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

IN THE DISTRICT COURT
AT MANUKAU

CRI-2016-055-000767
[2017] NZDC 24400

THE QUEEN

v

ANDRE LUDOVICUS PETRA

Hearing:	27 October 2017
Appearances:	H Benson-Pope for the Crown D Young for the Defendant
Judgment:	27 October 2017

NOTES OF JUDGE A M WHAREPOURI ON SENTENCING

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[1] Andre Petra, you appear before me for sentence having pleaded guilty to six charges.

[2] The charges can be separated into three separate sets, but all charges can be viewed as part of a continuing campaign directed against your two victims in this instance.

[3] The charges include threatening to kill, intentional damage, burglary, attempting to pervert the course of justice, and wounding with intent to cause grievous bodily harm. The most serious of those charges is that of wounding with intent which carries a maximum penalty of 14 years' imprisonment.

[4] The facts of your offending are that on 7 December 2015 you went to an address on [address deleted], Papakura which was being used by one of your victims, [victim 1], who I am told today was formerly your best friend. Another of your victims was [victim 2], who was formerly a partner of yours for some years. Following the break-up of your relationship, [victim 2] formed a new relationship with [victim 1], which was the cause of some angst for you.

[5] On 7 December you drove to [victim 1's] address in your work vehicle. You drove it onto his property, and at speed into a caravan there, causing the caravan significant damage.

[6] You reversed your work vehicle, and then deliberately drove into a garden shed causing it to come off its foundations.

[7] [Victim 1] was at the property at the time. He called out for you to stop. You then got out of your vehicle and took a machete in your hand. You lifted it above your head, and as you did so you threatened that you were going to kill [victim 1]. You then used the machete to strike five of the windows to [victim 1's] home causing them to smash completely. You then got into your vehicle and drove off.

[8] The police were called, and they made efforts to contact you via your mobile phone. Sometime later you presented yourself to the Papakura Police Station. There you were subsequently arrested.

[9] Between 20 February and 3 March 2016 you then threatened [victim 2] by text message. The threat was in relation to the police charges which had been laid. You wanted her to drop the charges, or you would stab her, or inflict other violence against her and [victim 1].

[10] The text message which you sent on 3 March 2016 reads as follows;

> "If you don't drop charges today or tomorrow, I'll come and fucking stab both of you fleas. Do you fucking understand? I'm not doing this shit for another three months. Got it cunts? Text me the fuck back or will come there. Your call. Will come there 30 minutes if you don't text back. Understand dummy?"

[11] On that day you did return to the [victim 1's] property. You kicked open the front door of [victim 1's] address, entered the house, kicked open a bedroom door, and forced open a lounge door. Bedroom drawers were then ripped out by you, and the contents of the same thrown on the floor. It was clear that you were the person responsible for this because the property was monitored by a closed circuit television system and you were seen on footage of the same.

[12] On 3 April 2016 you went back to the [address deleted] address. You were seen to be holding what appeared to be a pipe or a crowbar in your hands. You confronted [victim 2] who was at the address at the time, and shouted to her threats that you were going to kill her. You then ran to the front of the address, forced your way into the home, and then locked the front door behind you. You then chased [victim 2] through the house. She fled from the property and hid in a ditch nearby.

[13] [Victim 1] however remained inside the house. He was standing in the hallway. You confronted him, and as a result [victim 1] received a blow to his chest, which he later realised to have been a stab wound. Following that you ran from the address, and you were apprehended by Police sometime later.

[14] I have seen victim impact statements from [victim 1] and [victim 2].

[15] [Victim 1's] victim impact statement notes that he worries for the safety of his family and [victim 2]. He has also suffered significant property damage as a result of your offending.

[16] In her victim impact statement [victim 2] identifies that it was the break down of your relationship with her that was the cause of your offending. She understands your anger, but accurately states that that is no excuse for what you have done.

