

**IN THE DISTRICT COURT
AT CHRISTCHURCH**

**CRI-2017-009-009624
[2018] NZDC 5726**

NEW ZEALAND POLICE
Prosecutor

v

MATTHEW DOUGLAS SMITH
Defendant

Hearing: 23 March 2018
Appearances: Sergeant S Keith for the Prosecutor
M Smyth for the Defendant
Judgment: 23 March 2018

NOTES OF JUDGE A S MENZIES ON SENTENCING

[1] Mr Smith, you are appearing for sentence on 16 charges. They comprise six charges of burglary which is a charge with a maximum penalty of 10 years' imprisonment and 10 charges of using a document which carries a maximum penalty of, in each case, seven years' imprisonment. Guilty pleas were not entered at the first available opportunity. Not guilty pleas were entered initially and the pleas were changed at case review stage, it would seem. You are entitled to credit for that.

[2] So, what I am indicating Mr Smith is that there is a 25 percent allowance available which is the full discount for guilty pleas which is generally applied when acknowledgement of guilt and pleas are entered at a very early or the first practicable stage and that does not apply to you but you will certainly get a discount for the fact that guilty pleas have been entered.

[3] Your past history involves a significant number of prior convictions; they are in excess of 30. They include past convictions for burglaries and there are numerous past convictions for dishonesty related offending which have taken you to prison. In October 2015, you were sentenced to imprisonment on a range of thefts and using documents and I see that most of those theft charges were theft for vehicles.

[4] The summary is a lengthy one and I do not propose to read the whole summary. I have reviewed it in full and apply it in full but a short version of what has happened is that there were various burglaries of different domestic dwellings all during the day over a period of time. Essentially what has happened is that you have taken from the dwellings cheque books, then written out cheques to yourself and using your own driver's licence have, in some cases, succeeded in cashing those cheques at banks and in other cases, the banks declined to pay out. The summaries disclose a number of items also being taken from these properties and while that is a relatively short description, it covers the nature of the offending and should not downplay the fact that there were six burglaries and 10 occasions in which you attempted to take advantage of the cheques that you had taken and, in some cases, succeeded. There are, as a result, significant losses to the victims. The total amount of reparation that has been sought is \$21,737.98. Over \$15,000 of that is from one of the banks involved. The remaining amounts are smaller amounts that relate to various victims involved.

[5] The victims who were primarily affected by this have provided victim impact statements. One was 87 years of age, was in hospital when the burglary occurred and, of course, it is pretty obvious how much added stress and concern your actions would have caused. Another victim has outlined the consequences of feeling violated by what had happened by having people; strangers or a stranger in the house, all the inconvenience of cancelling cheques, the fact there was significant embarrassment because the victim's credit card was declined because of the money that had been withdrawn and it would be obvious to you, no doubt, that your actions have caused a significant amount of distress, loss and trauma to a significant number of people.

[6] I have received detailed police submissions for today. Those submissions remind me of the purposes and principles to be applied under the Sentencing Act 2002

and suggest that the key matters as far as you are concerned, are to hold you to account, deter and denounce your conduct and provide for the interests of the victims.

[7] A number of cases have been referred to as sometimes happens in sentencing. Those cases reflect where there is guidance being offered by higher Courts and simply examples of how similar offending has been dealt with in the past. As I raised with your lawyer, there are decisions including *Arahanga v R*¹ where the Courts take the view that dwelling house burglaries at the relatively minor end of the scale tend to attract the starting point of 18 months to two years' imprisonment. The police submissions have then given other examples of cases where there have been multiple daytime burglaries and starting points of imprisonment of up to three and four years have been imposed.

[8] Here, the police say that there are aggravating features that include you targetting urban residential dwellings during the day. You could not have known for sure whether they would have been occupied and, therefore, there was the possibility of confrontation with anyone who was inside the home. You have stolen cheques. The police suggest there was a degree of premeditation which is an inevitable and reasonable submission to make where there is repeat offending such as this. Significant amounts have been stolen and significant financial losses have been incurred.

[9] The police accept that some acknowledgement for a guilty plea is appropriate. The approach that the police urge upon me is that the burglary charges should take a starting point of four years' imprisonment and that there should be an uplift of, as I read the submissions, six to 12 months to reflect the other offences, so that would be a starting point of four and a half to five years if I adopt the approach taken by the police. In reflecting the totality principle, the police suggest that an end result in the order of three years' imprisonment would be realistic and appropriate.

