

**IN THE DISTRICT COURT  
AT AUCKLAND**

**CRI-2017-044-001481  
[2018] NZDC 3183**

**NEW ZEALAND POLICE**  
Prosecutor

v

**HAUPAPA SNOWY PAUL**  
Defendant

Hearing: 22 February 2018

Appearances: H Lotriet for the Prosecutor  
S Thompson for the Defendant

Judgment: 22 February 2018

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**NOTES OF JUDGE R J COLLINS ON SENTENCING**

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[1] Mr Paul you are for sentence on charges on injuring with reckless disregard for the safety of another. Three charges of breaching release conditions, unlawfully getting into motor vehicle, burglary, and wilful damage. Guilty pleas were entered to all those matters on 10 October last year. That followed a sentencing indication that I gave. You did not accept the indication but you wished to accept your responsibility for the offending and obtain the appropriate discount for that guilty plea coming at that stage.

[2] Dealing with the facts of the matters which relate to 17 April 2017, on that night the victim had his blue Subaru Legacy motor vehicle stolen from Reiher Road in Massey. And at 10.24 pm that night you arrived at [store name deleted] in Hobsonville Road. You were with three others and you were in the stolen blue Subaru Legacy. You smashed a window at the address with a large rock and attempted to enter the store. However, you were unable to enter due to a metal gate that was behind the

smashed window and you and your associates decamped in the stolen vehicle. That matter was amended and the plea you entered was to a charge of wilful damage under the Summary Offences Act 1981. And that is the way things have been dealt with but you are indeed fortunate that that charge was not also one of attempted burglary.

[3] However, shortly after at 11.35pm. you arrived at [store name deleted] in Whangaparaoa Road, Stanmore Bay. One of those with you smashed a window at that address with a large rock and held the glass up while you entered the store and stole an unknown amount of liquor bottles. You left in the stolen vehicle. You were pulled over in the vehicle and arrested at that point. That forms the charge of unlawfully being in that vehicle.

[4] However earlier in time when in custody you on 26 August 2016 were at Mt Eden Correction Facility. The victim was there, you were in [unit deleted] of the prison. There is large open section where prisoners can socialise. You were in the area close to the victim who was sitting at a table talking with his friends. You filled a metal flask with hot water from a wall mounted water boiler where you can make hot drinks. You circled around the victim and readied yourself by removing your shoes and jumper. You ran up behind the victim and poured hot water over the back of his head, and his neck and back. You and the victim had had a brief physical fight before prison staff have separated you. The victim suffered burns to his scalp, neck and shoulders that required hospital treatment. You were only 20 years of age at that stage.

[5] I have received a pre-sentence report. I consider that report is sufficiently contemporaneous for today's purposes and I do not propose adjourning sentencing for that. Sentencing was also adjourned back in both October and December with the direction that inquiries be made as to the appropriateness of restorative justice processes. Those inquiries have not come to any fruition and in any event I would need a lot of convincing that there was anything to be gained by a restorative justice process between members of rival gangs.

[6] The pre-sentence report was written by your supervising probation officer who had very good insight as far as you are concerned. I intend to refer to a number of the comments made. It says that you are currently single with no dependents, were

currently on remand at Auckland Prison and have a history of being transient while on sentence. That is you move around a lot when sentenced to community-based sentence. And it says that you lack a stable pro-social address to reside at on an ongoing basis.

[7] Further on in the report amongst other matters the report writer says that you have a poor lifestyle balance, you lack stability and structure in your every day life which exacerbates, that simply means makes worse an inability to demonstrate some level of organisation or motivation to make some positive steps to an offence-free lifestyle. It says you have a history of gang affiliations and it would appear that this is very likely to continue upon release. The report writer says that you have no pro-social support and you are predominantly involved with antisocial peers.

[8] It said while on sentence when subject to non-association orders in relation to known gangs you demonstrate poor compliance with such a direction. It says you have a significant history of alcohol and drug use. It says due to your continued noncompliance with attendance at courses, you lack motivation to address your offending needs and the report writer depressingly notes that it is difficult to see the results of any progress. It says you will need to make significant changes to your attitude and level and commitment to address your addictions and be able to make the necessary changes needed to address convictions. You are assessed as a very high risk of reoffending and in my assessment you are also a high risk of harm to others.

[9] Importantly amongst all the purposes and principles of sentencing which are operative today Mr Paul, is the need to protect the public. The Crown position is that taking all the offending and making all the adjustments, my assessment of the Crown submissions is we get to a point of four years' imprisonment. Ms Thompson argues on your behalf that the sentence should be no more than two years, nine months.

[10] I have reviewed the matters that I dealt with at the sentencing indication in which I dealt with in this way. If the burglary had been a residential home, at someone's house the range is between one and half years and two and a half years. With shops or commercial buildings it is generally thought it is to be less serious and a lesser starting point is taken. But this occasion involved smashing into the premises,

a liquor store was targeted. It involved multiple offenders and it occurred at night where there must have been a risk of confrontation with either security guards, owners or others.

[11] Having referred to the Court of Appeal decision in *Columbus*<sup>1</sup> I see the combining of the fact that a stolen vehicle was used to get you to the burglary, the smashing into the premises and the multiple offenders, a starting point for the burglary is 18 months.

[12] The uplift for the wilful damage of the earlier premises would be two months. And looking at your list of previous convictions and there are a lot of them and there are a number of burglaries and dishonesty offending there would be a further uplift of six months for your previous. But that uplift relates only to the burglary, wilful damage and unlawfully getting into a motor vehicle. As I make clear later there is no uplift in terms of the violence offending.

[13] So that took matters to 26 months. I then took the view that the starting point for the attack with the hot water in prison was governed by the tariff case of *Nuku*<sup>2</sup> that your offending fell into band 2. In my view it involves a high level of premeditation, a high level of intent in pouring what must have been near boiling water onto another prisoner and that offending is aggravated by the fact that he was vulnerable and that his liberty had been denied by the state or the Courts, and he had no choice but to be where he was. So my view the starting point for that was 30 months or two and a half years.

[14] Putting the two together is 56 months or four years, 8 months and I took the view that on a totality basis that was too much. All combined the appropriate starting point would be one of 46 months, and then for a guilty plea that would take matters to 38 months or three years, two months.

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<sup>1</sup> *R v Columbus* [2008] NZCA 192

<sup>2</sup> *R v Nuku* [2004] BCL 1053 (CA)

[15] Now what was not added into that was any uplift for the breach of release conditions. But anyway that all goes all into the round and I do not propose any further uplift for those matters today Mr Paul.

[16] I have considered this matter, everything that has been written and everything that has been said and I do not see a basis on which to change the view that I adopted back in October last year.

[17] On the charge of injuring with reckless disregard to the safety of another you are sentenced to three years, two months' imprisonment. On the burglary a concurrent term of imprisonment of 18 months. On all the other charges, that is the wilful damage, the unlawfully getting into a motor vehicle, and the three charges of breach of release conditions, concurrent terms of imprisonment of two months. The total term of imprisonment is three years, two months.

[18] I consider that any orders for reparation would be futile. I really regret that as far as the victims are concerned I consider that making an order would only create false expectations that they might receive some compensation.

R J Collins  
District Court Judge