

**IN THE DISTRICT COURT
AT HAMILTON**

**CRI-2017-019-005810
[2017] NZDC 27017**

THE QUEEN

v

TAMSIN VENA ADAMS

Hearing: 28 November 2017
Appearances: S Gilbert for the Crown
R Boot for the Defendant
Judgment: 28 November 2017

NOTES OF JUDGE A S MENZIES ON SENTENCING

[1] The charges that you face are two charges of aggravated robbery that relate to events on 11 August 2017 at different establishments and you are also to be sentenced on a charge of breach of an extended supervision order which involves you breaching the conditions of that order by removing the GPS tracker and absconding. Guilty pleas were entered to all matters at an early stage and I will discuss the allowance to be made in respect of the guilty pleas in a moment.

[2] Your previous record involves more than 20 previous matters. No previous convictions are for offending of this sort. You do, however, have a record that involves a sentence of imprisonment which was some seven years for a serious matter involving violence in 2007 and you were sentenced in May of this year on breach of the extended supervision order and sentenced to community work.

[3] The two aggravated robbery charges carry a maximum penalty of 14 years' imprisonment and those two charges follow events on 11 August of this year. The summary describes you and two associates planning to rob a food centre. On that day, you entered the food centre with a clothing covering your face and you had a large kitchen knife in your hand. You jumped over the counter, took various tobacco items worth approximately \$200. The complainant, who was the proprietor and was present, fled and climbed a neighbour's fence to get away. The complainant suffered some injury while doing so.

[4] On the same day, you and other associates drove to a dairy. On that occasion, you waited in the vehicle as the getaway driver. Your associates entered the dairy with their faces covered and they were armed with a long-bladed knife. They jumped the counter and stole various tobacco items. The second complainants were present during that robbery. The offending cost the dairy a sum more than \$6000 and that included damage to the till and loss of product. The second complainants also suffered loss of some \$2500 due to an insurance excess.

[5] The victim impact statements that have been provided illustrate that your acts caused all of the complainants involved to fear for their welfare and indeed for their safety and for their lives. The one complainant that I mentioned who fled the scene was concerned that he was going to be hurt and in the process of getting away he injured himself. The family involved in the other matter were terrified by what occurred. What they saw was more than one person there with a large knife being held. They had young children who were terrified and unfortunately had to witness what occurred. Both have made changes to the way in which they run their business activities as a consequence of what happened and in both cases there have been financial consequences of having to do so.

[6] The pre-sentence report that has been prepared describes the number and frequency of your past offences. The assessment is that you are at high risk of re-offending, given that you are a convicted child sex offender and a weapon was carried while this offending occurred. You are considered to be high risk of harm to others. The report writer observed an absence of remorse during the course of the interview and you indicated you had no concern for the victim and your main concern

was to just get in there and get out. The report refers to some dispute about your involvement in the [dairy] matter but Mr Boot has clarified that the issue was to confirm your involvement in that matter was as the getaway driver which is what is reflected in the summary that is now available for sentencing. The explanation offered to the Probation Service for your offending was financial need, that you needed to pay bills, you needed money. Evidently, that is a similar explanation to one that was offered for your offending two years ago. The Probation report observes that you have continued to offend in spite of the conditions and oversight from Community Corrections. You are therefore seen as being at high risk of re-offending. Imprisonment is the recommendation that has been advanced by the writer of the report.

[7] The Crown submissions have set out in some detail the relevant sentencing features that the Crown advances. The Crown refers to the Court of Appeal decision in *R v Mako*.¹ which is a guideline decision in terms of sentencing for this type of offending. The Court of Appeal notes a range of comments relevant here including reference to multiple offending with separate incidents and numbers involved in such offending. The most relevant extract from that decision in terms of your circumstances is the description of a scenario at paragraph 56 of *Mako* which describes circumstances similar to your offending. The reference there is to robbery of a small retail outlet by demanding money from the till under threat of the use of a weapon such as a knife after ensuring no customers are present, with or without assistance from a lookout or an accomplice waiting to facilitate getaway. The shopkeeper is confronted by one person with his face covered, no actual violence and a small amount of money taken. The starting point would normally be around four years. Should the shopkeeper be confined or assaulted or confronted by multiple offenders, or if more money and other property is taken, five years and in bad cases six years should be the starting point.

