

**IN THE DISTRICT COURT
AT AUCKLAND**

**CRI-2017-004-008365
[2018] NZDC 1547**

THE QUEEN

v

DAVID IAN WEDGEWOOD

Hearing: 30 January 2018
Appearances: K Lummis for the Crown
B Meyer for the Defendant
Judgment: 30 January 2018

NOTES OF JUDGE C S BLACKIE ON SENTENCING

[1] David Wedgewood, you are before the Court for sentence today on a total of three charges one of aggravated burglary, one of threatening to kill grievous bodily harm, and finally a charge of assault. The maximum sentences that can be imposed on the aggravated burglary charge is one of 14 years' imprisonment.

[2] The facts as outlined to the Court and clearly now accepted by you, are that back on 14 August last year the two complainants were at their home address in Kingsland. At about 11.15 pm you together with three associates who you described later in the probation report to be thugs went to that address with the obvious intention of dealing with the complainants. So as to recover what you considered to be some stolen property. You armed yourself with a crowbar. You were able to gain entry to their address because their door was unlocked, and once inside you stood over the male complainant preventing him from moving, whilst your associates searched his room and other adjacent rooms.

[3] He was assaulted, described as being roughed up, and he was then moved so that his hands and feet could be bound using duct tape which your associates had brought with them. Both he and the other complainant who happens to be obviously his partner, or associate, a female, felt intimidated by you particularly in the manner in which you were holding the crowbar. They felt because it was threatened that they could, particularly the female complainant, have been raped, murdered, and the property ransacked. As it was you and your associates left the property taking, according to the complainants, a number of cellphones, tablets, items of clothing, the clothing being excess of \$1000.

[4] The complainants, however, have some familiarity with you, or at least your vehicle, and you were subsequently traced by the police, and you admitted that you had been at that property the previous evening and that you were responsible for your part at least in what had occurred.

[5] Your associates correctly described by you as thugs, have not been brought before the Court or even sighted or seen since obviously because you have not been prepared to disclose who they might be. So you end up carrying the can for this incident on your own.

[6] The question is initially for me is a starting point for the appropriate sentence which is accepted by you and your counsel as being a custodial one. In doing so I have to apply the principles of the Sentencing Act 2002 which your lawyer has no doubt outlined to you, which is that you have got to be seen to be accepting responsibility for what you have done, and indeed you do. You have got to be accountable for what you have done, and I think you accept that to be the case.

[7] The Court has got to take in the interests of the victims, and in this instance the effect on the victims has been certainly traumatic, and the older victim speaks now of really having what he might have long-term mental effects. This is often the case with people who have had their space violated, particularly, in a violent sort of way like this by intruders coming in at night. It is an experience which is particularly traumatic, and leaves them affected long into the future. Quite clearly items of property can often

be replaced, but the trauma, as I say, can last much longer, and it is the case with both of them. So I have to take their interest into account.

[8] Further, I have got to impose a penalty which will be a deterrent to you not to get involved in this sort of activity again, whether you thought there might have been some initial justification or not. Also perhaps more importantly a deterrence for others who might think that because there is some slight, or has been some slight, or they have got some complaint against somebody, they can take the law into their own hands, go round at night disguised in the way that your colleagues certainly were and mete out their own personal justice. We cannot operate like that, society would soon become a complete shambles if that is the way we acted. You have got a complaint about these people, then the police are to deal with them just as they subsequently were to deal with you.

[9] The Crown in their submissions suggest that I have got to look at a starting point of between four and five years' imprisonment, and they say that because in this case there are a number of what we call aggravated factors. First is that there was a degree of premeditation. This was not something that happened on the spur of the moment, this was not a sort of a sudden smash and grab type thing. This was planned, planned to the point that you recruited your associates. That they were people who were able to facilitate this type of offence. They had all the kit, the disguises, the balaclavas, something which the average man in the street does not normally possess and, of course, there was the taking of a weapon, a crowbar, and we all know, particularly those of us in Court, what damage a crowbar can do if it is used to strike somebody, it can be fatal.

[10] The Crown also point out that this was the unlawful entering of a dwelling space, this is a person's private home. It is distinct from aggravated robberies which often happen out in the street or out in a workplace, but this is in fact a place, is a private home where they could expect to be relatively, hopefully, safe. They also point out that there was the extent of the loss, we do not know the exact value of the loss, some of the items may have been recovered cellphones, and tablets and so forth but certainly some of the items are still missing, or have not been located.

[11] An aggravating factor the Crown point out is the multiple offenders, this was not something with just one person going into a property and creeping about at night. This was a gang up to four, and so it was that there was no chance that these people could defend themselves or resist, indeed that was apparent because one of them, the male, was actually tied up and secured. So his ability to resist and get out of the place to call the alarm to seek help, or to defend himself was greatly reduced by the overwhelming numbers, which you took with you on this occasion.

[12] Then there is the use of the violence, the man was roughed up. I do not know the absolute extent of his injuries. He said he suffered pain, as one would expect from being roughed up, to his left foot, his shins, his right leg, his hands, had to go to the doctor to have treatment and, as I say, has the mental element which is continued from then on and, of course, there was the detention, you actually detained this guy by tying him up in the way that you did.

