

**IN THE DISTRICT COURT
AT MANUKAU**

**I TE KŌTI-Ā-ROHE
KI MANUKAU**

**CRI-2017-092-002518
[2018] NZDC 17555**

THE QUEEN

v

[KARL HOPOATE]

Hearing: 20 August 2018
Appearances: J Pridgeon for the Crown
Q Duff for the Defendant
Judgment: 20 August 2018

NOTES OF JUDGE A M WHAREPOURI ON SENTENCING

[1] Mr [Hopoate], you appear before me for sentence having pleaded guilty to one charge of wounding with intent to cause grievous bodily harm. That charge is a serious one which carries a maximum penalty of 14 years' imprisonment.

[2] On [date deleted] March 2017, you were at your home address together with your victim. You and your victim had commenced a relationship of sorts only a few days earlier. The two of you moved in with one another and shared accommodation in a [converted sleep-out] on the property. At approximately 3.00 am the two of you were asleep in bed when you were awoken by the victim who herself was stirred after a bad dream. She wanted to talk with you about that dream. You, however, wanted to return to sleep.

[3] Because she persisted you then got out of bed and turned on the lights. You picked up a piece of four by two timber, returned to your victim, who was still lying in bed, and struck her over the head with sufficient force to break the timber into two pieces. You then grabbed one of the broken sections and used it to strike your victim two further times to her head.

[4] Despite the nature of your attack the victim was able to get out of bed and run to a neighbouring property, asking the occupants there to call the police. When the police arrived at your house they found you at the scene and you admitted to the officers carrying out the assault as I have described. You told the police that you were annoyed after having been woken by the victim and you were simply tired, wanting to go back to sleep.

[5] Your offending is aggravated by your use of a weapon, an attack by you on your victim's head, the fact that she was vulnerable, lying prone, unsuspecting in bed and also because while she was not your long-standing partner at that time the two of you were nonetheless in a relationship. Finally, your offending is also aggravated by the serious harm that was inflicted on your victim in terms of her physical injuries and the ongoing psychological effects.

[6] In terms of her physical injuries, your victim suffered deep lacerations to her head and required immediate surgery. She was hospitalised for several days after the attack. In terms of the psychological effect on her, she notes in her victim impact statement that she has been left deeply traumatised and struggles to socialise with people around her. She often relives those moments of the horrible attack in which she thought she was going to die and she lives in constant fear of being assaulted by those who are close to her and has real difficulty in trusting them. As a result, she keeps herself indoors and has become socially isolated.

[7] I note that you are now [over 50] years old and that you have lived much of your life as a law-abiding citizen. You do, however, have a previous conviction for wilful damage from 2009. You were sentenced to supervision for that offending. While that previous conviction is not of a similar nature to the wounding charge it is not completely irrelevant from the matter before me. I will refer to the previous

conviction later when discussing the issue of whether you should be extended some credit for previous good character.

[8] In sentencing you it is important to have regard for the sentencing purposes of denunciation and deterrence. It is also important to hold you accountable for the harm caused by your offending while recognising the importance of imposing the least restrictive sentence which is warranted in the circumstances.

[9] I note that there is much in common between where the defence and Crown see your offending. The Crown submits that the starting point for your offending should be somewhere between six and seven years' imprisonment, while your counsel Mr Duff submits that the starting point should be six years. Both the Crown and the defence agree that you should be afforded the maximum discount for your early guilty plea, being 25 percent. But where the parties are at loggerheads is whether you should be given some discount for previous good character. Mr Duff submits that you should be whereas the Crown submits that you should not.

[10] I have seen a number of psychological reports for you. At the time that you entered your guilty plea a screening report was called for which ruled out the likelihood of mental health issues being the root cause of your offending. A further psychological assessment carried out on 16 February 2018, however, raised the issue about the accuracy of that initial screening report. In particular the report writer recommended more investigation because, in his view, your current violent offending appeared to be the culmination of a lack of appropriate emotional regulation skills combined with recurrent triggers that have in the past resulted in violence or having had violence modelled to you.

[11] A further psychological assessment was carried out which considered your particular circumstances in greater detail. That assessment and report was prepared by Dr Mhairi Duff. In Dr Duff's report she noted that you were born and raised in Samoa and that you were the youngest of [several] siblings. She notes that you were forced to defend yourself often from your older brothers who would subject you to various assaults and that from their behaviour you continued that pattern of violence which you levelled out at other boys when you in time went to school. Dr Duff refers

to other instances of violence by you after you moved from Samoa to New Zealand which you relayed to her. Dr Duff was also able to identify a long-term history of substance misuse and abuse by you—those substances including cannabis, kava and alcohol.