[17] Your offending here is aggravated by a number of different features. First, your use of weapons. Second, your offending from 3 April 2016 involved unlawful and forced entry into the home being used by your victims. Third, while the injury inflicted to [victim 1] was not life threatening leaving him with permanent and ongoing health issues, it was nonetheless a serious injury. Fourthly, there was an element of

premeditation to your offending, given that you took a pipe or crowbar with you to your victim's address on 3 April, and it was with that implement in hand that you wounded [victim 1]. Finally, the offending here was part and parcel of an orchestrated ongoing campaign to cause your victims harm and intimidation. It ran over some five months or so.

[18] Any sentence passed by this Court must give appropriate consideration to the sentencing purposes of denunciation, deterrence, and the need to hold you accountable for the harm that you have caused.

[19] It also needs to reflect the sentencing principles of consistency with other sentencing levels imposed on similar offending by similar offenders, and it must be the least restrictive outcome which is warranted in the circumstances.

[20] The Crown submits that the lead offence for sentencing purposes should be the wounding charge. On that a starting point of somewhere between 10 years and 12 years' imprisonment is justified, with uplifts to reflect the totality of your other offending.

[21] The Crown further submits that any discount afforded to you for your guilty pleas should be in the region of 15 percent, given the timing of them, and all of the other surrounding circumstances.

[22] For your part, Mr Young submits that the lead offence for sentencing purposes should also be the wounding charge. He submits that it should be viewed as a discreet offence, and that the starting point for that should be somewhere between nine years and 10 years' imprisonment.

[23] That there should also be uplifts for the balance of your offending, and once deductions are made for mitigating circumstances, which I will refer to later, the end-sentence for you should be around six to seven years' imprisonment.

[24] Before I go on to consider the relevant sentencing authorities in this area I turn to your personal circumstances.

[25] I have seen two pre-sentence reports for you. Together they inform me that you are 49 years old. That you have a 17 year old son, with whom you have had little contact since he was about nine years old. You worked as a farm manager for a number of years in Clevedon, but following a disagreement with your employer over holiday pay that position came to an end, and you are now presently without work. According to the pre-sentence report-writer you laid much of the blame for your offending at the feet of your victims. You felt as if you had been responsible for rescuing [victim 2] from [details deleted]. You refer to [victim 1] as your true love, and that you have been left broken hearted by the end of your relationship, and a sense of betrayal from [vitim 2's] new relationship. The recommendation of the pre-sentence report is imprisonment.

[26] You have a number of previous convictions which go back some years. You have convictions for wilful damage and burglary, but nothing for any serious violence. The last relevant conviction you have for wilful damage was in 2009. The fact that that conviction, and the others which are also relevant, are now somewhat remote, means that the Crown does not seek an uplift for these. I too take care not to overstate them in this sentencing exercise.

[27] The guideline decision in this case is *R v Taueki*[1]. *Taueki* sets out a number of sentencing bands for with intent cases referring to a number of aggravating features. It is the presence of the aggravating features which assist in the setting of the starting point for serious violent offences.

[28] There seems to be broad acceptance between the Crown and your counsel that your offending comes within band 3 of *Taueki.* Band 3 involves cases of serious offending where there are three or more aggravating features. The cases within band 3 will attract starting points in the range of nine to 14 years' imprisonment. Your lawyer, Mr Young, sees your offending towards the bottom end of band 3, if not the top end of band 2. Band 2 relates to serious offending where there are two or three aggravating factors present. The Crown submits that your offending is towards the mid-point in band 3, but no higher.

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[1] R v Taueki [2005] 3 NZLR 372 (CA)

[29] The Crown has made reference to a number of other sentencing authorities, most importantly, cases called *R v Jury*[2] and *Watene v R* [3]. The *Jury* case, which also involved domestic related offending by a jilted former partner, involved a starting point of 11 years' imprisonment. In that case however the offending was more serious. *Jury* involved a sustained repeated attack against two victims with a greater level of violence. That is reflected by the repeated stabbing of one of the victims.

