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

IN THE DISTRICT COURT
AT WHANGAREI

CRI-2016-088-002006
[2017] NZDC 25712

THE QUEEN

v

[SAM CARR]

Hearing:	10 November 2017
Appearances:	R Annandale for the Crown S Thode on behalf of J Moroney for the Defendant
Judgment:	10 November 2017

NOTES OF JUDGE D G HARVEY ON SENTENCING

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[1] [Sam Carr], you are for sentence today on three charges of assault with a weapon, one charge of male assaults female, six charges of threatening to kill and one charge of threatening to do grievous bodily harm.

[2] The history of the file shows that you elected trial on all matters and it was well into this case, indeed you had given evidence, before pleas of guilty were entered and I note that there was a very clear agreement at that time that it would be for the Court to determine the facts on the evidence that was called at trial.

[3] It is reasonably clear from that evidence that you had been in a relationship with [the victim] for a period of approximately 18 months, perhaps a little longer. That relationship commenced some time in [dates deleted]. [The victim] had [children]

from a previous relationship and they resided with you both during the period. The relationship was tempestuous to say the least. It, as I understand it, resulted in at least one period of separation and I am also satisfied that during the course of that relationship, you regularly threatened to kill [the victim], you threatened to do grievous bodily harm to her, you also made threats to kill her children and her mother.

[4] During an evidential interview, [the victim] stated that these threats were almost a weekly occurrence and examples of the types of threats that she was referring to were to stab her in the face and slit her throat, cut her kids in half, and on one occasion you told her that if she ever went to the police, you were going to, "fucking kill her and everyone she loved." You threatened to kill her mother while she was at work, you said to [the victim] that if she told her mother you would do it slowly but if she did not. You would do it quickly. During this period you led [the victim] to believe that you knew every move that she was making. You reduced her life to one of fear.

[5] Matters essentially came to a head on [date deleted] when [the victim] went to [location deleted] to see a lawyer. Unfortunately for her, you saw her. You knew that she was living in [location deleted] and you had not been told that she was coming to [location deleted] so between the hours of just after 5.00 pm and 7.24 pm, you bombarded her with in excess of 120 messages and over 20 phone calls. The text messages and phone calls ranged from aggressive to you saying that you were going to kill yourself, all of which simply demonstrated the way in which you attempted to manipulate and control her.

[6] The Court heard recordings of messages that [the victim] taped on her phone. I can tell you that the tone of your voice, your calmness and the underlying menace, was chilling. It gave me a very useful insight into your modus operandi. During the course of this relationship, you did become aggressive from time to time. In your anger, you damaged her bed, you threw parts of her bed at her and caused her a minor injury. When she went to leave the bedroom, you followed her, you held her up against the wall and then you punched the door right next to her head on three occasions.

[7] On another occasion in [date deleted], you picked up a cut-throat razor. You and she had been having an argument in the kitchen. You pushed her up against a wall

and you held it to her throat saying that you did not like liars and that you wanted to cut her head off. Given that her children were present in the house, she was extremely frightened and when you told her to go to the bedroom, she obeyed. You made her get on the bed and then for an extended period of time, you ran that razor up and down her body including around her neck. Minor cuts were caused to her [body part deleted].

[8] While you were doing this, you made threats that you would kill her and that no one would ever know. You threatened to cut her breasts off. Not surprisingly, she was terrified but she could not leave because you have said that if she did try and run, you would kill her children and her mother. The next morning, you claimed to remember nothing about this but when she said that she was leaving, you again became aggressive, you again threatened to come after everyone that she loved and you specifically said, "If you go, I will slit your mother's throat."

[9] On another occasion, after your relationship had ended, [the victim] went with you from [locations deleted]. You became angry during that trip and so [the victim] asked you to stop and she got out. She started to walk away. You reversed back, you passed her and you said, "If you don't get into the fucking car, I'll run you over." You began revving the car, you edged towards her and again, not surprisingly, she became so frightened that she did get back into that car. You took her phone off her, you asked her for the code and when she would not give it to you, you began driving erratically and dangerously. You said that you were going to kill her and that no one would ever find her out there.

