

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

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**IN THE DISTRICT COURT
AT HAMILTON**

**CRI-2017-019-001271
[2018] NZDC 5306**

NEW ZEALAND POLICE
Prosecutor

v

[DECLAN ELLIOTT]
Defendant

Hearing: 20 March 2018

Appearances: Senior Constable R Bennett-King for the Prosecutor
M Sturm for the Defendant

Judgment: 20 March 2018

NOTES OF JUDGE D C CLARK ON SENTENCING

[1] Mr [Elliott], you appear today for sentence having pleaded guilty in response to a sentence indication.

[2] The charges that you appear for sentence include:

- Wounding with reckless disregard; that has a maximum penalty of seven years' imprisonment.
- Assault with a weapon; which has a maximum penalty of five years' imprisonment.

- Male assaults female; there are six of those charges with a maximum penalty of two years' imprisonment.
- Breaches of intensive supervision; there are four of those.

[3] You pleaded guilty to these charges in November of last year and I told you at that time that the starting point for sentence was a term of imprisonment in the range of two years eight months to three years on a totality basis.

[4] You came to Court with very little in the way of prior offending. The conviction of note was an assault in 2015. It occurred after the 2015 charges that are here today for sentence.

[5] When I looked through your offending it falls into two distinct timeframes. There were charges from 2015, September and October, and then in January and February of 2017, more than a year ago since the last incident.

[6] When I looked through the summaries of facts, it was clear that going back to 2015 you and your partner were involved in a relationship that had a number of difficulties. You were both very young. It was a significant emotional relationship and it did not appear that you coped so well with that.

[7] Your partner had a young child at that time. It appeared that many of the 2015 incidents involving violence also involved alcohol and you were described as being intoxicated at the time of those incidents in 2015. That does not excuse your behaviour but it provides a context for it.

[8] In general terms the 2015 behaviour included occasions when intoxicated you would argue with the victim, follow her when she left the place that you were at. You grabbed her on one occasion, threw her onto the bonnet of the car where she landed heavily. The significant thing about that was at that time she was in the very early stages of pregnancy.

[9] In October of 2015 there was a family gathering and again you were heavily intoxicated. When your partner wanted to go back into the house you kept pulling her

back by her waist and on one occasion with such force that she fell down the steps and landed on her back on the path.

[10] Her sister was pretty upset understandably about that and she became involved. Unfortunately you behaved in a similar way towards her and picked her up and pretty much threw her and there was a bit of a scuffle between the two of you.

[11] That did not stop because you again argued a little later on and you behaved in a way which is a little more unusual, you put your thumbs into her eyes. That was something that someone else saw and intervened which was a very good thing, but you picked up a knife. You threatened your partner with it. The police were called understandably because your behaviour was not acceptable.

[12] Moving forward to January 2017, you and your partner were parents and on one occasion you had been playing a game. You became upset because your son had been crying a lot and you spoke to your partner about that and for some reason which I am unclear about you hit her with the gaming controller. It caused her eyes to close. Then later in February at a family member's home, you argued over a concern that you had and hit her in the eye with your elbow. She did not take any action at that point.

[13] However the most significant matter in my view had to do with the incident involving your son in late February. He was described at that time as being grizzly and unsettled and he was teething at that time and so that is understandable.

[14] You were becoming more upset because you did not think that your partner was able to stop him from crying and you eventually picked your son up and assaulted him. The allegations suggest that you struck him a number of times around his face, grabbed him around the chin and mouth in an attempt to stop him from crying. You were very upset.

[15] Your partner became involved. You grabbed her, bent her arm back and when she fell over you kicked her to her legs and once to the hip. Again a family member

came around and it was your family member who took your child to the doctor to ensure that there was no serious injury.

[16] The doctor looked at all the marks on your baby's face and also there was some damage inside your son's mouth and said all of that was consistent with blows being struck which is what the police say took place.

[17] There is also some non-compliance around a sentence at the time and it had to do with breaking a non-association condition that the probation officer thought should be in place.

[18] When I heard the submissions about the sentence indication I heard from Mr Sturm. He talked about the fact that you were quite young, involved in a quite significant emotional relationship and that you did not cope well with that. He however acknowledged that all of the behaviour that brought you before the Court justified a prison sentence being the starting point. He asked also that I take into account that after these events you had participated in the HAIP programme and had completed that programme and that was a factor in determining whether there might be an opportunity to look at a sentence less than imprisonment. When I considered all of the charges I considered that prison was the starting point. I said that I thought the charge against your son on its own would warrant a sentence of imprisonment of about two years, the charge that involved the assault with the knife, an uplift of eight months and then I said that there should be an acknowledgement of other charges and that would justify another uplift of about four months.

[19] Having regard to totality I said that the imprisonment starting point was in the range of two years eight months to three years. I think really three years is where I consider it fits appropriately.

[20] I then called for probation reports to look at sentence options and what I gathered from the probation reports is that you had had an opportunity to work and you had been doing that as well after you completed your programme. It does seem to me that with the right environment you are able to behave in quite constructive

ways. Completing the non-violence programme or the violence prevention programme was a very positive step in the right direction.

