

**IN THE DISTRICT COURT
AT CHRISTCHURCH**

**CRI-2016-009-011067
CRI-2017-009-006289
[2018] NZDC 3388**

THE QUEEN

v

KILEY LEE O'CONNOR

Hearing: 22 February 2018

Appearances: S Bicknell-Young for the Crown
K Feltham for the Defendant

Judgment: 22 February 2018

NOTES OF JUDGE J A FARISH ON SENTENCING

[1] Ms O'Connor, prior to coming into Court, I get to read the whole file but for you importantly, I remember sentencing you last year in May and everybody including yourself was hopeful at that stage that being on the methadone programme, that would allow you the stability for you to address some of the issues that have led you to become involved in the criminal justice system and why you have been so reliant on illicit drugs.

[2] Unfortunately, that was unable to occur. Although you were on the methadone programme, that was not really holding you in terms of you being able to function because your drug addiction has been so severe and even though I was judicially monitoring you, it was not until just before Christmas that I became aware that there was this other charge and that there was a breach in relation to your sentence of intensive supervision.

[3] The charge which is the most important and of course the most serious is the charge of wounding with intent to cause grievous bodily harm which you pleaded guilty to in September of last year on the morning of trial, just shortly before trial. That relates to quite a nasty incident that occurred between you and the complainant who you know.

[4] I accept, particularly in light of the material supplied this morning, that you did not simply turn up at the complainant's address unannounced. There had been some discussion between the two of you earlier on in the day and at that stage, in November of 2016, you were seeking out morphine and whether or not there was a struggle over the \$60 and whether or not the complainant was not going to give you the drugs, I simply do not know but I proceed on the basis of the summary of facts.

[5] But even you acknowledge through your guilty plea that when you used those scissors and stabbed her six, I think it is nearly seven times, particularly as she was trying to leave the address, that was significant violence and the effect of you using those scissors was to cause very serious injuries. You punctured her lung, broke her rib – that is exactly what occurred, that is what the doctor in the original file, because I read the doctor's report, she suffered a fractured rib, a punctured lung, a laceration to her kidney and also there has been this damage caused to her thumb.

[6] Now fortunately, that is the only lasting injury that she has which is the permanent nerve damage to her thumb and luckily, when she did manage to get out of the house, an ambulance was able to be called very soon.

[7] When I sentenced you last year, as I said, you were subject to intensive supervision but unfortunately, for a variety of reasons, you have been unable to respond to that and so there is an application now to re-sentence you in relation to the original charges which you received intensive supervision from, from Judge Mackintosh and then there is the breach which relates to the sentence that I imposed.

[8] So what I am going to do is start with the most serious charge and then I am going to have to add on a modest amount to that starting point. So the Crown in their original written submissions, they said that if I looked at a Court of Appeal decision

called *R v Taueki*¹, that you fell within the top band of band two to three. What those bands are, are directions to Judges like myself that if there are a number of aggravating features, you fall within a certain parameter. So band two is starting points of five years' imprisonment up to 10 years' imprisonment.

[9] I do not think you fall in band three and I do not believe that you fall at the top end of band two and I say that because I have looked at the aggravating features. I do not accept that there was premeditation. You did not take a weapon with you, you did not go to the address intending to cause serious harm to the complainant. Whatever caused the dispute between you, and it is more than likely to be drugs, you used serious violence and you used a weapon to inflict serious violence.

[10] I would be able to start a lower level if there was only one or two stab wounds but the multiple nature of the stab wounds indicates that at that stage, you really did at that point in time intend to cause her really serious harm. Although you might not accept that now, that clearly was your intention at the time.

[11] I cannot overlook the effect upon the victim and the fact that she needed to have surgery and the very serious injuries that were caused to her which had the potential to be life-threatening. I know that you did not intend it to be life-threatening but they did have the potential to be life-threatening.

[12] There are a number of cases that the Crown have referred me to but they are far more serious, in my view, because they involve premeditation and people taking weapons to the addresses. So the best that I can do, given the seriousness of the injuries and the degree of violence, is take a starting point of seven years' imprisonment.

[13] Now, I do not have to uplift that sentence for any previous convictions relating to violence, all right, and from that seven year sentence I will give you 10 percent credit for pleading guilty on the morning of trial. If you had pleaded guilty at an earlier stage, I would have been able to give you 25 percent credit but because it was so close to trial, I cannot give you that full amount of credit.

¹ *R v Taueki* [2005] 3 NZLR 327 (CA).

[14] So that is a starting point in relation to the most serious offending of six years and three months' imprisonment.

[15] I need to then look at what extra I need to impose in relation to those matters I need to re-sentence you on, all right? I acknowledge that you have made attempts to comply with the sentences, both what Judge Mackintosh and also I imposed upon you. Your inability to comply with the sentence is reflective of the fact that you have such a serious drug addiction issue and you lack some stability and security in your life.

[16] So taking a very modest uplift, I would uplift the overall sentence by four months. So we are at six years and seven months' imprisonment.

[17] Now I need to consider whether or not there is any further principled credit that I can give you. The most significant is the fact that you are remorseful and I can see that today, you are distressed today and also as Ms Feltham has told me, you were distressed when you found out the fact that the complainant suffered such serious injuries.

[18] I know it is very hard Ms O'Connor when you have been in the midst of such a grave addiction to be able to comprehend and take in all of the details and as you said, you were not sure when you came into Court today and we started talking about the intensive supervision sentence when that had actually come to an end. That just reflects the fact that you are not functioning well because of the amount of drugs that you need to use just simply to be able to function on a day-to-day basis.

[19] So what I can do though, from that six year, seven month starting point is give you a small reduction of four months. So it takes us down to six years, two months' imprisonment. So you will be eligible to go to the Board at one-third of that sentence but can I just ask you a question now; how much have you been using up until now because the prison authorities will need to know because if you have been using a lot, they will need to give you some medication to help you once you get taken into custody.

[20] All right, so you have been stabilised on the methadone? [Yes] All right so when you go into custody, all of those details will be able to be passed over through to Corrections and they will maintain you for a while on the methadone. Sometimes they maintain you for the whole of your sentence, depending on what your needs are in terms of any drug and alcohol assessments which will be undertaken. Otherwise they will slowly reduce you in terms of your methadone use. But that is a clinical decision that they will be advised on.

[21] When you are in custody though, when you are serving your sentence, there are a lot of programmes that are available to you, particularly here at Christchurch Women's Prison and it will be a really good opportunity for you to try to address some of the issues that have made you so reliant on the drugs, all right?

[22] So the end sentence is one of six years, two months' imprisonment. I have imposed that in relation to the most serious charge. In relation to everything else, the breaches of intensive supervision, the possession of the Class B drugs, the burglary, the obtaining by deception, and the breach of community work, I have imposed two months but that is all concurrent. So the end sentence is one of six years, two months' imprisonment.

[23] You will be eligible to go to the Parole Board at one-third of that sentence, so that is two years. When you go to the Board, they will only look to release you if they think that you have got really good supports and you have done as much as you can do whilst in custody to address your offending issues, all right? But the Department of Corrections will look after you when they take you into custody and they will make sure that you get the necessary medication you need to keep you well.

J A Farish
District Court Judge