[8] The aggravating features relied upon by the Crown include planning and premeditation and the Crown emphasises in that context that you appear to be the oldest of the identified offenders by some eight to 10 years. The Crown therefore says that you can be viewed as the organiser and ringleader for this offending which

¹ *R v Mako* [2000] 2 NZLR 170 (CA)

involved planning to the degree that disguises were involved and people were ascribed particular roles. A knife was used, disguises were used, there were multiple offenders, there were threats of violence. There was substantial loss suffered by the victims, and I have already referred to the impact on the victims as reflected in the victim impact statements.

[9] The Crown has referred to a number of other cases, which are helpful. I have reviewed those cases but I do not propose to go through the detail of them all. The Crown submission, based on the issues that I have covered, is that the starting point should be taken on the lead charge of the [dairy] which is charge 2, of four years six months to five years' imprisonment. The other matter at [the food centre] would, in the Crown submission, attract a starting point of four years itself on a standalone basis. However, the Crown recognises that in the interests of totality, an end result would be appropriate that would be in the range of six and a half to seven years, being four to four and a half years plus a two year uplift for the second matter. The Crown accepts that although you have extensive previous convictions they are not of like kind and would not in themselves warrant an uplift.

[10] The Crown then argues that, notwithstanding the timing of your pleas which are accepted as being at an early stage, the strength of the Crown case is such that the allowance for a guilty plea should not be the full 25 percent and the Crown argues that 20 percent is the maximum that is warranted.

[11] Reparation is raised and is sought. In saying that, the Crown recognises that in the light of the sentences that are anticipated and certainly advocated by the Crown, that it may not be an appropriate order to make. The Crown does, however, seek disqualifications given the use of vehicles in this offending. Again, it is recognised that the sentence that is being sought would doubtless exceed any disqualification period but it is nonetheless appropriate to mark the offending and that would require you to re-sit a licence once you are released.

[12] The defence submissions recognise that *Mako* will be the guiding feature. Indeed the Crown and the defence submissions do not depart significantly in terms of a starting point. Mr Boot argues that the appropriate starting point for [the food centre]

matter would be four years' imprisonment with an uplift of two years producing an end total of six years' imprisonment before allowance for a guilty plea. Mr Boot acknowledges that there is little in the pre-sentence report or otherwise that would warrant deductions from the starting point beyond allowance for a guilty plea which Mr Boot argues forcibly should be the full 25 percent. His end result in terms of submissions is that the total of six years' imprisonment should be reduced by 25 percent and that would be the appropriate result. He argues against both reparation, given the length of sentence likely to be imposed, and against a disqualification as being an unwarranted obstacle in the way of your rehabilitation upon being released from a prison sentence.

[13] There is no doubt that this offending was serious and was premeditated. It had a significant impact on the owners of the two establishments, and it is unhappily a common form of this type of offending. The ranges that have been advanced by counsel reflect *Mako* and the *Mako* description to a large degree reflects the type of offending in which you are involved.

[14] Having viewed the various submissions, I take the view that the starting point should be on the [dairy] charge and I set a starting point of four years and six months' imprisonment in respect of that matter. So far as the other charge is concerned, bearing in mind the totality, I agree that on a standalone basis there would be a minimum of four years associated with that matter on the basis of *Mako*. However, to reflect totality I intend an uplift on the four years and six months of two years, which produces a total of six years and six months' imprisonment, or 78 months.

[15] So far as the remaining charge is concerned, that is a breach of the extended supervision order that has a maximum penalty of two years' imprisonment. You have a past conviction for a breach and given that you will be sentenced to imprisonment on the other matters, that is the only appropriate sentence so far as this matter is concerned. I therefore propose to uplift the 78 months by two months to 80 months' imprisonment.

[16] I do not propose to become involved in precise calculations about an allowance for a guilty plea. From the 80 months I am going to reduce the sentence to reflect the

guilty plea by 18 months' imprisonment which would reduce the end sentence to 62 months' imprisonment or five years and two months' imprisonment.

[17] The end result of this sentencing is that on each of charges 1 and 2, you are sentenced to five years and two months' imprisonment; five years two months on charge 1 and five years two months concurrent on charge 2 so the total period remains five years and two months' imprisonment. You are sentenced to two months' imprisonment for the breach of the extended supervision order. That period is also concurrent so the total period remains five years and two months' imprisonment. In my view, a disqualification is warranted. It may have no practical effect but is an element in terms of deterrence to others and I am going to disqualify you for 18 months from today on both charges 1 and 2. The three strike warning has been given in respect of charge 1. As far as reparation is concerned, clearly there are losses but in light of the penalties that have been imposed, I do not regard it as appropriate to order reparation and therefore no order is made.

Judge AS Menzies
District Court Judge

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