

**IN THE DISTRICT COURT
AT HUTT VALLEY**

**CRI-2017-096-003313
[2018] NZDC 3003**

THE QUEEN

v

MORGAN HUNIA

Hearing: 16 February 2018

Appearances: A Winsley for the Crown
M Baker for the Defendant

Judgment: 16 February 2018

NOTES OF JUDGE A I M TOMPKINS ON SENTENCING

[1] Morgan Hunia appears for sentence today, here been entered guilty pleas on 12 December 2017 to two aggravated robberies; one on 24 August 2017 of a video shop and the second almost exactly a month later of a dairy in Lower Hutt.

[2] On the first occasion Mr Hunia entered the store in the early evening on 24 August 2017, waited until other customers departed, pulled up a bandana over the lower part of his face and concealed the rest of his face with sunglasses and a hood, removed a large kitchen knife that he had taken to the store, approached the young woman store attendant, yelled at her and simultaneously threw the black bag at her feet whilst he brandished the knife in her direction, compelling her to take a small amount of cash of around \$100 in coins and notes which was placed in the bag and Mr Hunia fled.

[3] About a month later, with a [second person, details deleted] acting as a lookout, he entered a dairy near to his home, demanded money and brandished a claw hammer at the sole shop attendant and subsequently used the claw hammer to repeatedly strike the cash register so that the cash drawer opened. He took about \$500 in cash from the till. The victim tried physically to stop Mr Hunia from taking the money and Mr Hunia struck him with the hammer. The victim ran from the store and called for help. A passer-by intervened and tussled with Mr Hunia who dropped part of the cash he had stolen before pulling himself free and running to his home nearby.

[4] A restorative justice conference has not been able to be held because the conditions for it were not met but it is readily understandable that Mr Hunia's actions would have been significantly traumatising for both victims involved. Ms Baker accepts that the Court of Appeal judgment of *R v Mako*¹ applies here and in particular the first aggravated robbery fits very squarely within the description given by the Court in paragraph 56 of that decision which sets a starting point for a single disguised offender with no actual violence used and a small amount of money taken of four years. The Court of Appeal goes on to note that should the shopkeeper be confined or assaulted or if more money or other property is taken then five years and in bad cases, six years should be the starting point.

[5] Although Mr Hunia enjoys considerable community and whānau support and although the pre-sentence report somewhat unrealistically recommends home detention, Ms Baker accepts that in the somewhat brutal circumstances of both offences, the applicable sentencing principles and the purposes and principles of sentencing in the Act clearly mean that home detention is not a realistic option here. Ms Baker stresses in mitigation the age of the offender, Mr Hunia being aged 17 at the time of the offending, the guilty plea at the first available opportunity and his co-operation with the police and the expression of remorse, albeit somewhat tempered on Mr Hunia being unable realistically to explain why in particular he undertook the second aggravated robbery. But as Ms Baker noted, the extensive abuse of synthetic drugs at the time provides a clear explanation, the report noting Mr Hunia's acceptance

¹ *R v Mako* [2000] 2 NZLR 170 (CA)

that at the time of his offending he was using synthetic drugs on a daily basis and would spend much of his time sourcing those drugs.

[6] Whilst perhaps it is possible, albeit necessarily with some distortion of sentencing tariffs, that if there had only been one aggravated robbery the end sentence might have approached a level where home detention would be realistic. Here there are two aggravated robberies separated by a month and in the second of which there was actual violence used to the victim and as already noted, the considerable trauma visited on both victims by the brandishing of weapons and the terror which would undoubtedly have accompanied Mr Hunia's robbery, cannot be downplayed.

[7] Accordingly, in respect of both sentences, a starting point of four years' imprisonment is adopted with an uplift, given the circumstances of the second offence, of three years, so that an end starting point of seven years is appropriate. Given the mitigating factors referred to by Ms Baker and the support enjoyed Mr Hunia in the community as evidenced by the material placed before the Court today, a discount of one third, that is two years and four months, is adopted so that the end sentence is four years and eight months.

[8] The effect of that sentence will be that Mr Hunia will in due course appear before the Parole Board and the Parole Board will have to consider whether the rehabilitative work he has been able to undertake, together with his conduct in prison, warrants a release on parole. But that is fully and completely a matter for the Parole Board exercising its independent statutory jurisdiction.

A I M Tompkins
District Court Judge