

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

**IN THE DISTRICT COURT  
AT PALMERSTON NORTH**

**CRI-2016-054-002300  
[2017] NZDC 20268  
THREE STRIKES WARNING**

**THE QUEEN**

v

**FRASER KARU  
JARROD HETARAKA TE OKA**

Hearing: 8 September 2017

Appearances: M Blaschke for the Crown  
P Murray for the Defendant Karu  
J Younger for the Defendant Te Oka

Judgment: 8 September 2017

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**NOTES OF JUDGE L C ROWE ON SENTENCING**

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[1] Jarrod Te Oka and Fraser Karu you appear for sentence having pleaded guilty to a charge of aggravated robbery. Present in Court is your victim and I am pleased he is here and he is part of this process.

[2] On 18 April you both went with Chantelle Allen to the victim's address. She went there to gather property, whether she was entitled to it or not, and took you as back up. You were both disguised, you were both carrying weapons. In your case Mr Te Oka you had a black replica pistol. In your case Mr Karu you had a large butcher's knife. This was at 3.00 am on the 18th, so in the early hours when the victim would have been asleep and not expecting this sort of trouble.

[3] Whether you thought you were backing up someone who was entitled to property or not, the way you went about it was clearly and demonstrably wrong, unlawful, and as matters transpired, terrifying for this victim. [The victim] was made to lie on a bed, his hands were bound, a threat was made to cut his tongue and hand off, he was detained for approximately an hour while his house was ransacked and his personal items taken, including his vehicle. He tried to run away at one stage. He was caught by you Mr Karu and you struck him several times about the head. He was left lying on the floor; he may have lost consciousness as a result of this assault. This was a serious instance of a home invasion robbery.

[4] [The victim's] physical injuries were not especially serious but it is clear from his victim impact statement that he has suffered significantly from the emotional harm that arose as well as the property damage and loss he suffered. As he said this has caused him to be a different guy, what happened plays in his mind, he used to be a social person, he does not go out anymore, he does not know who he can trust. He does not like being home alone; he double checks windows and doors are locked and barricades a door to prevent people getting in. He suffers ongoing headaches and migraines as a result of what happened and he is often exhausted from not sleeping.

[5] These effects are all completely foreseeable when you go into someone's home and victimise them in this way, and completely understandable. They emphasise why this sort of offence, going forcibly into someone's home, detaining them, assaulting them, and threatening them in this way with weapons is something the Court must denounce in the strongest possible terms. I am sure you understand that. If I can put it in your own terms, if someone did that to a member of your whānau I suspect you would be outraged.

[6] Mr Karu I have previously given you a sentence indication and I have told you what the relevant matters are that I am taking into account. For both of you I have to identify what is called a starting point sentence. Identifying a starting point sentence is something of an artificial process. The law is frequently inadequate in being able to say to a victim, this is the price for you being wronged and it is never a delicate or acceptable process in many people's eyes. But the law has to treat everybody the same

and equally. So, I have a number of legal principles to follow when setting a starting point term of imprisonment for this offence.

[7] The authorities which have been discussed by your lawyers talk about other cases and relevant starting points for home invasion aggravated robberies where people are detained, assaulted, threatened, weapons are brandished, a large amount of property is taken and there is significant victim impact. That range can be between about six and a half years up to about 10 years.

[8] One of the important matters to observe here is what we call parity, in other words equality between the people involved. I have previously said to you Mr Karu, and I may have indicated to you Mr Te Oka, that I have to observe parity or equality if you like, in relation to what happened with Ms Allen. When she was sentenced the Court adopted a starting point of seven and a half years' imprisonment. While you had different roles and different parts to play in what happened there is no real basis to distinguish between any of you. The threats that were made, the assaults that occurred were all foreseeable, they were all part and parcel of what you all jointly embarked upon. Ms Allen was the organiser, she was the one who enlisted your help, she knew when she went to the door that you were armed and disguised. The fact that [the victim] might try and run away and be assaulted, to prevent him doing so was all completely foreseeable. The threats were all part of what happened, as was the detention and the taking of his property. There is therefore no basis to distinguish between your respective roles in identifying a starting point. So the starting point for both of you is seven and a half years' imprisonment which was the starting point identified for Ms Allen.

[9] The next step is to decide whether there ought to be matters that either increase or reduce that term of imprisonment. Starting with you Mr Te Oka, I must have regard to factors that might demonstrate you are at either greater or lesser risk to the public in the future. Factors that are personal to you either in aggravation of that starting point to make it higher, or in mitigation from that starting point. You have previous convictions that are of concern, including quite recently for violence. You have one previous conviction for aggravated robbery. As we all know that conviction for aggravated robbery, and the first strike that went with it, means that on this occasion

a second strike applies to you. While I have some discretion in the matter, it is extremely limited and I do not believe the law entitles me to depart from what a second strike means on this occasion.

[10] I have carefully considered your letter. There are many things there that demonstrate to me that there is a different side to you and that the future for you is not as bleak as might be thought. But equally this offence is one which does not allow me to step back from what a second strike means. The purpose of having a strike regime, and I am not allowed to second guess that purpose, is to say to everybody that if you commit a second crime like this, particularly of this seriousness, and victimise someone such as [the victim] in this way, the expectation is that you will serve all the term of imprisonment, and that is what will occur.

[11] Your previous convictions do require me to consider your ongoing risk, the need to deter you and the need to say to you that previous terms of imprisonment and other things have not, up to now, deterred you. It is an aggravating factor that you have these convictions. I increase your sentence by six months to take those previous convictions into account, which brings me to an overall starting point of eight years. I regard that as the least restrictive starting point available in your case.