[10] On another occasion, whilst in [location deleted], you began behaving aggressively towards [the victim]. Her mother attempted to intervene and you became aggressive towards her, you made a threat to kill her, you were told to leave. You did. However, moments later you began ringing and texting [the victim]. You were threatening her that if she did not come to you, you were going to come down there and do everyone over. Simply to ensure the safety of her family, she did walk down that driveway.

[11] That then is a very truncated summary of the facts that I sentence you on. In preparing for sentencing, I have had the advantage of reading the pre-sentence report. I have read the submissions filed by both counsel. I have read the s 38 report. I have read the victim impact statements that have been filed and I have listened to the submissions that have been made to me this morning.

[12] In any sentencing exercise, I have to have regard to the purposes and the principles of sentencing. You have to be held accountable for the offending and there is a very real need for me to attempt to promote in you a sense of responsibility for the dreadful harm that you have done. I need to make it clear, not just to you but to the community, that this conduct is totally unacceptable and there is a need for me to impose a sentence that is deterrent.

[13] I have to have regard to the gravity of the offending and I have to say that given all of the circumstances surrounding this relationship, given the number of times that you threatened to kill [the victim] in circumstances where she had a very real fear that you would do exactly that, given the number of times you threatened to kill her children and her mother, coupled with the other violent and controlling manipulative behaviour, I have formed the view that this offending, particularly the threatening to kill and threatening to cause grievous bodily harm offences, fall to the very top end of gravity for the nature of those offences.

[14] I consider that I need to impose if not the maximum penalty, then a penalty close to the maximum, given the seriousness of this offending. Of course, I must be consistent. I have to impose the least restrictive outcome that I can and that is why the lawyers have referred me to a number of previous cases.

[15] There are a number of aggravating features to this offending, including the time over which the offending occurred which was some 18 to 20 months, the fact that your actions, including your threats to kill and do grievous bodily harm, were persistent and were calculated to manipulate and control [the victim]. The fact that on two occasions at least, you actually caused injury to [the victim] and in fact your offending only ceased once you were in custody.

[16] As the Crown submit, this is a very bad case of domestic violence. The Crown argue that your actions were an abuse of trust and by that I am assuming they mean that anyone in a domestic relationship is by its very nature in a position of trust. I rather prefer to deal with this on the basis that there was a combination here. A combination of an abuse of trust and you preying on what you knew was [the victim]'s vulnerability. It may well be that when you first commenced your relationship, it would not have been accurate to have described [the victim] as vulnerable. However because of your persistent behaviours, because of your constant threats, she became more and more vulnerable and more and more fragile as the relationship progressed. You were able to reduce her to the point where she was so scared that she continued to communicate with you solely in an attempt to placate you.

[17] As I have said, I have read the victim impact statements. They in themselves make very sad reading. I do not intend to embarrass either of the victims who I know are present in Court by reading out what they have said in their victim impact statements. But you know what they have said because you have read them. What those victim impact statements demonstrate graphically is the terrible effect that your offending has had on them.

[18] The Crown submit that at least on three occasions, you have used weapons and they refer of course to the bed parts, the razor, and the vehicle. There were [numerous] victims here; there was [the victim], her mother, and [the children – number deleted] and as I have said, it is clear from the victim impact statements and from the evidence given at trial that your behaviour had an enormous effect on [the victim] and that effect is ongoing. The pre-sentence report notes that these convictions are seen as an escalation of your offending behaviour but I do not accept at all the assessment that you are at low risk of re-offending. Given the behaviours that we have learned about during the course of the trial, I am satisfied that you are at very high risk of re-offending unless something is done about the causes of your offending. I also believe that your risk of harm to others is at the top end of medium at the very least.

[19] I am not satisfied that you have a complete understanding of the seriousness of your actions. I know I am told that you are remorseful and yet I find it very difficult to accept that when I think back to the way in which you put the complainant through

the trauma of giving evidence and how you yourself gave evidence. The report writer does not accept that you are taking responsibility for your actions although, from what Ms Thode tells me, it would seem that there may well have been a change in attitude since that report was written. One encouraging aspect of that report is you saying that you do realise that you need ongoing alcohol and drug rehabilitation.