[12] In conclusion, Dr Duff was of the opinion that your offending did not show evidence of being caused by a chronic or acute transitory mental condition. Nor did Dr Duff consider that you lacked appropriate emotional regulation skills. She did agree however that your offending on this occasion was the result of an acute stress or trigger, namely being woken in the night by your victim, but she did not consider that that could be construed as a clinical acute stress trigger. Her opinion was that your offending should be viewed in the context of your cultural background and past learning. She believed that you were socialised to both expect a degree of respect and obedience from others, reinforced if need be through aggression and violence.

[13] I have also seen a pre-sentence report for you. That report picks up on a number of features referred to by Dr Duff in her own report. The recommendation in the pre-sentence report is one of imprisonment.

[14] In sentencing you it is first appropriate to identify a starting point. The Court of Appeal in a guideline decision called *R v Taueki* established several sentencing bands in which starting points can be identified based on the presence of aggravating features.¹ In band 1 cases involving violence at the lower end of the grievous bodily harm spectrum the sentencing band is between three and six years. In band 2 cases, which involve those serious violence instances where there are two or three aggravating factors present, the sentencing band will be between five and 10 years. Band 3 cases are those where there are three or more aggravating features or where the combination of aggravating features that are present is particularly grave. A sentencing band for band 3 cases will be between nine and 14 years.

[15] The Crown has referred to a case called [*Case 1 name removed*] v R.² [*Case 1*] was an instance of wounding with intent to cause grievous bodily harm broadly

¹ *R v Taueki* [2005] 3 NZLR 372 (CA)

² [*Case 1*] [2018] NZCA 154

comparable to the facts of your case. In *[Case 1]* the defendant assaulted his victim with a machete whereby he used the handle to strike his victim in the face and then with the blade inflicting three major lacerations. In that case the Court identified several aggravating features including extreme and unprovoked violence, the use of the weapon, an element of premeditation, attacks to the head and the relative vulnerability of the victim. In *[Case 1]*'s case the Court adopted a starting point of six years' imprisonment.

[16] As I have stated, I see your case as broadly comparable to *[Case 1]* although *[Case 1]*'s case did not involve an attack on a domestic partner and in your case the victim was slightly more vulnerable on the facts, given that she was in bed at the time of the offending. Nonetheless, I propose to adopt the same starting point as that adopted in *[Case 1]*. Accordingly, recognising that your offending sits towards the lower end of band 2 in *Taueki*, I adopt six years as appropriately recognising and reflecting your culpability.

[17] From that I propose to make a reduction recognising your remorse. I have seen a letter from you which sets out an apology to your victim. I also note that immediately after the offending you waited patiently for the police to arrive at the address. You were co-operative with the police officers and you made full admissions to them about what had taken place. I have also seen references in some of the material that since being taken into custody you have been a compliant prisoner. All those features suggest to me that you are truly remorseful for your behaviour and that your remorse should be recognised. Accordingly, I propose to reduce the starting point by 10 months to reflect that remorse.

[18] Mr Duff argues passionately for a further reduction for your previous good character. However, in my view such a discount would not be appropriate. The fact that you have a previous conviction for wilful damage from 2009 is in my view an impediment to Mr Duff's submission. While that offending was different in nature from the present charge, I note that the wilful damage charge referred to by Dr Duff in her own report seems to have occurred when you caused extensive damage to your sister's garage. When you were questioned about the incident you reported that you did not understand why it occurred but you were intoxicated at the time and, coupled

with the observations made by Dr Duff as to your background and behaviour modelled on violence in your upbringing, it is clear to me that the root cause of your offending from 2009 is similar if not identical to the root cause of your offending before me today. Namely, it stems from your particular background and an inability to display control and manage your anger in a more appropriate way.

[19] I note that in 2009 you received a sentence of supervision and that it was recommended that you complete a Living Without Violence programme. I have heard a report in Court today that while you were respectful during the period of supervision and did much of what was recommended to you, you failed to complete that Living Without Violence programme. It was also picked up in 2009 that you had a substance abuse problem. For these reasons, I am unable to provide you a further discount for previous good character.

[20] Turning now to the question of your guilty plea, I am prepared to extend to you the maximum discount for that mitigating feature which is 25 percent or the equivalent of 15 and a half months. When that discount is made the end sentence for you then becomes three years, 10 months and two weeks.

[21] Mr [Hopocate], could you please stand? In relation to the one charge before me of wounding with intent to cause grievous bodily harm you are convicted and sentenced to three years, 10 months, two weeks.

Judge AM Wharepouri
District Court Judge

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