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

IN THE DISTRICT COURT
AT TAURANGA

CRI-2016-070-004329
[2018] NZDC 1031

THE QUEEN

v

JORDON LEVI HALL

Hearing:	23 January 2018
Appearances:	H Sheridan for the Crown W Nabney for the Defendant
Judgment:	23 January 2018

NOTES OF JUDGE P G MABEY QC ON SENTENCING

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[1] Jordon Levi Hall, you are before the Court this morning for sentence. You appear by AVL. You were tried by a jury last year on a range of charges and were convicted on all but one. The charges involved domestic violence against [the victim]. Three of the charges can be treated as part of the same discrete event. They are injuring with intent to cause grievous body harm, kidnapping and threatening to kill. In the amended Crown charge list they are charges 2, 3 and 4. Separately charges 1 and 6 allege injuring with intent to injure on separate and discrete occasions and a final charge, charge 7, is brought as a representative allegation that during the period 1 January and 26 October 2017 you assaulted [the victim], the charge being male assaults female.

[2] I presided at the trial and have a view of the facts and concur with the Crown's summary of the essential facts which relate to the various charges. I need to establish

a start point, I need to apply the totality principle and I need to give credit to you for any mitigating factors. I also need to consider if there are any personal aggravating matters which would justify an increase to the start point.

[3] I commence by considering charges 2, 3 and 4 which involve kidnapping, threatening to kill and injuring with intent to cause grievous bodily harm. That group of charges is the most serious and will attract the greatest start point. I will then consider the proper start point for the separate charges of injuring with intent to injure. They will be dealt with cumulatively but subject to totality. I will then consider the representative charge but, as I have indicated to counsel, I do not see that in the overall context of this case that a cumulative approach need apply to that charge.

[4] Firstly, charges 2, 3 and 4. You were at an address in Tauranga with the victim of your offending, a female with whom you had a on and off relationship for some years, you have a child together. Problems happened at the address where the victim of your offending ended up in a conflict with another female. For some reason you responded by attacking her at the rear of the house by punching, kicking and stomping. The occupier of the house decided you should both leave and you did in a vehicle. In the vehicle you continued your attack by punching to the head. In an attempt to have you stop that your victim feigned a loss of consciousness but you still continued to attack. When she wanted to get out of the car you prevented her from doing so and that constitutes the kidnapping. During the assault you indicated you would kill her and she took that seriously. The car was eventually stopped and in an apparent display of regret perhaps you hugged her and then took her home. Despite that action you were clearly, in the jury's view and in my view, a kidnapper and someone who committed a sustained attacked which demonstrated an intention to cause really serious harm. That of course was accompanied by threats to end her life.

[5] Mr Nabney addresses the start point by what is known as *R v Taueki*[1] analysis and builds in the kidnapping and the threats to kill as factors within the injuring with intent to cause grievous bodily harm. He acknowledges aggravating factors of attacking the head, victim vulnerability and harm to your victim. He points out that *R*

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

v Taueki is primarily concerned with the charge under s 188(1) Crimes Act 1961 with a 14-year maximum whereas the charge of injuring with intent to cause grievous bodily harm is brought under s 189(1) with a 10-year maximum. He directs me to the passage in the Court of Appeal case of *R v Taueki* where assaults of the type that you have been convicted of within this group of charges may attract a start point in the region of four years and he makes the submission that the lesser start point would require an adjustment. He proposes a start point of three years for this group of charges.

[6] Ms Sheridan takes a different approach by looking at the group of charges as a whole suggesting that the kidnapping is a particularly aggravating matter. She also identifies the particular *R v Taueki* factors but goes to precedent authority in the form of *R v Hayes*[2] and *Police v Mahutoto.*[3] Both of those authorities are on point in that they involve the kidnapping by the use of the motor vehicle and sustained attacks during the period of the kidnapping, accompanied also by threats. Start points of three years of imprisonment were adopted and upheld in those cases. By reference Ms Sheridan suggests that your offending within this group of charges is more serious because it involves a charge under s 189(1) and also the threats to kill.

[7] I agree with her and would adopt a start point for charges 2, 3 and 4 of three and a half years. I do observe, however, that Mr Nabney's approach, coming from a different direction under a *R v Taueki* analysis, arrives at a start point that is not dissimilar. That demonstrates to me the proper application of counsel's analysis of what are the essential elements of your offending and their focus upon what clearly must be the primary principles and purposes of sentencing, that is, accountability, deterrence and denunciation. On charges 2, 3 and 4 taken together, as arising from a single discrete incident, the start point is three and a half years.

[8] I now address charges 1 and 6, which are charges under s 189(2) Crimes Act of injuring with intent to injure, each of which have a start point of five years' imprisonment. The guiding authority for those charges is *R v Nuku*.[4] That case sets

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[2] *R v Hayes* CA171/06, 17 July 2006.
[3] *Police v Mahutoto* HC Auckland CRI-2011-404-111, 20 June 2011.
[4] *R v Nuku* [2004] BCL 1053 (CA).

out bands of offending, the second band justifying a start point of up to three years' imprisonment where there are three or fewer of the aggravating factors found in *R v Taueki*. You are within band 2. There is a particular aspect of your offending on these charges which is aggravating and that is strangulation.