[20] I have read the s 38 report and from that I have learned that you do not display evidence of a psychotic or mood disorder. There is no evidence of an intellectual disability. You would likely attract a diagnosis of panic with anxiety disorder but there is nothing that would amount to a finding of mental impairment and you do not meet the criteria for a mental disorder.

[21] The Crown submit to me that there is no guideline judgment for any of the offences that you have committed and I agree with that. They observe that there are real difficulties in trying to compare this offending with other cases, particularly given the extensive manipulation and control that you exercised. I can say that there has been a very sustained search to try to find previous cases that have a factual matrix such as this one and we have been unable to find any.

[22] I have been referred to three decisions, *Clark v R*[1], *Rasmussen v R*[2], and *R v Nash*[3]. However, the Crown acknowledges that there are difficulties with those decisions given the very different fact scenarios that are contained within them. It is submitted that they are illustrative only.

[23] Your counsel accepts that the Court must have regard to ss 7 and 8 Sentencing Act 2002. It is submitted to me that I should follow the three-step approach as outlined in *R v Clifford*[4]. Your counsel submits that the charges of threatening to kill are the lead charges given the number of instances, the number of victims, and their vulnerability. Your counsel accepts, as he must, the aggravating features that I have already outlined and after a review of the case law, it is submitted to me that a starting

[1] *Clark v R* [2013] NZCA 63.
[2] *Rasmussen v R* [2011] NZCA 626.
[3] *R v Nash* [2007] NZCA 520.
[4] *R v Clifford* [2012] 1 NZLR 23.

point between four and four and a half years would accurately reflect the totality of the offending.

[24] It is submitted that there should be no uplift for previous convictions and turning to mitigation, it is suggested that there are a number of matters which together or individually ought to attract a reduction. Those factors include your personal and family circumstances, your age, the fact that you have a supportive family and a [young child] , that you were in full-time employment prior to being remanded in custody and that you are now studying towards some NCEA qualifications. Your counsel tentatively suggests that your mental health history is also a matter that I could take into account. I am told that you have completed a number of programmes while in custody and I am told that you are now remorseful for your offending.

[25] Your counsel also submits, albeit tentatively, that there should be at least some credit given for the pleas of guilty, particularly given that that occurred when some of the charges were withdrawn. Dealing with the Crown's application for a minimum term of imprisonment, your counsel submits that it would be more appropriate for the Court to leave that to a Parole Board to decide when you should be released.

[26] Yet again, this Court is having to deal with serious domestic violence and as was said in *Kohu v Police*[5], domestic violence is a scourge and sentences towards the upper end of a range are appropriate. Now I appreciate that as these cases go, the actual physical violence was not as serious as many cases I have to deal with. But here the psychological abuse and the threats designed to control and completely manipulate and frighten [the victim] must have been and were terrifying for her. The vicious threats to hurt her children and her mother were clearly designed to frighten her and bend her to your will. [The victim] really believed that you were serious and really believed that you might carry out your threats. Sadly, she still believes that.

[27] The fact that during this period you were also abusing drugs, including methamphetamine, is truly frightening. I do not remember a case where the circumstances surrounding the repetitive threats to kill were more serious. So often when the Court is called upon to sentence a person for threatening to kill, it is

[5] *Kohu v Police* [2013] NZHC 944.

confronted with a situation where a threat has been made during a violent incident or in the course of a violent argument. From time to time, there are numerous threats made. Here, many of the threats were said in the absence of such domestic upheaval and were all the more frightening in their calculation.

[28] In a decision *Dawson v Police*[6], Mr Dawson was sentenced on a single charge of threatening to cause grievous bodily harm. That occurred during a heated argument between himself and his partner. A member of the public approached and when that occurred, Mr Dawson picked up a hammer and he threatened to smash the victim's head in. At the time, he was standing about a metre away from her and she feared that he was going to carry out his threat. A sentence of seven months' imprisonment was adopted on appeal.

