

**IN THE DISTRICT COURT
AT WELLINGTON**

**CRI-2017-096-000614
[2018] NZDC 579**

THE QUEEN

v

RAHIRI MANUEL HOSAY

Hearing: 16 January 2018
Appearances: A Garrick for the Crown
P Paino for the Defendant
Judgment: 16 January 2018

NOTES OF JUDGE B DAVIDSON ON SENTENCING

[1] Mr Hosay, you appear for sentence on a charge of causing grievous bodily harm with intent to cause grievous bodily harm.

[2] In the early hours of 18 February 2017 you went to an address where your partner was visiting her mother, concerned that she had not come home. You had with you a small axe which you usually used in your course of work. You found your partner in bed with the 17 year old male victim. You became enraged and lost control. You struck the complainant on the head and the shin several times with the blunt side of the axe causing cuts, bruising, abrasions. You struck him on the forearm resulting in this being broken. You dragged him off the mattress and continued with a very ferocious assault.

[3] The victim suffered a broken forearm, cuts to his leg, bruising and a significant head injury. He required surgical intervention to insert a plate in his forearm and significant treatment to deal with the risks associated with bleeding in the brain.

[4] You contacted the emergency services calling for assistance immediately.

[5] The victim impact statement shows that the victim was badly affected at the time; he was hospitalised and had to undergo treatment commonly associated with head injuries, including speech therapy and physiotherapy. Members of his family, a number of whom are here in court today, have been affected as well. There can be no doubt that the victim suffered physically, emotionally, financially and psychologically. It does seem from the medical information that I have seen that he has made a substantial recovery. I think the best that can be said is that the physical recovery is relatively good but the emotional and psychological scarring is significant.

[6] You have a fairly extensive list of previous convictions over a 13 year period from 2003 to 2016. Your convictions are for a variety of offences, including driving, dishonesty, non-compliance. Violence has not been a regular feature of your criminal convictions and no uplift is required in my view to mark those.

[7] You are aged 33. You spent around 6 weeks in custody after your arrest before being released on bail to live with your supportive employer. In your employment you are very well regarded. You are said to be remorseful, regretful; you were willing to undertake a restorative justice programme and as I have said, you called for assistance at the time when you realised the severity of what you had done. You have been consistent in attending appropriate counselling.

[8] The aggravating features of the offending are self-evident. This was inherently dangerous. To strike someone repeatedly, even with the blunt side of a small axe, particularly to the upper body and the head, carries with it a very significant risk of very serious injury. The complainant received significant injuries at the time. The short and long-term consequences on him and immediate family have likewise been quite severe. A weapon was used but I am clear in my own mind that it was not taken

to the address by you deliberately. Nevertheless it was ready and available and you resorted to its use as soon as you lost control.

[9] In my view, a significant mitigating feature is the fact that you lost control. This was an impulsive reaction to your partner's apparent infidelity. It explains how the offending occurred. It must, in my view, be a highly relevant mitigating feature. I accept that you are remorseful, that you called the police yourself, that since your release on bail you have committed yourself to counselling, you have committed yourself to your employment where you are well regarded.

[10] The Crown say that the appropriate starting point should be imprisonment of at least 8 years, recognising the combination of the various aggravating features that I have mentioned; the use of the weapon, serious injury, blows to the head and upper body, serious consequences for the victim. For the Crown, Ms Garrick makes it clear that the Crown do not accept that the circumstances that presented themselves to you when you arrived at the address in any way justified any kind of response let alone the one that actually unfolded.

[11] Your counsel emphasises 2 key points: firstly, the impulsive enraged reaction on your part, your calling of the emergency services and, secondly, that the victim has made a very good recovery.

[12] Mr Hosay, I make it very clear that in my view the starting point must reflect the impulsive spontaneous nature of your offending. This was an enraged reaction by you to very distressing circumstances but unfortunately because you had access to a potentially lethal weapon you used it and you inflicted serious injuries on a very vulnerable victim from which he has made a relatively good recovery.

[13] In my view, drawing all that into combination, the appropriate starting point for the offending in itself is 6 years' imprisonment. The first discount I give you is of 1 year's imprisonment. It recognises your remorse, your willingness to undertake restorative justice, the commitment to counselling that you have made while on bail, your stable circumstances in the community; all of these features in combination in my view point to an unlikelihood of any such further offending in the future. You

should then be given a credit for your plea of guilty. I agree with your counsel that the full credit should be afforded. Although you rejected a sentence indication given by another judge you still pleaded guilty relatively promptly. As well, of course, it saved the complainant the trauma of a trial and it spared all of the anxiety and cost associated with a trial.

[14] The end sentence to be imposed upon you is one of imprisonment for 3¾ years. On this charge you are sentenced to imprisonment for 3 years and 9 months.

[15] You were given a strike warning at the time of your plea of guilty and conviction in October last year.

B Davidson
District Court Judge