[9] The facts which underlie these charges are these. On charge 1 you were at an address in Tauranga, your child was present and you pinned your victim to a couch and choked her. She succumbed to that and tried to leave but was grabbed by you. The next thing she recalls is waking up and you were standing over her. She again tried to get away and you stopped and choked her for a short period. Charge 6 involved a separate occasion where there was a dispute over a cellphone. You wanted to see the cellphone, she denied that she had it. You then punched her and pushed her in to the car and again strangled her.

[10] The Courts have observed on more than one occasion that strangulation is increasingly recognised as a potentially lethal act. People die as a result of being strangled and those that kill them are charged with murder or manslaughter. The risks of harm, potentially lethal harm, are very high and increasingly the Courts are seeing strangulation in the context of domestic violence as an aggravating factor there being a suggestion that there should be a separate charge within the range of domestic violence of strangulation carrying a start point well beyond that that applies to such charges of male assaults female. I agree with the increasing emphasis on strangulation as an aggravating factor and I consider that within the second band of *R v Nuku* a start point of two years' imprisonment is justified for charges 1 and 6.

[11] Because the events which gave rise to those charges are separate and discrete from the group of charges involving the kidnapping, threatening to kill and injuring with intent to cause grievous bodily harm, a cumulative approach is appropriate when setting a final start point. That is justified on the application of basic sentencing principle. It was said in the Court of Appeal case of *R v Clarke*[5] that those who inflict serious violence upon females whether partners or not at different times and different places cannot expect as a general course for sentences of imprisonment to be

[5] *R v Clarke* CA128/06, 6 June 2008.

concurrent. The Court said that subject to totality cumulative sentences are appropriate and pertinently in my view said, however, that the totality principle is not a discount for bulk offending. Nonetheless I must strive to appropriately apply the totality principle and I do so by reducing my start point of two years on each of these charges to one year and on a cumulative basis I arrive, therefore, at a final start point on all but charge 7 of five and a half years' imprisonment. I add in at this point that I have made no reference to charge 5, which was a separate charge of injuring with intent to injure, as the jury acquitted you on that charge.

[12] Charge 7 is representative charge alleging that you assaulted [the victim] on a regular basis throughout the period in the charge list. She said it was about every week. The evidence was vague in that regard and whilst you have been convicted of the representative charge my impression was that the jury was satisfied that at least on one occasion there was an assault separate and distinct from the various other charges. But I do not know and could not discern myself the extent of the assaults and the vagueness and lack of specificity in the evidence takes me to the view that no additional uplift is required for charge 7. I consider that the start point that I have arrived at in relation to the other charges – approached cumulatively but subject to totality accurately – reflects your overall criminality in all charges.

[13] That then leaves me to consider your personal position. You do have previous convictions and they do involve domestic violence. However, they are largely historic, the last relevant conviction being in 2010. If I were to consider an uplift because of your previous convictions I would be determining if those convictions and the sentences imposed have been insufficiently deterrent of you such that repeated offending could justify an uplift as further emphasis of the deterrent factor. I do not consider an uplift is justified and I am concerned that if I did impose an uplift I would be risking double sentencing on matters which are largely historic. I will not do that. There will be no uplift for your past convictions.

[14] I have a pre-sentence report which does not make good reading. The report refers to your past history of offending which is extensive but is limited in matters of domestic violence but it does say that you have limited insight in to your offending, you express no remorse and there is an absence of victim empathy. When you were

last imprisoned you went through the Special Treatment Unit Rehabilitation Programme which is designed to assist high-risk prisoners avoid future offending. However, it was after release from prison on parole that these charges that I am now sentencing you on were committed. The programme did not have the desired effect and the fact is that the extent of your domestic violence has escalated to much more serious charges. You will be imprisoned today and the Parole Board will no doubt take in to account your attendance at the past programme and its lack of effect and I expect that your release on parole, if at all, will be heavily influenced by the Board's assessment of whether in fact programmes such as that can mitigate your risk. You were seen by the report writer as being a high risk of future offending and harm to others and in my view that is an entirely justified view.

[15] I can give you no reduction for any personal credit factors. You defended the charges which of course you are entitled to do but there is nothing available to me in terms of remorse or prospects for rehabilitation. I am told that you have quit the Mongrel Mob and that is to your credit. But that is not a matter I can give you credit for. It may well be that the Parole Board will see that as a positive for your future. But this offending against [the victim] was entirely unrelated to your gang connection and I cannot see it as something that can influence what I do today. The end result for you, Mr Hall, today is that you are sentenced to a term of five and a half years' imprisonment made up in this way.

[16] On charges 2 and 3 the sentence is three and a half years' imprisonment.

[17] On charge 4, the threatening to kill, the sentence is two years' imprisonment.

[18] On charge 1 the sentence is one year's imprisonment cumulative upon charge 2.

[19] On charge 6 the sentence is one year's imprisonment cumulative upon charge 1. That brings me to a total of five and a half years' imprisonment.

[20] On charge 7 there is a concurrent term of one year's imprisonment.

P G Mabey QC

District Court Judge