[29] In *McKinlay v Police*[7], the defendant unlawfully entered the victim's home and after smoking methamphetamine, said, "Get your son away from me or I'll kill him." In that case he had a history of violence towards the victim and a starting point between 10 and 14 months was felt to be appropriate.

[30] In *R v Nash*, a sentence of three years was imposed for an aggressive and violent campaign towards an ex-partner. In that case he sent threats via text messages. He entered her home while she was away and he took items. The Court said that the factors relevant to the threatening to kill charges and threatening to do grievous bodily harm were the frequency of the threats, the calculation of threats to manipulate and control, and the times when the threats involved the use of weapons. The Court also observed that these threats were taken seriously. An end sentence of three years was imposed in that case.

[31] There are several ways in which I could approach this sentencing. I could take as the lead or the most serious charges, the threatening charges and then impose cumulative sentences on the three assaults with a weapon and male assaults female. Alternatively I could take as the lead or the most serious charges the charges of

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[6] *Dawson v Police* [2012] NZHC 3298.
[7] *McKinlay v Police* HC Rotorua CRI-2011-470-000028, 28 November 2011

threatening to kill and to do grievous bodily harm but then impose an uplift from that starting point to recognise the assaults with a weapon and the male assaults female.

[32] As I have said, I cannot recall a case of this type with this number of serious factors. The threats to kill were not idle threats in the heat of the moment. They were threats that you very carefully calculated. They were uttered in a way that ensured the complainant, [name deleted], would be frightened of you. They were directed not only to her but her children and her mother. One of your threats to cause grievous bodily harm involved you running that razor over her body. She had every reason to believe that you were about to do her a serious injury.

[33] As I said earlier in this sentencing decision, I regard this combination of factors, when dealing with the threatening to kill, as putting the offending towards the top end of seriousness. I intend to set a starting point for all of the threatening charges at five years' imprisonment. I must then look at imposing an uplift for the other charges but as I do, as Mr Annandale very properly reminds me, I must have regard to totality. I am conscious that any sentence imposed must not be manifestly excessive.

[34] In my view, on their own, the assaults with a weapon and the male assaults female charges could well justify a starting point somewhere in the vicinity of 18 months' imprisonment. Those assaults with weapons were three separate incidents which clearly had the effect of terrifying the complainant. However, I appreciate such a starting point would be excessive. Accordingly, I intend to uplift the starting point set for the threatening to kill and threatening to do grievous bodily harm, by one year.

[35] Turning then to your counsel's submissions regarding discount. I do not intend to give you any credit for the very late guilty pleas. They came after the complainants had given evidence and on your instructions, your counsel ran your defence on the basis that the complainants were not telling the truth. I accept that there should be no uplift for previous offending. However, I do consider that you should be given some credit for the fact that you now recognise that you need alcohol and drug rehabilitation and that you have already completed a course whilst in custody.

[36] Whilst I have some doubts about the real remorse that you now say that you have, I am prepared to give you some credit. I am prepared to allow a discount of six months to recognise the factors relied upon by your counsel. You may now stand.

[37] On the charges of threatening to kill, you are now sentenced to five and a half years' imprisonment. On the threatening to do grievous bodily harm, three years' imprisonment. On the male assaults female, six months' imprisonment. On the three assaults with a weapon, 12 months' imprisonment. All of those sentences of course are concurrent.

[38] I now turn to the imposition of a non-parole period. I am of the view that given the seriousness of this offending, for you to be released after one-third of the sentence, would be insufficient to meet the purpose of s 86(2) Sentencing Act 2002. In particular, a non-parole period is required to deter and denounce and it is also required to protect the community. That community of course includes [the victim], who as I say makes it clear that she still holds grave fears for her safety. After hearing all of the evidence in this case, I am satisfied that you do represent a danger to the community and, in particular, to [the victim] and her family, until you complete all the programmes that are designed to reduce your risks. Accordingly, I set a non-parole period at two years and nine months.

[39] In respect of charges 1, 4, 6, 7, 10, and 11 in the charge list, there being no evidence offered on those charges, they are dismissed.

D G Harvey
District Court Judge