

**IN THE DISTRICT COURT
AT MANUKAU**

**CRI -2016-092-010607
[2018] NZDC 5396**

NEW ZEALAND POLICE
Prosecutor

v

FREDERICK WILLIAM THOMPSON
Defendant

Hearing: 20 March 2018
Appearances: Y Olsen for the Prosecutor
J Griffin for the Defendant
Judgment: 20 March 2018

NOTES OF JUDGE J BERGSENG ON SENTENCING

[1] Mr Thompson you appear for sentence today on a charge of injuring with intent to injure under s 189(2) Crimes Act 1961 where the maximum penalty is five years' imprisonment.

[2] This matter came before me as a trial and I heard evidence from a number of witnesses including [the victim] who was the person that you attacked with a sledgehammer. I also heard your evidence.

[3] The facts as I found them to be are that you were angry at [the victim]. [Victim details deleted]. The reasons for your anger are somewhat irrelevant but you armed yourself with a sledgehammer and you went looking for [the victim] who was upstairs at the address. He heard someone running up the stairs. He came out of [the room], walked around a corner and straight into you. Before he had time to react, you used the sledgehammer and you effectively smashed the head

of it into his mouth. The injuries that he sustained included a significant cut lip which required a number of stitches. He had two teeth knocked out and he had a couple of teeth cracked and dislodged. It was a serious assault on your part.

[4] You have a history of violence going back recently to 2009 and 2010, two convictions of injuring with intent to injure, and you received sentences of imprisonment on both of those occasions. You have got previous convictions for assault with a weapon and assault on Police, although those are going back some years. All up, you have eight violence convictions.

[5] Submissions have been filed by the Police. They submit a starting point of between three to three and a half years with an uplift of six months because of your history. They note the aggravated features to be that there was actual violence, it was an attack to the head, a weapon was used and the extent of the harm together with the fact that it was a premeditated attack.

[6] On your behalf, Mr Griffin has also made submissions. He submits a starting point of two and a half to three years. He submits that this is offending within the upper range of band 2 in *Nuku*¹ or perhaps in lower band 3. Four features are identified that are aggravating, that is, this was an attack to the head; the use of the weapon; the nature of the injuries sustained and it was a premeditated attack. He also acknowledges that there will be an uplift for your previous history.

[7] There is a provision of advice report which I have considered and that makes the unrealistic recommendation of intensive supervision. It also gives me some insight into your more recent background and you have also had some recent medical issues.

[8] The Court of Appeal in the case of *Nuku v R* from 2012 set out a number of bands that involve offending of this type where it includes an intent to injure. The aggravating factors I find includes that this was a premeditated attack; prior to it, you had armed yourself with the sledgehammer. There is then the use of the sledgehammer in terms of the assault and that was an attack to the head of the victim. As I noted, he

¹ *Nuku v R* [2012] NZCA 584.

did not even see it coming. Serious injury was sustained, although I see that to a lesser extent in terms of the aggravating features (given the nature of the charge).

[9] The starting point I adopt, given that I see this as offending which falls in band 3 of *Nuku*, is one of three years' imprisonment. I am going to uplift that by four months for your previous history.

[10] In terms of personal mitigating factors, the only issue that I can take into account in my view is that you have had recent ill health and I accept that that is going to make your time in prison more difficult. For that reason, I reduce the sentence by four months.

[11] The end sentence is three years' imprisonment.

J Bergseng
District Court Judge