

**IN THE DISTRICT COURT
AT HAMILTON**

**CRI-2017-019-001518
[2017] NZDC 19552**

THE QUEEN

v

JONATHAN DAVID DOUGLAS

Hearing: 31 August 2017
Appearances: S Gilbert for the Crown
C Bean for the Defendant
Judgment: 31 August 2017

NOTES OF JUDGE D C CLARK ON SENTENCING

[1] Mr Douglas, you appear today for sentence having pleaded guilty in response to a sentencing indication on two charges. Those two charges specifically are assault with a weapon which has a maximum penalty of five years' imprisonment, and wounding with intent to cause grievous bodily harm which has a maximum penalty of 14 years' imprisonment.

[2] On 3 July, which is the date that I gave the sentence indication, I heard full submissions both from Mr Bean and from the Crown and I discussed also in the sentencing indication the circumstances surrounding your behaviour on that occasion back in March. I was satisfied, having heard the submissions and taking into account relevant sentencing principles, that your behaviour justified a starting point of imprisonment of six and a half years, uplifted by four months for previous relevant

offending. I rely on the sentence indication that I gave on that occasion and that can be attached to the sentence decision which I give today.

[3] I said that if you were to plead guilty that your sentence would be reduced by 25 percent which would give you a full credit for pleading guilty and that anything else would be considered when there was further information available, particularly in the form of a pre-sentence report. After the credit for a guilty plea the sentence at that point was five years, one month and 14 days' imprisonment.

[4] Today I have heard from the Crown who filed a brief written memorandum about sentence. The Crown stood by the initial sentence they sought as a starting point. Having heard the Crown's submissions today they have turned essentially on the comments in the pre-sentence report as to whether you really had insight into your behaviour and whether you should be given any further credit for things such as remorse and a willingness to participate in a restorative justice process. The Crown's assessment is that there should be no further credit and say that in respect of restorative justice, given the circumstances here, that a restorative justice meeting would not have taken place in any event and also, because of comments in the pre-sentence report that turn on you saying to the report writer that you only ever intended to ram the vehicle, that there should not be any further credits available to you.

[5] I have heard from Mr Bean. Mr Bean has referred to the probation officer's report also and in that report there is an assessment made by the report writer about your views toward the victims and also your expressions of remorse and how they may be treated. The probation officer has written in the report that you told the report writer that you bear no malice, that you did want to undertake a restorative justice conference and that you appeared to be genuine in your expression of remorse.

[6] There has also been reference to letters you have written but have not been received and the Crown mentioned that also. The submission made by Mr Bean is that this report does indicate that you show remorse, that there should be some credit available to you for that and that it is remorse that should be treated as being genuine.

[7] Having heard from counsel, having read the report, having considered also the circumstances surrounding this there do appear to me to still be some issues for you around real acceptance of what you did on that occasion. Having said that, I do consider that there is remorse shown by you. I accept the assessment of the probation officer. There, in my view, is still a way to go for you to really understand the impact that your behaviour has had but there are, in my view, positive comments in this report that indicate that you are on the way to achieving that.

[8] From that five years, one month and 14 days point, having given you credit for a guilty plea, I do consider that there can be a further slight reduction to acknowledge those expressions but not to the extent that Mr Bean has asked for. The further reduction that I consider can be given takes into account the observations of the probation officer and while restorative justice seems to me to have been extremely unlikely in these circumstances it does not mean that there should be a complete ignoring of your willingness to participate. However, the further credit is small, I think about 2.5 percent, and that means that I consider that the appropriate final sentence in respect of the most serious charge is four years and 11 months' imprisonment.

[9] In respect of the charge of assault with a weapon I impose a concurrent sentence of two and a half years' imprisonment.

[10] I have had an oral application to cancel an outstanding community work sentence. It is appropriate in your circumstances that happen and that community work is also cancelled.

D C Clark
District Court Judge