[30] *Watene* was a case which involved gang inspired violence. The starting point there was nine years' imprisonment. Your lawyer, Mr Young, submits that *Watene* should be seen as more serious than your case because there were also the use of multiple weapons against multiple victims. I note however that *Watene* was a single instance of violence which did not involve home invasion which is apparent here.

[31] While Mr Young urges me to view the wounding as a discreet offence when setting a starting point, I cannot divorce it from the lengthy build up which started back on 7 December 2015. When the wounding is viewed against that backdrop, the seriousness of your offending and your culpability becomes such that I view your offending to be slightly more serious than in the *Watene* case. It follows that the starting point for you on the lead charge of wounding with intent to cause grievous bodily harm is about nine and a half years' imprisonment.

[32] Your offending captured by the other threatening to kill charge from that day can be subsumed within that starting point.

[33] The other charges could be seen as distinct by time, place and circumstance given the nature of each of them, therefore justifying a cumulative sentence. I do not propose to do that. Instead I am going to apply an uplift to reflect your other charges, including the attempting to pervert the course of justice, which is tailored to take into account the totality of your offending. Accordingly, for your other charges I apply an uplift of three years' imprisonment.

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[2] R v Jury [2014] NZHC 687
[3] Watene v R [2014] NZCA 381

[34] I note that in doing so, the individual charges of threatening to kill and intentional damage could well have attracted starting points of one to two years, and one year respectively in and of their own right, and similarly the charge of attempting to pervert the course of justice could well have justified a starting point of between one year and 18 months.

[35] There needs to be a further uplift to reflect the fact that much of your latter offending was conducted whilst on bail. Here that uplift is six months. Accordingly, the headline starting point for you is 13 years' imprisonment.

[36] I do not propose to add anything further for your previous criminal history. I view your offending on this occasion to be out of character given the nature of your previous convictions, and I see them as being too remote in time so as to justify an uplift on this occasion.

[37] I accept what Mr Young says, that there needs to be some adjustment to reflect your willingness to participate in a restorative justice conference even though no such conference was convened. According to the memorandum filed by the convenor this was because the convenor determined that a conference should not occur because it was considered either inappropriate or unsafe so as to proceed with one. You may well have derived some benefit from a restorative justice conference as your victims, but the fact that one was not convened should not prejudice you. For your willingness to engage in restorative justice you are entitled to a discount of one month.

[38] Mr Young also urges me to recognise some remorse on your part. I have had the benefit of reading remorse letters provided to the Court, and I accept that there is some remorse for your offending.

[39] I also recognise that you have made efforts whilst in custody to better yourself. I have seen certificates evidencing your completion of various courses, and a letter from your head of unit which is to your credit. You are regarded as a senior mature stable influence on those others in your unit.

[40] For your remorse, as well as your efforts to rehabilitate yourself whilst in custody, my view is that you are due a further three month discount.

[41] That would take your sentence down to 12 years eight months.

[42] From there some consideration needs to be given to your discount for guilty pleas. Your guilty pleas did not come at the earliest opportunity. In fact they came very late in the piece. They came at what amounted to the third callover conducted on the morning of what would have been the week of your stand-by trial. It is fair to say that your pleas nonetheless enabled cost savings to the state, and spared your victims the ordeal of having to give evidence. However, I cannot extend to you the full or maximum discount that would otherwise have been granted had the pleas come at the earliest opportunity. What do I extend to you is a discount of 15 percent, or approximately 23 months.

That brings your end-sentence down to 10 years nine months' imprisonment.

[43] The Crown is not seeking the imposition of a minimum period of imprisonment, and I would not have thought one warranted in any event. My view is that the finite sentence is sufficient to reflect the sentencing principles and purposes referred to earlier in my remarks.

[44] Accordingly, the end-sentence for you is 10 years nine months' imprisonment.

A M Wharepouri
District Court Judge