

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

**IN THE DISTRICT COURT
AT CHRISTCHURCH**

**I TE KŌTI-Ā-ROHE
KI ŌTAUTAHI**

**CRI-2018-009-005755
[2019] NZDC 679**

NEW ZEALAND POLICE
Prosecutor

v

DREZAY KAIWAI
Defendant

Hearing: 17 January 2019

Appearances: S Whyte for the Prosecutor
N Pointer for the Defendant

Judgment: 17 January 2019

NOTES OF JUDGE AA COUCH ON SENTENCING

[1] Mr Kaiwai you appear for sentence today on one charge of aggravated robbery. The starting point for sentencing you today is that on 1 August last year you were sentenced by Judge Phillips on a number of charges, the most serious of which were two charges of aggravated robbery, one charge of assault with intent to rob and one charge of injuring with intent to cause grievous bodily harm. The charge for which you are to be sentenced today arose out of events in late May last year. You were then on bail awaiting sentence on those earlier matters.

[2] These are the facts of the matter that I must sentence you on today. At about 11.35 pm on 24 May you and four other young men were travelling in a car in the Yaldhurst area. The victim was working alone at a service station on [street name

deleted]. You drove into the forecourt where you all got out of the car. You were all wearing balaclavas or other disguises. Some of you were armed. You had a hammer. One of your colleagues had a short axe. All five of you went into the shop where the victim was working. There was one customer there who was ordered to sit on the floor. You then threatened the victim, demanding money and cigarettes. The victim emptied the till and gave you the money. Following your instructions, he gave you cigarettes from the cigarette cabinet. After taking the money and the cigarettes you all left the scene in the car in which you had arrived.

[3] From the outset, I am conscious that I must sentence you for this offending in the context of the sentencing conducted in August and by reference to the gravity of the offending on this occasion compared to that for which Judge Phillips sentenced you.

[4] I say immediately that this offence is the most serious of all the offences you have committed so far. I note several aggravating aspects. You were part of a group of five men. You were armed with a dangerous weapon as was one of your co-offenders. You were disguised. The victim was vulnerable, being effectively alone in the service station in the middle of the night. You threatened the victim in order to steal money and goods. The amount stolen was substantial; \$5738 worth of cigarettes and \$327 in cash. The effect on the victim was serious. During the robbery he was petrified and barely able to move. He genuinely feared for his life. After you left he collapsed in fear. He subsequently experienced flashbacks, repeated emotional trauma and insomnia.

[5] Having regard to the guidelines in the Court of Appeal decision *R v Mako*¹ I would take a starting point of seven years' imprisonment. In sentencing you last August, Judge Phillips took a starting point of three and a half years for the two robberies and three years nine months for the injuring charge. Viewing those matters in totality, Judge Phillips adopted a combined starting point of six years' imprisonment. Adding the present charge to the totality of your offending I would adopt a combined starting point of nine years and six months' imprisonment.

¹ *R v Mako* [2000] 2 NZLR 170 (CA).

[6] Judge Phillips applied an uplift of six months for the fact that you were subject to an electronically monitored sentence at the time of your offending in 2017. When you committed this offence in 2018 you were on electronically monitored bail. I adopt the uplift of six months applied by Judge Phillips but take it no further. That leads to an overall starting point of 10 years' imprisonment.

[7] I turn then to the mitigating factors. Judge Phillips was very familiar with your personal and offending history. As I understand it, he had dealt with you previously in the Youth Court and he had also dealt with you in the District Court on a number of occasions. In his notes on sentencing, he referred to several reports about you which were available to him. He also of course noted your age. For those factors Judge Phillips reduced the sentence from the starting point by 30 percent. He then reduced it by a further 25 percent to reflect your guilty plea. I adopt the same reductions. That results in an end sentence of five years and three months' imprisonment.

[8] Standing back and considering all aspects of your offending since 2017 that seems to me to be appropriate. On this charge then you will be sentenced to imprisonment for two years and one month cumulative on your current sentence of three years and two months.

A A Couch
District Court Judge