

**IN THE DISTRICT COURT  
AT WELLINGTON**

**CRI-2016-091-002231  
CRI-2017-085-001829  
[2018] NZDC 540**

**THE QUEEN**

v

**TANE MESSENGER**

Hearing: 16 January 2018  
Appearances: R De Silva for the Crown  
K Preston for the Defendant  
Judgment: 16 January 2018

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**NOTES OF JUDGE B DAVIDSON ON SENTENCING**

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[1] Mr Messenger you appear for sentence on related charges of aggravated robbery, aggravated wounding and attempting to pervert the course of justice.

[2] Early on the evening of 6 August 2016 you and 2 others went into a small shop in Porirua where the 2 victims, a married couple, were working. All 3 of you were armed with knives and partially disguised with raised hoodies. You pushed the female victim near the counter so that you could grab some cigarettes. One of your co-defendants demanded money and tried to open the till. The female victim yelled for the help of her husband who ran into the shop. The third co-defendant attempted to stop him from intervening by lashing out towards him with his knife. This victim then grabbed and wrestled with you. During this you struck him with the knife which you were holding. Your co-defendant became involved again; there were several blows

during the struggle. All 3 of you fell to the ground. Your co-defendant stabbed the male victim twice towards the head and neck area. In an attempt to get free you joined in stabbing him likewise in the same area. You all managed to run off.

[3] The victim was taken to hospital for overnight observation. He had 3 fairly substantial stab wounds and 2 others of less seriousness. I have seen photographs of the injuries. It has to be said it was really only by good fortune that the injuries were not far more serious. To stab with a knife towards the neck and head area of course carries the potential for lethal if not fatal injuries.

[4] Cigarettes worth around \$400 were taken and there was damage to other property in the shop.

[5] Your 2 co-defendants both faced charges arising from the incident. [details deleted].

[6] Your other co-defendant only faced a charge of aggravated robbery and was sentenced, following a plea of guilty, to 3½ years' imprisonment.

[7] After your arrest, you were remanded in custody and over a 6 month period, between late 2016 and May 2017, prior to the first trial date there were ongoing attempts by you to get [one of your co-defendants], to retract his statement which implicated you and for him to say that someone else was involved. There were also efforts on your part to get 2 people to provide a false alibi for you at trial.

[8] Both of the victims, have been badly affected. Small shop proprietors are extremely vulnerable and susceptible to this kind of offending. The female victim was bruised, scared and apprehensive. The male victim suffered the injuries I have already detailed. Luckily, he made a good recovery physically but remains affected emotionally and psychologically.

[9] You have a fairly extensive list of convictions for a variety of offences over an 8 year period from 2008 to 2016; some of your convictions are for quite serious violence, but they are some years ago now and no uplift is required to mark those.

[10] You are aged 27; you have 3 non dependant children; prior to your remand in custody you were living with a grandparent. You have had a very dysfunctional, problematic upbringing with issues around alcohol, abuse of drugs; including synthetic cannabis, an inability to form proper attachments and it seems to me from the material I have read, a high likelihood that you suffer from foetal alcohol spectrum disorder. You are remorseful; that is noted both in the presentence report and in your letter. You are willing to address the causes of your offending if only in an attempt to try and resurrect your relationship with your children.

[11] The psychiatric report, which I have read, confirms your long exposure to drugs, alcohol, your inability to form proper attachments and does, as I have already mentioned, raise a distinct possibility that you suffered from foetal alcohol spectrum disorder.

[12] The aggravating features of your offending are self-evident. Clearly these premises were targeted; clearly the aggravated robbery was planned and premeditated; you were armed; you were partially disguised; you entered at a time of day when it might be expected that large numbers of the public may not be around. The victims were together, were alone, vulnerable, outnumbered, and unarmed and unable to put up any realistic resistance. Actual and quite significant violence was used especially to the male victim; the violence was unprovoked, quite serious in itself and targeted the head and neck area where serious injury can easily result. The offending has had a significant effect on both victims. You were on bail, at the time as well.

[13] Mitigating features would include your pleas of guilty, your remorse, your willingness to address some of the causative features of your offending.

[14] The Crown submit that the aggravated robbery charge, in itself, is a relatively bad case involving the confronting and assaulting of 2 shop-keepers and in combination with the aggravated wounding of one would call for a starting point of something in the order of 8 years.

[15] The Crown submit the charge of perverting the course of justice is of a mid-range of seriousness because it was done to attempt to derail the strength of the Crown case against you.

[16] On your behalf, Mr Preston does not take any particular issue with the combined starting point for the charges aggravated robbery and aggravated wounding. He notes another judge indicated last year that 8 years' imprisonment would be an appropriate starting point for those two offences in combination. He submits that the sentence for the charge of perverting the course of justice, although cumulative, should be relatively short. He labels this offending as amateurish, unsophisticated and unlikely to succeed. He submits that the guilty plea discount for the charges of aggravated robbery and aggravated wounding should reflect the fact that although delayed there was some difficulty with your legal representation shortly before your proposed first trial date.

[17] In my view the charges of aggravated robbery and aggravated wounding need to be seen in combination; in reality they simply cannot be divorced one from the other. Neither is really the lead offence. What is required is to look at both in combination against the maximum penalty of 14 years available for each.

[18] In my view a starting point for those 2 offences in combination of 8 years' imprisonment would be unimpeachable and is the starting point I adopt.

[19] There should be an uplift, in respect of the charge of perverting the course of justice. Although fairly amateurish and unsophisticated it was persistent over a period of several months; it was offending which was designed to attack the heart of the case to be presented against you at trial even if it was in a fairly haphazard kind of way. In my view standing on its own that charge could call for a starting point of 2½ to 3 years' imprisonment, but recognising totality features the uplift which I would fix is for 8 months. All of that would lead to an overall sentence of around 9½ years. I have some concern that a starting point of 9½ years just feels to me to innately be too much; and for reasons for which I find hard to express, the overall starting point I adopt is 9 years. It just carries a sense to me as being about right.

[20] There is no uplift to recognise your previous convictions and although it would be tempting to impose an uplift for offending while on bail, in the scheme of your sentencing it would be relatively minor.

[21] The first discount that I afford you is of 10 months' imprisonment. It recognises your remorse, your willingness to address the causes of your offending.

[22] There is a further discount of around 6 months to recognise the fact that your capacity for rational thinking may well have been diminished because of the effect of foetal alcohol spectrum disorder and a long-term abuse of substances.

[23] I turn to the credit for your pleas of guilty. In my view you cannot be afforded the full credit for your pleas of guilty on the charges of aggravated robbery and aggravated wounding; the pleas were given late. However, the credit could not be as low as 10% as the Crown submit because that would simply fail to recognise the value of guilty pleas. I set the discount for your pleas of guilty on those two charges at 20%. You should be afforded a full discount of 25% on the charge of perverting the course of justice. Of course, in a strange way what that charge did was to have the effect of scuttling any realistic prospect that you could defend the case at trial.

[24] All of that would lead to an end sentence of 6 years' imprisonment.

[25] Mr Messenger on the related charges of aggravated robbery and aggravated wounding you are sentenced to 5 years' imprisonment. Those 2 sentences are concurrent each with the other.

[26] On the charge of attempting to pervert the course of justice you are sentenced to 1 year's imprisonment. That is cumulative on the sentence of 5 years.

[27] You have already been given, as I understand it, at the time of your pleas of guilty appropriate strike warnings.

B Davidson  
District Court Judge