

**IN THE DISTRICT COURT
AT TAURANGA**

**CRI-2017-070-002701
THREE STRIKES WARNING
[2017] NZDC 27127**

THE QUEEN

v

DONALD BAIKIE

Hearing: 27 November 2017
Appearances: A Shore for the Crown
W McNicol for the Defendant
Judgment: 27 November 2017

NOTES OF JUDGE S J COYLE ON SENTENCING

[1] Mr Baikie, you are here for sentence in relation to a charge of wounding with intent to cause grievous bodily harm. It carries a maximum term of imprisonment of 14 years so is one of the more serious charges in our Criminal Justice system.

[2] The facts of the matter are that on 11 July of this year you were in Oxford Street, Te Puke. You and [the victim] had had ongoing issues and conflict, although what exactly that is based on has not been made clear. He approached you and, as he approached you, you got out your knife which had a nine centimetre blade.

[3] I accept, as Mr McNicol has submitted, that you had the knife because of your orchard work and so it was part and parcel of your tools of trade as it were and this is

not a situation in which you came deliberately armed with a knife to try and attack someone.

[4] Nevertheless, it is concerning that as he approached you, you got our knife and flicked it open. Then, without warning, you stabbed him in the stomach.

[5] In his submissions, Mr McNicol concedes that whilst you maintain that he was coming towards you in a threatening manner and you felt you might be under attack, that in the cold light of day as he puts it that you were simply unsustainable.

[6] As he approached you, you simply lunged at him, stabbing him in the stomach with the knife going in through the layer of fat around his bowel. He required hospitalisation and spent some time in hospital. You, yourself, immediately went to the Te Puke Police Station and you made an immediate confession with words to the effect that you had stabbed [the victim]. You were and have remained co-operative with the police throughout.

[7] On any assessment of the situation this boils down to the fact, that whilst there was some tension between you and [the victim], you for reasons that are entirely unclear decided to be aggressive and to stab him without warning causing him a significant injury, which had the potential as both Ms Shore for the Crown and Mr McNicol for you concede of being far more serious in terms of the outcome. The potential serious injury that could have occurred and, indeed, the charge that you are facing today.

[8] You have previous convictions for assault, for male assaults female and for possession of a knife. They are as Mr McNicol has said somewhat old in time but they are, nevertheless, relevant in my view.

[9] The PAC report indicates that you are remorseful. I am not surprised to learn that through that report that you had been drinking at the time and, of course, the fact that you had been drinking and the type of alcohol that you were drinking is not an excuse or justification for what occurred, but it does place it in some context. You have had some mental health issues and you have an underlying diagnosis of

schizophrenia but for some time you have disengaged with community mental health services, choosing instead to self-medicate through other substances rather than to seek medication.

[10] Enquiries were made at the time that these matters came before the Court as to whether there were any ongoing mental health issues and those enquiries established there were not, such that you were caught by the provisions of the Criminal Procedure (Mentally Impaired Persons) Act 2003. The situation, therefore, is that you have an underlying mental health issue but it is not, as Mr McNicol accepted, to the fore and a rehabilitating part of your everyday life at present.

[11] The victim impact statement from [the victim] indicates that he was in considerable pain at the time. He describes the cut as a large cut and says he spent a considerable time in hospital and, then later, in bed rest when he returned home. He has been left with a scar, but there appear to be no ongoing injuries or consequences that have occurred through you stabbing him.

[12] He has had financial consequences which have had significant impacts on him, as he was at the time about to commence employment and he, for obvious reasons, was unable to do so. He is still struggling to understand why you stabbed him at that time. As he says “this” – and by that I mean the conflict between you both – could have been resolved without you stabbing him and you putting him in hospital.

[13] I have received written submissions from the Crown and from Mr McNicol on your behalf. I have read them and the cases attached to Mr McNicol’s submissions prior to coming into Court today. The position of the Crown confirmed today by Ms Shore, is that a starting point is between six to seven years’ imprisonment. In Ms Shore’s submission there should be an uplift, all be it a moderate one, for your previous convictions. The Crown accepts that you should be entitled to a full credit of 25 percent for the entry of your guilty plea, in terms of the *Hessell v R*¹ decision.

[14] The principles in the Sentencing Act 2002 which the Crown rely upon, which are also accepted by Mr McNicol in his submissions, are those of denunciation and

¹ *Hessell v R* [2010] NZSC 135, [2011] 1 NZLR 607

deterrence. Holding you accountable, particularly to the victim for your offending and instilling in you responsibility and acceptance for your offending. There also needs to be a consistency in terms of sentences that are imposed.

