

**IN THE DISTRICT COURT
AT TAURANGA**

**CRI-2017-070-004529
[2018] NZDC 3508**

THE QUEEN

v

JOEL HAAKA DOUGLAS

Hearing: 26 February 2018

Appearances: O Salt for the Crown
R Nabney for the Defendant

Judgment: 26 February 2018

NOTES OF JUDGE E P PAUL ON SENTENCING

[1] Joel Haaka Douglas is now for sentence on one charge of aggravated robbery and a charge of unlawfully getting into a motor vehicle, the offending all occurring out of the same incident in Tauranga back on 6 October 2017.

[2] The facts are at 1.15 in the afternoon on 6 October 2017 Mr Douglas, along with a male associate, were in [location deleted]. Both were wearing hoodies with the hoods up. They have gone to the [details deleted – store 1] where Mr Douglas has removed a plastic bag from the fruit stand, placing it in his pocket. They have then moved on from there to the [details deleted – store 2] situated at the end of the row of shops. Both men have walked in together, moving straight to the counter where the sole attendant, the victim, was standing. The defendant's associate was holding a firearm which was tucked up his sleeve while the barrel was exposed. Both men have demanded money from the victim telling him to empty the till into the plastic bag that Mr Douglas has taken from his pocket. The victim has complied, pulling tills out from the cash machine, placing them on the counter and putting the money in the plastic

bags. He has been told to hurry up and the associate has raised the barrel of the firearm in his direction.

[3] Once the tills have been emptied both men have gone to leave before the associate has gone back in and demanded the keys to the victim's car. The victim has given up the keys and both the defendant and his associate have left in the victim's car.

[4] The sum of \$2180 was taken in the robbery along with the [motorcar]. That was subsequently located but a number of personal items were not.

[5] I have received a victim impact statement for the victim and I simply read a portion of that today.

After this happened I seriously considered leaving my job at the [store 2] which caused me great stress as I enjoy my job. What they did to me made me feel vulnerable and unsafe. Every time a customer would come in wearing sunglasses or a hat I would get nervous and when I heard about other robberies in the area it made me very panicky we would be hit again.

[6] I have received submissions from the Crown and also from Mr Douglas' lawyer, Mr Bill Nabney. For the Crown they are seeking a starting point of six years' imprisonment, with an uplift for Mr Douglas' previous criminal history. They accept Mr Douglas is entitled to the full discount for his guilty plea of 25 percent and they have submitted an end sentence in the order of four years eight months' imprisonment. Today Mr Salt has also asked for a discrete uplift of four months for the unlawfully getting into a motor car. I have already indicated that I am not attracted by that submission today given the lead offence is the aggravated robbery.

[7] The Crown have referred to the purpose of sentencing, particularly denunciation and deterrence and holding Mr Douglas accountable for his actions.

[8] The Crown have pointed at a number of aggravating features of this offending. The premeditation involved, that is, the taking of a firearm to the [store 2] and the wearing of hoodies at the time. They have also referred to the use of disguises but it seems to me that is covered in the premeditation aspect. The Crown also point to the use of a firearm which always elevates the seriousness of offending; the amount of

property taken, in excess of \$2000 cash, that there were two offenders involved and the target premises. They have also referred to the impacts on the victim who was the sole attendant in the store.

[9] The Crown have referred to the leading tariff decision of *R v Mako*¹ which says where there are robberies of [commercial premises] where substantial sums of money are taken by a group (two people is a group) where lethal weapon and disguises are employed the adult offenders can expect a starting point of six years' imprisonment before any discounts. Where the firearm is found in fact to be loaded or violence is actually used then an eight year starting point is more appropriate. The Crown say this offending falls squarely within that description.

[10] They have also referred to Mr Douglas' previous convictions which are a number for property related offending.

[11] As I have already indicated, the Crown accept Mr Douglas is entitled to the full discount of 25 percent for his guilty pleas and they say given his previous convictions and history he cannot claim any discount for age.

[12] As against that Mr Nabney, in a carefully and considered way, has acknowledged the application of *R v Mako* and has also acknowledged the aggravating features of this offending. He submitted no uplift is required for this man's previous criminal history and also, although accepting the unlawfully getting into the car again, attempts to persuade me that there is no discrete uplift for that. He seeks the full discount for Mr Douglas' guilty plea.

[13] He is aware the Crown are seeking reparation from Mr Douglas for his share of the money stolen but in practical terms reminds the Court it will be some time before Mr Douglas could even be in a position to pay that money. I agree.

[14] In terms of sentencing I accept this falls squarely within the aggravated robbery of commercial premises. A firearm was presented, there were two offenders, offences during daylight hours, middle of the day the public can be expected to be in the [store

¹ *R v Mako* [2000] 2 NZLR 170 (CA).

2] which elevates the risk and there seems no dispute between either counsel that a starting point of six years is potentially appropriate.

[15] As I have indicated on at least two occasions I do not see a requirement to uplift Mr Douglas' sentence either for the unlawfully getting into the motorcar or his previous convictions. I do that because I am mindful Mr Douglas is still a relatively young man, at 24 years, and there must be some light at the end of the tunnel rather than accumulating further periods of imprisonment on top of the starting point I have already indicated.

[16] I accept he is entitled to the full discount of 25 percent for his very early guilty plea and that will clearly reduce the sentence. I cannot reduce the sentence any further for his age because a reduction for age relates to generally the fact a young person does not have any history of involvement or knowledge of the criminal justice system. Unfortunately for Mr Douglas he has significant knowledge of the criminal justice system, both when he was in the Youth Court and now in the District Court.

[17] I am not prepared to order reparation today. Mr Douglas will have no means for some time to pay that reparation and despite accepting it is owed to his victim it cannot be justified imposing it today given the sentence I am going to have to order against Mr Douglas.

[18] Accordingly, on the aggravated robbery charge, I impose a sentence of four years six months' imprisonment. On the unlawfully getting into a motorcar charge, I simply impose a term of three months' imprisonment, concurrent. That adds nothing to the four and a half years. That is a sentence of four and a half years.

E P Paul
District Court Judge