

**IN THE DISTRICT COURT
AT AUCKLAND**

**CRI-2017-004-007352
[2018] NZDC 7107**

THE QUEEN

v

JOHN EMERSON ROYAL

Hearing: 12 April 2018
Appearances: J Barry for the Crown
S Kilian for the Defendant
Judgment: 12 April 2018

NOTES OF JUDGE R J COLLINS ON SENTENCING

[1] Mr Royal, in one sense a lot of what is to happen this morning will seem to you unnecessary because you already know the outcome, but there needs to be a very full record of what has taken place and why for all sorts of people, not the least of which will be the Parole Board.

[2] You are for sentence in relation to nine charges which appeared in the Crown charge notice and then there is an additional charge of burglary and then there is an additional charge of breach of your parole conditions. The matters in the Crown charge notice include unlawful actions in relation to three motor vehicles, aggravated robbery, driving in a dangerous manner, threatening to cause grievous bodily harm, theft, two burglaries.

[3] Now, in relation to those matters, on 5 June 2017 you were on parole. You absconded by cutting off your electronic monitoring bracelet. Between 5 June 2017

and 19 July 2017, when you were arrested, you committed a number of criminal offences. On 25 May 2017, a BMW motor vehicle registration [registration deleted] was stolen from a [location deleted], St Heliers address. It is not known who stole that. It is owned by the victim. That vehicle was located at the garage of [location deleted], Auckland by police. No one was with the vehicle at the time. The vehicle subsequently towed and forensically examined. The results of the examination identified your fingerprints on the outside of the driver's door of the vehicle.

[4] At about 7.45 pm on [date deleted] the next victim was in the [carpark], Central Auckland. He was returning to his Audi motor vehicle parked in one of the parking spaces. You ran towards the victim and said in a forceful tone, "Get on the ground, I've got a gun, empty your pocket and give it to me." The victim saw that you were holding what he believed was a gun. The gun had a thick barrel and a small hole in the end. The victim complied emptying his pockets and providing you with his keys, wallet and cellphone. You directed the victim to come with you in the vehicle. The victim complied and entered the vehicle with you.

[5] While inside the vehicle, you spoke to the victim while pointing the gun at him and discussed how to exit the vehicle. Once the vehicle was started, you drove through the parking building to the exit on Hobson Street. At the exit of the carpark the victim asked for his wallet and phone. You opened the barrier out of the carpark and drove out of the carpark and gave the victim back his phone and keys. You then told him to exit the vehicle and drove off.

[6] At 9.40 on 15 June, you were involved in a pursuit when you were driving the Audi vehicle. All four tyres were spiked at the time of the incident due to the dangerous manner in which you were driving. Police last saw the vehicle driving along Great South Road in Papakura. A short time later, an off-duty police officer noticed the Audi vehicle in a public carpark outside Kiwibank in Takanini. Police enquiries identified CCTV footage that showed a male believed to be you entering Kiwibank.

[7] On 16 July 2017, you checked into the [Hotel] on [location deleted], Eastern Auckland. At approximately 1.30 pm on 17 July you stood

in the hallway of one of the hotel floors, you uplifted three bags of luggage that belonged to the victim. At approximately 1.30 you exited the hotel and walked up to a waiting VIP taxi cab parked outside. The vehicle was driven by the next victim. You placed the stolen luggage in the back of the taxi and entered into the rear left passenger seat. You told the victim to drive to [a shopping centre]. During the drive, he was advised by the hotel staff at the [hotel] that you had stolen the luggage from a guest in the foyer. He told you he was going to turn around and take you back. At this point he was driving south along Southern Motorway approaching Greenlane East. You stated to him, "If you turn around I'll shoot you," and poked the victim in the back with what was believed to be your hand. No weapon was seen by the victim. He exited the motorway at Greenlane East and pulled into the [Petrol Station] next to the offramp. He got out of the vehicle and locked it in an attempt to prevent you from grabbing the bags. You followed him to the gas station and attempted to take the keys from him demanding he unlock the vehicle. He unlocked the vehicle and you removed the bags before walking off towards Greenlane East.

[8] At about 5.45 hours on 18 July, a Toyota truck was stolen from Mt Wellington. The vehicle was stolen from the loading bay. The truck was unlocked and the keys were in the sun visor. Sometime after your initial taking of the vehicle you received the vehicle and keys from an unknown associate. At about 3.30 am on 19 July, you were driving the stolen truck. You reversed the truck at speed into the rear roller doors of the [supermarket] in College Hill, Freemans Bay. The roller door was buckled from the force allowing you to gain entry into the store. You loaded two trolleys full of alcohol and put them in the truck before driving off. Your actions were clearly captured on CCTV footage. Stolen items worth \$300.

[9] At 5.00 am on the same day, 19 July, you were driving the Toyota truck at speed on Morrin Road, Auckland. You failed to negotiate a slight bend in the road and rolled the vehicle. As a result of the rolling of the vehicle it suffered significant damage. You were able to exit the vehicle relatively unharmed and waved down a passing motorist. He dropped you off nearby and you changed your clothing. Police were called up, a member of the public thought your behaviour was suspicious. You were found by the police and arrested.

[10] Mr Royal, you have a lengthy list of previous convictions. I have overlooked though before going on to that one further summary which was the burglary at Botany Downs where you broke into a retirement village by smashing the window of the office area and once inside broke into the restaurant safe or one of the small deposit box. The alarm was activated. You left the building in a rush and left behind a duffle bag which contained several tools and mobile phone. A total of \$6000 in cash was taken along with the large digital projector.

[11] As I say, you have a large or lengthy list of previous convictions which include multiple convictions for burglary. A pre-sentence report has been provided. I have considered that. Its recommendation is inevitable and the other comments are unsurprising.

[12] The matter came before me by way of sentencing indication on 15 February and after discussing the lengthy submissions that Mr Kilian has provided on your behalf and the Crown had provided and discussing the various starting points and discounts they raised, I concluded that in my view if we looked at matters individually a starting point for the aggravated robbery and matters associated with that would be five years, each of the burglaries on their own would warrant 18 months adding up in totality that would be four and a half years, the threat to cause grievous bodily harm was a serious one; six months for that, three months for the theft, dangerous driving two months and put altogether that would get to 10 and a half years. With an uplift of one year for your previous convictions, that will take matters to 11 and half years. But standing back on a totality basis that was too much and, therefore, on totality the global term of imprisonment in terms of starting point was adjusted to one of eight years or 96 months. Twenty percent discount for guilty plea was indicated and that would take matters to 76 months or six years four months, and that is the position we arrive at today.

[13] So, on the charge of aggravated robbery, the sentence is one of six years four months.

[14] Unlawfully taking or getting into motor vehicles; those three charges, concurrent term of imprisonment of six months.

[15] The burglary charges, 18 months, with respect to the three burglary charges.

[16] Two months for the dangerous driving plus disqualified from holding or obtaining a driver's licence for three years in relation to that matter from today, 12 April.

[17] For the theft charge, concurrent term of imprisonment of two months.

[18] If I had not already mention it, for the threatening charge, six months concurrent.

[19] On the breach matter, concurrent term of imprisonment of two months.

[20] Intentional damage charge – two months.

[21] Dangerous driving – two months plus disqualification for three years.

[22] Failing to stop – convicted and discharged.

R J Collins
District Court Judge