[21] I know that you were willing to participate in a restorative justice meeting. That meeting did not take place and it had to do with the views of the victim and in particular the victim's family. Understandably they were upset and angry at the way their family members were treated and it will take quite some time I think for those views to change. The concerns of the family were really around the safety of their family members.

[22] On your part, you have had the support of your family each time you have come to Court and I know that when we suggested that Tai Aroha might be an option for you your family certainly supported that as well. Unfortunately you were not able to participate in the Tai Aroha programme and the option available for you to stay was with your sister who lived away and in a rural place that would not be amenable to electronic monitoring or access to services.

[23] I talked with you and your family about the commitment that would be needed if you were to remain in the community. Commitment not just from you but in a supportive way from your family because there would need to be programmes that you would be involved in to address factors around why you offended and that would, because of where you live, mean that there would need to be transport available to you.

[24] Your family indicated last time speaking with the probation officer as well that they would be willing to support you by providing transport to and from any courses or appointments that you were involved in in Hamilton. That is quite a significant undertaking but it is because they want to support you to learn better ways to deal with your emotions, to get on top of your alcohol use, to learn how to be a good parent, many of those things.

[25] Having that information, taking into account your guilty plea and acceptance of responsibility, I accept that you are remorseful and also acknowledge the steps that you have taken since, gives me some confidence that you can stick to a sentence of

less than imprisonment. I am satisfied that with all of those things, this would allow me to impose a sentence of home detention. I am giving you a credit for all of those things of about a third.

[26] I then need to look at what else might be involved in a sentence and part of that would involve community work. Community work is a sentence that holds you accountable as does home detention and having looked at that mix and the proposed conditions for home detention, I am satisfied that if you were to also undertake a sentence of community work, the community work would be 160 hours, a home detention sentence of nine months would be appropriate. That would be followed by post detention conditions and I am going to talk about the conditions now.

[27] This is a long sentence for you but it is a sentence that allows you to remain in the community to address those needs that you have through the programmes and services that probation have available to them.

[28] The conditions that I consider appropriate for a home detention sentence are these:

- (a) That you undertake and complete the Hamilton Abuse Intervention Programme and abide by the rules of the programme to the satisfaction of your probation officer or any other appropriate violence intervention programme or counselling. Your probation officer will discuss that with you.
- (b) You must also attend an assessment for any programme to address identified offending-related factors as directed by your probation officer and also attend and complete any counselling, treatment or programme as directed by the assessment to the satisfaction of your probation officer.
- (c) You must also attend and complete an appropriate parenting skills programme to the satisfaction of your probation officer and that

programme will be worked out between you and your probation officer when you meet.

- (d) I am also going to put another condition in that you attend any other counselling or programmes as directed. It might be that your probation officer considers that something else would be of assistance.

[29] This home detention sentence is going to be judicially monitored. Not every home detention sentence is but some are and that means that I am going to ask your probation officer to write a progress report. That will tell me how well you are doing on your home detention sentence, whether the conditions are the right conditions, whether anything needs to change and also if there are any issues around how you are complying with the sentence then we would talk about those as well.

[30] Usually a report is provided to the Court, however I would like you to appear in Court and I am going to set a date in two and a half to three months' time so you can tell me how things are going.

[31] There will also be post detention conditions and the post detention conditions are to allow you to complete things that you may have started and have not had a chance to finish. The conditions are that you:

- (a) Attend an assessment for any programme to address identified offending-related factors as directed.
- (b) Attend an assessment for any condition or programme left uncompleted through the sentence.

[32] This really is there to hold you accountable, to show you that your behaviour was not okay but also to promote change and you have shown that you can comply with programme requirements already and this is to continue with that.

[33] I am going to tell you now how the sentence will be imposed. When I talked about nine months' home detention that is going to be imposed on the charge that has to do with your son, that is the charge that with reckless disregard for his safety you

wounded him. There will be nine months' home detention on that plus the community work.

[34] I am going to impose home detention on the other charges, it will be lesser home detention because they are charges that are not as serious as this one.

[35] Mr [Elliott] the sentence will be imposed on the other charges in this way. I have already said on the most serious charge home detention of nine months, community work 160 hours. The conditions are in the probation officer's report and the post detention conditions will last for six months past the sentence end date as well as judicial monitoring and you will need to come back to Court on 13 June at 11.45 am which is when the first judicial monitoring report will be available and we will talk about that.

[36] The next charge is assault with a weapon. That will have community work also of 160 hours and home detention of six months. The same conditions apply.

[37] There are then charges of assaulting your former partner. They will have a sentence of three months' home detention along with all of the same conditions. There will not be community work on those, it is home detention.

[38] On the charge of assaulting your former partner's sister there will be home detention of one month and on the breaches of intensive supervision which had to do with breaching the non-association, there will be home detention of one month. So that is a total of nine months, a total of 160 community work hours and the conditions as I have talked about.

[39] You have already shown that you can stick to a programme. I am confident that with the support of your family and the commitment you say you have you can successfully complete this sentence so I look forward to receiving the first report from your probation officer for 13 June.

[40] I am sorry everyone it has been so late. It was a lot longer than I expected to be this afternoon in Court. There will need to be a home detention order and I have

kept the registrar way too long as well but there will be a home detention order, community work order and then you will be able to leave.

D C Clark
District Court Judge