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

**IN THE DISTRICT COURT**
**AT AUCKLAND**

**CRI-2016-004-009584**
**[2018] NZDC 290**
**THREE STRIKES WARNING**

**THE QUEEN**

v

**TAMATOA MATAA**

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| Hearing: | 10 January 2018 |
| Appearances: | Ms Bellingham for the Crown<br>J Corby for the Defendant |
| Judgment: | 10 January 2018 |

## NOTES OF JUDGE D J SHARP ON SENTENCING

[1] Mr Mataa, is for sentence following a guilty verdict for wounding with intent to cause grievous bodily harm. This has a maximum sentence of imprisonment of 14 years. Mr Mataa was found not guilty at the same trial in relation to a charge of aggravated burglary.

[2] As I have discussed with counsel it is necessary for me to establish the factual basis for sentencing Mr Mataa. By the jury verdict the jury considered that Mr Mataa was entitled to reasonable doubt on the issues of him taking a weapon or weapons with him into the address where he was found to have wounded [the victim].

[3] Mr Mataa said that he was attacked while in the address with a knife and that he needed to protect himself. While I am prepared to accept that Mr Mataa may have

been acting out of self-defence and he may have had a subjective fear of attack, the physical stature of the other occupants and the manner in which they gave evidence do not support a defence of self-defence and what appears to me to have occurred is that Mr Mataa reacted in a way that was excessive and outside the reasonable basis that would be present for self-defence. In considering the factual situation I am prepared to allow some limited mitigation credit for Mr Mataa for acting in what he thought was a means to protect himself.

[4] I am required to take into account the principles and purposes of sentencing in coming to a sentence for Mr Mataa. I have got to denounce violent offending of this kind, and I do so. I have to deter you, Mr Mataa, and others from behaving in such a way and I have to attempt to consider what rehabilitation might be possible and if I can to aid your reintegration when you are released from prison. I have to consider the effects of the offending on the victims and I am required to impose the least restrictive outcome which is consistent with the principles and purposes of sentencing.

[5] I have read the victim impact report. This was a situation in which although [the victim] unwisely discharged himself from hospital there were multiple staples to his head and he has scaring which will be permanent and it is fortunate that he did not suffer worse effects given the nature of the assault that was committed upon him.

[6] I consider that I need to look at what makes the offending more serious than an ordinary case of its kind and the following factors are present. This was a situation in which there was what I would regard to be extreme violence. That is notwithstanding that the charge requires really serious harm to be intended anyway.

[7] This was holding the victim in a headlock, punching him multiple times in his head and you must have been aware from the types of injury present that serious cuts to his head were being caused. You have said that this was as a result of rings that you had on your fingers as opposed to the Crown case of use of weapon. Notwithstanding this you needed to be aware that what you were doing was causing considerable harm to the person you had under your control at the time the blows were delivered.

[8] The injury to the victim was severe. As I have said, you are fortunate that these were not greater, but they did require medical intervention and they required staples to close the wounds in his head. The effects on the victim in relation to the attack have been recorded. It was also a sustained attack with heavy blows to the head of the victim.

[9] Now I consider that it is necessary to categorise your offending in band 2 of the guidelines which are established in *R v Taueki.*[1] I do move that back down the band, because there was an element of excessive self-defence which is recognised as a factor which can be seen as mitigating. The offending could be regarded as similar to a serious domestic assault in these circumstances.

[10] I consider that a starting point of four years' imprisonment is required. I know that your counsel has suggested a starting point of three to three and a half years and that the Crown have suggested six to seven years' imprisonment as a starting point.

[11] I cannot accept your counsel's starting point, because I can only give limited credit with regard to excessive self-defence and I consider that there are multiple aggravating aspects as identified by the Court of Appeal in relation to what happened. The sentence is on the basis of the facts as I found them and you are not being sentenced on the basis for use of weapons. Had you been the starting point would have been closer to that which has been contended for by the Crown.

[12] After considering those factors I turn to you. I hope you have had an opportunity to read your provision of advice to Court's report. Sadly it does you little credit. The report describes you as having no remorse. I note that you are a person who is recorded as medium risk of re-offending, but of high risk of harm. That you have convictions in terms of violence. You have had 23 convictions since 1984. These convictions involving violence, burglary and wilful damage.

[13] Your criminal history requires me to uplift the four year starting point. I do so by three months. I cannot give you credit for rehabilitation or remorse, given the content of the report.

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

[14] I have read [name deleted]'s letter. I have taken that into account. that is what got you the credit in relation to the potential that you felt for needing to defend yourself. What he says is something that may help you in your rehabilitation. If you can adopt the support which he is providing to you now there is an opportunity for you to do something about the history that you have had.

[15] The real issue to me is whether you can address the problems that relate to your excessive consumption of alcohol and drugs. Your pre-sentence report indicates you have not reached a point where you see them as significant. From the outside much of the trouble that you have is a direct result of those aspects.

[16] I do not consider that I can realistically provide credit in terms of the prospects of rehabilitation. Accordingly, the sentence which is imposed is one of four years and three months' imprisonment. And that obviously will be a sentence that will require you to be before the Parole Board. They will read these sentencing notes. If you can do anything about the taking of courses and other things to deal with the problems that you have carried round with alcohol and drugs they will be interested in that and that will go towards potential rehabilitation and reintegration.

[17] Would you please stand up, Mr Mataa. You are sentenced in respect of the charge of wounding with intent to cause grievous bodily harm to a term of imprisonment of four years and three months.

[18] I have got to give you a warning, Mr Mataa. This warning is that given your conviction for wounding with intent to cause grievous bodily harm you are subject to the three strikes law. I am going to give you a warning of the consequence of another serious violence conviction. You will also be given a written notice outlining these consequences, which also lists what are serious violent offences.

> If you are convicted of any serious violent offences, other than murder, committed after this warning, and if a Judge imposes a sentence of imprisonment, then you will serve that sentence without parole or early release. If you are convicted of murder committed after this warning, then you must be sentenced to life imprisonment. That will be served without parole, unless it would be manifestly unjust. In that event the Judge must sentence you to a minimum term of imprisonment.

[19] You will get a written notice of that. That is all for today, thank you.

D J Sharp
District Court Judge