[15] Both Ms Shore and Mr McNicol point to *R v Taueki*² as being the relevant guideline decision. In terms of that case, Ms Shore submits the aggravating features are extreme violence, the harm caused and particularly the potential for injuries to be serious or, indeed, fatal in the use of a weapon.

[16] Ms Shore's submissions, on behalf of the Crown in terms of the bands in *R v Taueki* it is her submission that this is band 2 and fits within the mid-point of band 2. It is on that basis that the Crown have reached its submission that a starting point should be in the vicinity of six to seven years, uplifted moderately for your previous offending and then given a discount for your guilty plea of 25 percent.

[17] Mr McNicol in his submissions and in Court today has taken issue with that starting point. In his submission, this matter fits squarely at a five-year starting point. He refers to *R v Goodin*³ in which the victim in that case was in a more vulnerable position. He puts forward that case as being consistent with a starting that he submits should be applied.

[18] He also relies upon *Stowers & Ors v Police*.⁴ In that case there was an end sentence of four and a half years' imprisonment. That case had a starting point of seven years' imprisonment. The end point of four and a half years was reached through the applying of a number of discounts, described by Justice French as "being very generous" and some of those discounts appeared to have no proper foundation. As Mr McNicol has said, on your behalf, the violence in that case was in some respects more serious than that which you caused to [the victim]. It involved a group of people attacking tourists and the stabbing while one of the tourists was on the ground.

² *R v Taueki* [2005] 3 NZLR 372 (CA)

³ *R v Goodin* [2017] NZDC 3984

⁴ *Stowers & Ors v Police* HC Christchurch CRI-20008-409-170, 27 November 2008

[19] In Mr McNicol's submission the facts of that case are sufficient different to justify departing from the Crown's starting point of six to seven years. I note that Justice French in that case described the starting point of seven years as "being stern" and towards the upper end of what would be appropriate in the circumstances.

[20] Mr McNicol concedes that the aggravating features are serious injury and the use of a weapon. He too concedes that in terms of the serious injury that, as the Crown has submitted, for the potential to have had much more serious consequences or indeed a fatal consequence, are matters which that I need to take into account.

[21] In support of his submissions Mr McNicol points to the fact that you had the knife on you as part of your work, as I have already said. That it was spontaneous and that there was no premeditation on your behalf. He draws a distinction between the cases where people deliberately go and get a knife who go into a situation with a deliberate intention of stabbing someone. Rather, in his submission, this is a product of conflict between you both. It was on the spur of the moment. That is a matter which, in his submission, needs to be considered.

[22] While I accept that submission, what is also relevant is that whilst there had been a history of conflict between you and [the victim], that does not in any way justify you without any warning trying to resolve that conflict by stabbing him. There needs to be a strong deterrent message as part of any sentence that it is unacceptable and inexcusable to resolve conflict – whether that be with a general member of the public or with family – by spontaneously resorting to stabbing them. The community should not and would not accept that that is, by any assessment, an appropriate way to resolve conflict.

[23] I agree with the Crown that this did involve extreme violence. In relation to that I note Justice French in *Stowers & Ors v Police* decision, referred to the fact that someone was stabbed, as being in and of itself, extreme violence. Clearly, the aggravating features for you are the extreme violence, the harm caused and the potential for injuries to be serious or fatal in the use of a weapon.

[24] I need to fix a starting point which is reflective of the culpability of your offending. For the reasons I have set out, I do not accept that five years is an appropriate starting point in terms of the culpability of your offending.

[25] I fix a starting point at six years' imprisonment as being reflective of your culpability and taking into account the principles in the Sentencing Act 2002, which both counsel have referred to in their submissions and which I have referred to.

[26] Given that you have previous convictions for violence and possession of a knife, whilst they are historic, they do attract a moderate uplift of six months, arriving at a provision sentence of six years and six months' imprisonment.

[27] Whilst your mental health issues were not to the fore, as I put it, you nevertheless do have an underlying diagnosis of schizophrenia. That, in my view, should attract a discount of five percent of four months. From that you are entitled to the full credit of 25 percent re *Hessell v R* or 19 months, arriving at an end sentence of four years and seven months' imprisonment.

[28] In relation to this matter, you are convicted and sentenced to imprisonment for four years and seven months.

[29] There is an order for destruction of the knife as sort.

[30] Mr Baikie, given your conviction for wounding with intent to cause grievous bodily harm, you are now subject to the three strikes law. I am now going to give you a warning of the consequences of another serious violence conviction. You will also be given written notice outlining these consequences which list the serious violent offences. The consequences are, that 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 and that would be served without

parole, unless it would be manifestly unjust and in that event a Judge must sentence you to a minimum term of imprisonment.

S J Coyle
District Court Judge