[13] So the Crown really are saying that this is more akin to an aggravated robbery when it comes to sentence than just a burglary, certainly it is an aggravated burglary because it used violence, and there were more than one offender. The Crown draw analogies which what might have been an aggravated robbery, and they say that it had been an aggravated robbery being framed in that way, which it could well have been then it would have attracted starting point of between four and five years' imprisonment.

[14] The Crown rely on a fairly a well-known case which we often see cited in this Court that of the *R v Watson*¹ which was an aggravated burglary like you had, or you were involved in. Where the principles, the sentencing principles of aggravated robberies which are set out in the case of *R v Mako*² [2000] 2 NZLR 170 (CA) can be employed in such offending as yours.

[15] Mr Meyer on your behalf has cited to me a number of cases which the offending or the starting point might have been a bit less but up to three, to three and a half years' imprisonment. But when I look at those cases carefully they did not

¹ *R v Watson* CA224/03, 24 October 2003

² *R v Mako* [2000] 2 NZLR 533 (CA)

actually involve aggravated burglary, they involved other offences like assault with intent to injure, or injuring with intent, although albeit in similar circumstances to yours.

[16] So in my view looking at the cases and adopting principally the points that are made in the case of *R v Watson* I am adopting a starting point of four years' imprisonment for the aggravated burglary, but there has to be some uplift on that because:

- (a) There are the other two charges, that's the threat and the assault.
- (b) Also you do not come to the Court with what I might call clean hands. We have seen you far too much in the past some of those charges involve violence, some of them involve drugs, and some of them involve straight dishonesty. But over the years going back since 1994 which is 20 odd years ago, you have accumulated five pages of previous convictions.

[17] So taking those into account I think that an overall starting point should be four years and six months' imprisonment.

[18] I look now though to the issues that have been raised by Mr Meyer in mitigation and also you have raised to some extent in your letter, extensive letter that you have written today.

[19] There may well be some justification in your having issue with the complainants. I am not saying for a moment that it justified the actions that you took, which were totally ill advised but I am informed by the prosecution that these two people are not unknown to the police, and which I infer that they may well have a criminal record themselves, and although there is no proof of this could have been involved in something which was to your disadvantage. I do not know the details but I can see that may have been what prompted this ill-advised as it were. In other words it was not a random attack at innocent people, it was a self-help episode.

[20] But I can only give that a very minor discount. I am prepared though to give a discount for the other issues which you raise in your letter, and that hopefully you have had problems in the past, and this is pre-sentence report, that you might finally have learnt that you have got to turn your life around. That you are willing to take part in rehabilitative programmes that might be offered to you in that regard. Some of those programmes might have been promoted to you by the pre-sentence report, which I have to say unfortunately does not provide an outcome which the Court could readily accept. But I can see that the programmes that are suggested may well have, and will have some benefit.

[21] So for those factors I am prepared to give you a discount of 10 percent from the initial starting point, which in reality brings the sentence back to where we were originally of four years' imprisonment.

[22] It is accepted immediately by the Crown and, of course, it is pointed out and endorsed by your counsel that you accepted responsibility for this offending forthwith. You made no efforts to disguise it, and you pleaded guilty at the earliest opportunity, and that is unusual, I have to say, in cases of this seriousness.

[23] So I am prepared, therefore, to give you the maximum credit for your plea of guilty. That is 25 percent. So that brings the overall sentence now back from four years down to three, and that is where we are going to finish.

[24] So it means this that on the charge of aggravated burglary, which is the most serious, you are now formally convicted and sentenced to three years' imprisonment.

[25] Also on the other two charges I have to impose a separate sentence but they will be concurrent, served at the same time, 18 months for the threat to kill that did carry a maximum of seven years, and six months for the assault which carried a maximum of one year. They will be concurrent.

[26] Now there is one question I have to ask, and that is aggravated burglary remains a qualifying offence, and I need to enquire as to whether the three strikes warning has been issued. Yes, very well Mr Wedgewood normally the Court has on the bench here

a specific warning which I have to give you, and I am going to give you the warning perhaps in a slightly abbreviated form as I remember and recall it. It will, however, be delivered to you in writing setting out the formality of it.

[27] The warning is along these lines. That given your conviction for the charge of aggravated you are subject to the three strike legislation which is still in existence and I therefore have to warn you that in the event of your being convicted of a serious violence offence like this in the future, and you are sentenced to a period of imprisonment, then you would serve that sentence without parole or early release.

[28] Secondly, if you are convicted of murder following this warning, and you will be sentenced to life imprisonment which you would serve without parole or early release unless it would be manifestly unjust.

[29] Now those are in abbreviated form the terms of the warning but it will be given to you in writing so you will have the precise wording.

[30] All right, well now Mr Wedgewood you have got a bit of repair work to do, and I hope that that can be undertaken whilst you are in custody. So that when you appear before the Parole Board you can put your best foot forward, and these issues can be considered as at the time of your release.

C S Blackie
District Court Judge