

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

**IN THE DISTRICT COURT
AT CHRISTCHURCH**

**CRI-2017-009-003870
CRI-2017-009-004907
[2018] NZDC 1286**

**THE QUEEN
NEW ZEALAND POLICE**

v

SEAN DANIEL BROWNE

Hearing: 25 January 2018

Appearances: B Hawes for the Crown
S Burdes for the New Zealand Police
A Greig for the Defendant

Judgment: 25 January 2018

NOTES OF JUDGE T J GILBERT ON SENTENCING

[1] Mr Browne, you are for sentence on four charges. There is one of aggravated robbery and three charges of burglary. The facts are set out in an agreed summary and I will start with the aggravated robbery.

[2] At about 3.30 in the morning on 20 August you and two friends were at [the victim convenience store]. At the time the victim was working behind the counter and was the sole staff member in the store. You entered and raised an air gun towards him as he approached the counter. Whilst it was an air gun, and perhaps an old one incapable of lethal force, it looks very much like any rifle and [the victim] would have been terrified by that.

[3] Your two associates followed you in and went behind the counter near the tills and the cigarette cabinet. One associate was armed with a small sledge hammer and the other with a long knife. You hit a glass food cabinet and shouted at the victim, "Give us what you've got or we will kill you." You moved around the back of the counter and pointed the air gun at the victim's head while your associates took tobacco from the cabinet behind you. They put that tobacco into bags that they had brought into the store.

[4] You and one of your associates attempted to open the till beside you but were unsuccessful and again demanded the victim do that under threat of killing him. He opened the till and the money was removed. A second till was then opened and further money taken. You left the store through the front door followed by two associates carrying the tobacco and the cash. In total, \$680 was taken and the tobacco was worth just shy of \$1700.

[5] The burglaries are different matters. The first was on 20 September when you were in the New Brighton area. You received a phone call from one of your associates asking you to meet him at an address in Baker Street to lift a heavy item. You went there and once there he told you that he was in the process of committing a burglary. With that knowledge you entered onto the property with your friend and into the garage. Together the pair of you took three guitars, an amp and a microphone and took them home to your address.

[6] On 21 September you went to the pawn shop at [address deleted] and persuaded a female friend to take two of the guitars into that shop. She returned a short time later having pawned them and gave \$200 to you. You and your associates then went to [pawn shop 2], a different pawn shop of [street deleted], where the female friend of yours took a guitar into that store and pawned it. She returned a short time later having received \$120 and gave you \$100. Those guitars were fortunately returned to the owner.

[7] The next burglary was on 22 May last year. You were in [street name deleted], New Brighton. You entered a residential property on a rear section. You gained entry to the house by smashing a glass panel and a door and unlocking it. Once inside you

searched the premises and stole various items such as laptops, iPods, a mountain bike, a camera and so forth. In all \$6,700 worth of items was taken. You were identified because your DNA was left at the scene.

[8] Then shortly before midday on 30 May last year you went to [street name deleted] with an unknown friend. You entered the address, again by smashing a window and climbing through it. Whilst in that address you took various items and put them into a bag. You heard the victims arrive home and fled the address through the back door, climbing over a neighbouring fence onto [street name deleted]. You were chased and restrained by the victim and held there until the police arrived.

[9] You were sentenced on various matters including burglary on 20 November 2016 to 10 months' imprisonment and it was shortly after your release from that, that you committed two of these new burglaries. The aggravated robbery and the other burglary pre-dated that sentence.

[10] I have seen your history. For a guy who is 18, it is a disgrace. It contains a lot of violence and dishonesty.

[11] The pre-sentence report notes that you are not the smartest guy but still you are clever enough, and understand enough, to know what you were doing was wrong and you are capable of making choices. The report writer said that you seemed to have some insight into your actions and understand the harm that you have caused, and showed at least some remorse. You talked about wanting to change your life when you get out of prison so that you do not end up back there. The recommendation, given the offending, is imprisonment.

[12] I have read the victim impact statements. You have heard yourself from [one of the victims], the impact your actions have had on him and his family and his young children. I have read another victim impact statement from the owner of [the convenience store]. Unbelievably, his shop has been the subject of 10 aggravated robberies within the space of about 15 months by people like you.

[13] I have received submissions from the lawyers. The Crown submits a starting point of five years on the aggravated robbery is justified because of the case of *R v Mako*¹ which is a leading case. An uplift for your previous convictions is warranted but credit for the fact that you are still a young person and your plea of guilty is appropriate.

[14] The police have addressed the domestic burglaries and point out that, ordinarily, sentences of 18 months to two and a half years would be justified for each of those.

[15] Mr Greig, on your behalf does not really take any issue with that but asks me to bear in mind your young age and what we call the totality principle. He suggests that a somewhat lesser sentence than the Crown has advocated for might be warranted but acknowledges that a substantial term of imprisonment is inevitable.

[16] I need to bear in mind the sentencing purposes and principles in our law. I have to hold you accountable and try and promote in you a sense of responsibility. I need to denounce what you have done and deter you from doing it again in the future and I have to bear in mind the need to protect the community.

[17] What you did on these occasions is a continuation of your conduct since you were a 14 year old boy. So you need to figure out a way to change Mr Browne, otherwise you will end up spending your life in prison.

[18] I have borne in mind the gravity of this offending, the harm that it has caused, the effect on the victims and the requirement to be consistent. On the other hand though, I have also considered your young age and the requirement to impose the least restrictive outcome.

[19] The aggravating features are in some sense self evident. There was the use of the weapons in the aggravated robbery, and multiple attackers. For the burglaries, there were unlawful entries into dwelling houses. You were subject to a sentence when the last two burglaries were committed. There is the loss of property and the emotional

¹ *R v Mako* [2000] 2 NZLR 170.

harm. There is the victim vulnerability of that poor guy who was the sole attendant at the [convenience] store when you and your two friends confronted him. These actions were premeditated, and there are your previous convictions.

[20] On the other hand, as I have said twice already, I bear in mind your youth and your acknowledgment of responsibility which is demonstrated through your guilty plea.

[21] In my view, the starting point on the aggravated robbery, having regard to paragraph 56 in *R v Mako* is five years' imprisonment. The starting point on each of the two burglaries involving entry into the dwelling houses is 18 months. Having regard to a case *R v Arahanga*² that is the very least that I can attribute to those burglaries. They could easily have justified up to two and a half years. On the burglary of the garage, I would take a starting point of 12 months. All that gets me to nine years.

[22] I then need to bear in mind your prior offending and the fact that you were subject to a sentence at the time of the last two burglaries and I would uplift that sentence by six months to get me to nine and a half years.

[23] For a man who is only 18, that would be a crushing sentence and I need to bear that in mind, alongside the totality principle. So for those factors, I would reduce it by three years to six and a half years which is 78 months.

[24] I would then provide what I consider to be a discount which is generous for your pleas of 18 months' imprisonment which brings me back to five years overall. That is going to be the end sentence for you Mr Browne.

[25] I am not going to impose a minimum period of imprisonment on you because I think given your age, that would not be right. But unless you do something in prison to show the New Zealand Parole Board that you intend to change your ways, you can expect to serve a fair portion of that five years. If you do do something constructive in prison, it might be significantly less than that.

² *Arahanga v R* [2014] NZCA 379.

[26] At any rate the five years will be imposed as follows. There will be three and a half years on the aggravated robbery with a one and a half year cumulative sentence on the burglaries, taking it to a total of five. Reparation in the circumstances is completely unrealistic in my view. Five years' imprisonment, thank you.

T J Gilbert
District Court Judge