[10] As far as your counsel is concerned, again there have been helpful and detailed submissions filed. The aggravating features are acknowledged. Ms Smyth has said that the domestic premises were all unoccupied and her submission is that

¹ *Arahanga v P* [2012] NZCA 480.

confrontation with the occupants was deliberately avoided. I do not have enough information in front of me to determine whether that was the case or whether it was just sheer good fortune that there was nobody home.

[11] The point is made that there was no violence used and that is so. You operated alone. It is argued that guilty pleas were entered at a relatively early stage, being case review hearing. Ms Smyth has acknowledged the authorities that have been referred to. She says in her written submissions that a starting point to reflect all matters would be in the order of two to two and a half years and I accept that that was her primary submission. She acknowledged today when we discussed that, that such a starting point might be viewed as optimistic in light of the cases and approaches that I have already referred to. Ms Smyth has pointed out that you are making efforts at rehabilitation and education while in custody and you recognise the merits of change in your own behaviour.

[12] You have provided a letter which I have seen prior to today and I have read that. You attribute your situation today to making stupid and selfish decisions and I think that is a fairly appropriate way of describing it. You say that you are remorseful for what has happened. You accept that the victims did not deserve what has happened. You have reflected in your letter a concern about becoming institutionalised and that is something you should reflect upon. Given your record, if you offend again when you come out of prison, then you will potentially be looking at longer and longer periods in custody and in prison.

[13] So, I need to draw these issues together Mr Smith and determine what is an appropriate outcome both in terms of reflecting a penalty, the scope of the offending, the impact on the victims while also recognising that you are showing some remorse and the need to encourage you to try and rehabilitate matters.

[14] Before I finalise those issues, I want to comment on two matters. The first is restorative justice. I was advised at the beginning of today that two of the victims wanted to be involved in the restorative justice process. The restorative justice coordinator was in Court and indicated that a request had been made to adjourn today's proceedings so that that could take place. I have not been able to find any indication

on the Court file where a request for adjournment has been declined. I raised with your counsel whether a request was being made to adjourn the sentencing to enable restorative justice to be explored and Ms Smyth, after taking your instructions, indicated it was your preference to proceed today and that is what we have done.

[15] The second issue to mention is the question of reparation. There are significant amounts being claimed, as I have already outlined. The difficulty that I face in finalising the reparation to be paid is that your counsel has indicated that a number of the amounts that have been claimed which are comparatively speaking, smaller amounts, are in dispute. What I am going to do in that context is to direct that reparation be paid in respect to the matters that are not in dispute but that is not to say that I accept that the matters that are disputed should not be paid. It reflects the fact that either I deal with matters on an accepted basis or there will be a need for a disputed facts hearing to enable orders to be made. That issue again has been considered previously and an earlier Judge has indicated that it is not appropriate to have a disputed facts hearing over comparatively small amounts. I accept that that is the case. Proportionately the amounts involved are comparatively small and I do not see that it is appropriate to delay the sentencing process to have a hearing over those comparatively small amounts. I am not, therefore, saying they are not payable, I am simply not directing reparation in respect of those amounts. There may well be civil action available to the parties concerned to pursue if they consider it appropriate to do so.

[16] So, in terms of the reparation, I am making orders that are reflected in the summary of facts that has been provided to me today which itemise the amounts and the charges to which they are applicable with the exception of the three that are the ones in dispute which are the [victim 1] house keys, the [victim 2] amount of \$1374.98 and the [victim 3] tablet amount of \$348. So those three items excluded, I am making reparation orders in terms of amounts that are set out in the summary of facts that has been provided today which lists the amounts in relation to the charging documents. Those amounts of reparation will be paid by you by arrangement with the registrar upon your release.

[17] In terms of the sentence itself, I have taken as the lead charges, the six burglary charges. Given what I have said to you before that 18 months is an appropriate reflection of one, there is scope to impose or have a starting point that could be three to four years or more, as is argued for by the police in terms of the four years.

[18] I am going to take what I regard as the absolute minimum which is a starting point of three years' imprisonment on the burglary charges and I am going to uplift those charges by six months to reflect the using documents and a further six months to reflect your history. Now, that is a total of four years or 48 months' imprisonment. From that figure, I am going to deduct for allowance for a guilty plea of 10 months which reduces the end result to 38 months or three years and two months' imprisonment, so that is the sentence that is being imposed. The sentence of three years and two months' imprisonment is imposed on each of the burglary charges. Those periods are concurrent. The total period remains: three years and two months and on each of the charges of intent to obtain property dishonestly by the use of documents, the penalty is two years' imprisonment, again concurrent, so the end result remains three years' two months' imprisonment is the total period of imprisonment.

Judge AS Menzies
District Court Judge

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