

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

**IN THE DISTRICT COURT
AT MANUKAU**

**CRI-2017-092-007202
[2018] NZDC 1487**

THE QUEEN

v

[FINLAY WALLIS]

Hearing: 30 January 2018
Appearances: J Rhodes for the Crown
M Saseve for the Defendant
Judgment: 30 January 2018

NOTES OF JUDGE D J McNAUGHTON ON SENTENCING

[1] Mr [Wallis], you appear for sentencing on charges of kidnapping, injuring with intent to cause grievous bodily harm and male assaults female. You pleaded guilty after a sentence indication hearing before me on 27 October last year, and the facts are set out in my notes of the sentencing indication hearing.

[2] You and the complainant had been in a relationship before this incident for approximately seven years, and you have [number deleted] children together.

[3] You were at home drinking alcohol at your grandparent's address in Otara on [date deleted] last year. There was an argument in the bedroom just after midnight. Shortly after that you and the complainant engaged in consensual sexual intercourse to make up for the argument and it was immediately after that, that you began to accuse her of being unfaithful and having sex with other men, and you demanded the opportunity to inspect her vagina to check for semen from another man and reluctantly

she was persuaded to allow you to do that. You pushed her legs apart, you inserted your finger into her vagina. You found a white substance inside her vagina and you began to interrogate her about where that came from. There was then another argument. You forced her to take off all her clothing and once naked, you ordered her to sit on a chair in the bedroom and while she was seated in that position you tied her up by the wrists and waist and ankles using a variety of cords. You tied socks around her mouth to stop her from screaming. You locked the bedroom door and began to beat her with a section of a metal crutch which had been disassembled into two pieces so that you had a shorter object to hit her with. Throughout this you were questioning her about sleeping with your cousin. She denied that she was in another sexual relationship, and you continued to hit her about the body with this length of metal crutch over a prolonged period. Throughout this period she was beaten and pleading for you to stop and in considerable pain. You lit a cigarette and you burnt her thighs, using the burnt end of the cigarette in five places, and it is notable that those injuries are located just below her genitalia.

[4] The assault charge relates to a separate incident a couple of days later when you had been out and returned in the early hours of the morning. You were yelling at the complainant telling her to remove her clothing and get out. Responding to your demands, she took off her clothes, you grabbed her by the hair and pushed her into a bedroom. On route you went past the grandparent's room, the complainant was able to push their door open and wake up the grandparent's, who then began to yell at you. Your grandmother helped the complainant find some clothes and you followed the two of them into the laundry and in the laundry you punched her twice in the face. At that point your grandmother intervened. After that you managed to get the complainant away and into the bedroom and again, you locked the door and again, you wrapped socks around her head to cover her mouth. You forced her onto the bed, hitting her on the back using your knees to hold her down. She was able to break away and bang on the walls for help. She was tackled, landed on her stomach with you on top of her and eventually your grandparents responded to her cries for help, they forced open the door and that ended the assault.

[5] Photographs of the complainant's injuries show extensive very heavy dark bruising to the back of one arm, across her wrists and shoulder, also to her thighs and

there are cigarette burns visible in these photographs. It was obvious that a great deal of force had been applied to cause bruising to that extent.

[6] The victim impact statement said that after nine years she has finally been able to leave a violent and abusive relationship, and despite physical scars, the emotional scars are more serious. The complainant was struggling to support her children on her own, but is relieved that she does not have to live with the fear of waiting for the next assault. She describes her [age deleted] son assaulting his sister, no doubt copying what he has seen you doing. The complainant describes herself as feeling worthless and empty, and emotionally unable to deal with life. Any self-belief that she had has been taken away. She describes you effectively torturing her, making her believe that what you were doing was her own fault.

[7] The aggravating features referred to by the Crown are extreme violence, premeditation on the basis that the complainant was tied up and gagged and the bedroom door locked, before the assault proceeded, the serious injuries received by the complainant shown in the photographs and the use of a weapon; and finally, what the Crown submitted was a vulnerable victim and a significant breach of trust given the relationship.

[8] I am not going to repeat the submissions and authorities relied on by the Crown and defence in their arguments at the sentence indication hearing.

[9] Mr Saseve, however, did submit that your belief that the complainant was being unfaithful to you was effectively provocation which should be taken into account as a mitigating factor. I said there was absolutely no way I would do that, particularly given the way you forcefully examined her vagina, and I said you were extremely fortunate that you were not facing another charge of sexual violation by unlawful sexual connection, and I said if that charge had been before the Court, the starting point would have been considerably higher than five years' imprisonment, as argued by the Crown on the existing charges.

[10] I said I accepted the Crown submissions as to appropriate starting point which was five years' imprisonment at a minimum and I said arguably it could have been

higher than that, there were certainly enough aggravating features identified here to take this case into a band 3 *R v Taueki*¹ sentencing if the Crown had wanted to argue that. I said I would apply a modest discount on the basis that your only previous criminal history was for drink-driving, and that was six years ago, otherwise, you were a person of good character with no previous convictions. I said I would apply a 15 percent discount on that basis which would reduce the sentence from 60 months to 50 months. I said I would apply a 20 percent discount for plea at case review because this was not a plea at the first opportunity, that would mean an end sentence of 40 months which is three years four months. You accepted that indication and pleaded guilty.

[11] I have a pre-sentence report. You accept some responsibility for your actions but attempt to blame the complainant to some extent as well. You say the offending was out of character and that both you and the complainant had been consuming large amounts of methamphetamine. You are assessed as a medium risk of further offending, this of course is your first exposure to a prison environment.

[12] Your grandparent's and other family members are here today to support you at the sentencing, and they helped to raise you after your mother abandoned you as a young boy. You say you had a good upbringing but life was hard growing up in Otara as there were drugs and gangs in the environment. You say you began using drugs at around 2013. Your grandparents describe you as a quiet person who does not talk much. You hope to return to live with them after you are eventually released from prison.

[13] You say that the complainant was verbally and physically abusive towards you, you said you had grown tired of her assaults. You have had no contact with her since you were arrested. You do not present with any motivation at the moment to address your drug issues.

[14] It is going to be up to the Parole Board when you are released from this sentence, not me. I set the sentence but it is the Parole Board who will decide when you are released. I think you should reconsider this issue of drug treatment. If you

¹ *R v Taueki* [2005] 3 NZLR 372 (CA)

were to complete a drug treatment programme in prison as a part of your sentence, that is going to be a good sign for the Parole Board, and it may persuade them to release you earlier if you do it. If you do not do it, I can see you getting back into drugs after you are released from prison and maybe back before the Courts again, and no one wants to see that, but that is in your hands, you have got to think about it.

[15] I am not persuaded to change the indication I gave you. This is very serious offending. I have discounted the sentence as much as I possibly could, but the end sentence is, in respect of the major charges, it is kidnapping and injuring with intent to cause grievous bodily harm, are three years four months on those two charges.

[16] On the male assault female charge, 12 months' imprisonment. Those sentences are all concurrent, they run together.

[17] So, the effective sentence is three years four months.

D J McNaughton
District Court Judge