[12] Your pre-sentence report suggests you either lack remorse or are not genuine in your remorse. I do not agree with that. I have read your letter; I would like your victim to read your letter. I consider you are quite capable of turning things around. You and your family have put together what resources you can to pay the reparation sought and that has been tendered in the form of a bank cheque today. Normally Judges are very sceptical about claims of remorse, that people turn up at sentencing and claim for the first time to have been remorseful, and quite properly that could be seen as simply an effort to reduce a sentence without that claim to remorse being genuine. I do regard, however, the payment of the money as a tangible demonstration of remorse. It is limited to some extent because of just how serious this was and the effect on this victim. I am required to balance all of these things in deciding what credit you should have for remorse and the payment of this reparation. In your case any discount is meaningful because that will be actual time off what you spent in custody.

[13] In this case I consider that the appropriate reduction is one of nine months. That brings me back to 87 months. You are entitled, I think, to credit for your guilty plea in a meaningful way. It was not entered early but equally at a time when there had been a great deal of discussion about matters that were not really your fault if I can put it that way. A guilty plea in this case was extremely important because it meant that [the victim] did not have to give evidence and re-live, when giving evidence, what occurred to him in a very harmful way. The law requires me to take that into account. The discount I give for your guilty plea is 22 months. In your case your end sentence therefore is 65 months. That is five years, five months' imprisonment. As we know you will have to serve all of that time.

[14] In your case Mr Karu, I indicated to you in the sentence indication a starting point of seven and a half years. Your previous convictions are somewhat worse than Mr Te Oka's. You have five previous convictions for aggravated robbery. They were incurred prior to the strike regime coming into place. Equally you also have recent convictions for violence and possession of a firearm which are convictions of real concern in the context of this case. They are an aggravating feature that, on the sentence indication, I uplifted the starting point by 12 months. I have not received any information to suggest that was an inappropriate uplift. In all of the circumstances I think that is an aggravating feature relevant to your ongoing risk and the need for real care to be taken with you when you are reintegrated back into the community.

[15] One of the matters I think emerges from your pre-sentence report is that sadly you have become institutionalised. When in prison you do incredibly well. You do training, trade papers and you are a positive influence to people while in a prison environment. It is extremely sad that a man has to only do well in that environment and is not able to cope well within the community.

[16] There is, as your lawyer points out, little discussion of remorse in your pre-sentence report. You expressed a willingness to attend restorative justice. I wish that had been able to occur. I regard your willingness to attend restorative justice when I now read the pre-sentence report and the things that are said about you in an institutional setting which are very positive. They paint a completely different picture of you. I regard that you were at least genuine in wanting to attend restorative justice.

I want to say to you that this is a thought you should retain. That there is a place to restore victims, there is a place to put things right always and in saying that to you I reduce your sentence by three months simply to take that into account and to send you that message. It may not seem much but it is important that you receive that message.

[17] Your guilty plea is also worthy of proper recognition and the law requires me to recognise it properly. The discount that I consider the law requires me to give you is one of 25 months which would bring me back to an end sentence of 74 months. That is six years, two months' imprisonment.

[18] I do need to say to you that you will come before the Parole Board and your Probation report makes it very clear you have no hope of early release and that is realistic. At present you pose a real risk to the community and the Parole Board will need to work carefully with you. The pre-sentence report makes it also clear, that when you are released into the community it will need to be a properly thought through plan, and a structured plan to give you real support. It is only in that way you would overcome the institutionalisation that I think has occurred over the last 20 or more years for you. You will need to play your part.

[19] You do need to understand this can never happen again. If it happened again then I am telling you now that preventive detention is a very real likelihood for you. I do not want to see you spend the rest of your life in a prison. It would be a waste of someone who, at least in an institutional setting, shows he is able to function, learn things and contribute positively. The trick is seeing how you can do that when you are released into the community. That is the trick, but you do need to understand that public safety will always come first, and if this happened again you are likely to receive a sentence of preventive detention simply to protect the public, no other reason. The person who is in a best position to protect the public is you. So you need, within your heart, to find a way to do that. The Parole Board will talk to you carefully about how that can be achieved, but this must never happen again.

[20] The end sentence therefore is six years, two months' imprisonment. You are also now convicted of the offence of aggravated robbery. That conviction was held over so you could complete programmes on remand. You are now subject to the Three

Strikes Law and I am 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 violence offences. If you are convicted of any serious violent offence other than murder after this warning, and a Judge imposes a sentence of imprisonment, then you will serve that sentence without parole or early release. If you are convicted of murder after this warning then you must be sentenced to life imprisonment. That would be served without parole unless it would be manifestly unjust. In that event the Judge must sentence you to a minimum term of imprisonment. As I have indicated to you, however, if this happened again and you committed another crime like this again, I suspect we would be leapfrogging the second strike and going straight to preventive detention. So you actually have, I think, a greater incentive than the Three Strikes Law provides to ensure that this does not happen again.

[21] In Mr Karu's case I consider it is appropriate that I do impose reparation. It is not an unwieldy figure, even though it is some time before you are going to be out I would like you to repay [the victim] and I would like that to be the starting point of you being able to show that you can live in the community and understand what it is to restore victims. So I do order reparation in your case of \$3502 which is your share of what was stolen from [the victim]. There needs to be a lot of care taken on Mr Karu's release. I do not want to see you back here Mr Karu.

L C Rowe  
District Court Judge