to make positive changes in your lifestyle including abstaining from drug use, wanting to have contact with young children being a motivating factor for you.

[15] As both of your lawyers would have pointed out you are subject to the three strikes regime now and the Commission of Further Violent Offending has very, very serious consequences for you.

[16] In terms of sentencing objectives, sentencing is a nuanced process, it is not just simply about punishment, it is certainly to hold you accountable for the offending. I am very mindful of the interests of the victims. Sentencing Judges often refer to deterrence but it is perhaps a concept that is made too much of but as against those factors the sentence should promote your rehabilitation and reintegration into the community.

[17] I have spent a bit of time looking at the various authorities, both at the Crown and those Mr McKenzie in particular put forward to me. I have to be consistent in the way that I sentence you with decisions in like cases and overall I have to impose the least restrictive outcome that is appropriate.

[18] Mr Collier, having regard to the aggravating features of the offending and assessing the criminality of the offending overall I have started at a point somewhat higher than Mr McKenzie would urge me to. I have started with a term of some five years and six months. That has to be uplifted by some six months having regard to your offending history. That would give a total before allowance is made for guilty plea of some six years.

[19] In terms of your guilty plea it was late in the piece. Mr Starling has provided the somewhat unique circumstances as to why that is so. There are a number of benefits in pleas of guilty, of course, both to the administration of justice but more particularly it spares the victims from the prospect and trauma of going through a trial. That has been hanging over their heads for some time of course until you entered pleas of guilty. So in no way could a full discount for your pleas of guilty be justified but I do consider that some 15 percent (so that is about 10 months in your case Mr Collier) is justified.

[20] Ms Tamati your involvement in this offence is less in terms of assessing the criminality of it. You were not actively involved in the violence that Mr Collier meted out. I have started with a term of imprisonment of four years and six months. I have not uplifted that at all notwithstanding that you have got some criminal history because it is largely irrelevant, nor taking into account the fact that you were on intensive supervision at the time. I also have allowed you a discount of some 15 percent (or eight months) to reflect your plea of guilty.

[21] So, overall, in your case Mr Collier that would be a sentence of some five years and two months and in your case Ms Tamati a sentence of three years and 10 months. I have stood back from that slightly in both cases.

[22] Mr Collier you are sentenced to imprisonment for five years. Ms Tamati you to imprisonment for three years and seven months. There will simply be concurrent sentences of six months on the breaches of release conditions Mr Collier and three months on the breach of intensive supervision for you Ms Tamati.

P R Kellar
District Court Judge