

**IN THE DISTRICT COURT
AT MANUKAU**

**CRI-2018-088-000046
[2018] NZDC 5014**

THE QUEEN

v

[PIPI RAKENA]

Hearing: 15 March 2018
Appearances: S Murphy for the Crown
C Hirschfeld for the Defendant
Judgment: 15 March 2018

NOTES OF JUDGE A M WHAREPOURI ON SENTENCING

[1] [Pipi Rakena], you appear before me for sentence having pleaded guilty to one charge of wounding with intent to cause grievous bodily harm. The maximum penalty for that offence is 14 years' imprisonment.

[2] The facts are that on 16 December 2017 you were in the company of your victim at a party for a mutual friend. You and your victim had been in an on-again-off-again relationship for approximately seven years. You have three children together. At the party, you and your victim consumed alcohol and an argument erupted between the two of you about him allegedly contacting other women. Your victim did not wish to argue further, so he left the party and returned to his home to sleep.

[3] The next day on 17 December, you arrived at his address and continued with the argument from the night before. During the argument, you became incensed with

him and grabbed a knife from a nearby table. You then used the knife to stab him once in the upper back between his shoulder blades. The knife broke at the handle, leaving the blade embedded in your victim's back. He fainted, fell to the ground, and you then ran from the scene.

[4] I note that the force which you used must have been considerable for the knife to have broken in the manner which I have described, but I take care not to overstate the offending because the injury suffered by your victim was not life-threatening. Instead, it is recorded in the agreed caption summary as well as the victim impact statement that the wound simply required several stitches.

[5] The police were called to the scene and you were spoken to a short time later. You told officers that you did not mean what you had done and that you are not a violent person, just that you were angry at your victim at the time.

[6] Your offending on this occasion is serious. It is aggravated by several features. First, your use of a weapon, second, the serious harm that was inflicted, and third, a vulnerable victim. The vulnerability which I refer to is reflected by the fact that the stab wound was to your victim's back, which indicates that he had his back turned to you at the relevant time, and also from the fact that, while a male, the offending was nonetheless in the context of a domestic relationship.

[7] In sentencing you, it is important that I observe the sentencing purposes of denunciation and deterrence. It is important that the sentence also holds you accountable for the harm that was done.

[8] I note that you have previous criminal convictions. Most are for dishonesty and non-compliance with court orders in previous sentences. You do, however, have three convictions for violence, the last of which is from June 2014. On that occasion, you were dealt with in relation to a charge of common assault, and a sentence of two months' imprisonment was imposed. I accept that that sentence also took into account a number of other matters for which you were dealt with at the same time.

[9] Turning to your personal circumstances, I have seen a pre-sentence report for you. It tells me that you are 28 years old and that you have three children with your victim, aged [under six years old]. You described yourself to the report writer as an alcoholic and that in the lead-up to your offending you were drinking at least two or three times a week. When you and your victim argued the night before, it was because you had looked through his phone and noted several text messages to him from another female. When you confronted your victim about this suspected infidelity you felt like an idiot. You told the report writer that you remembered seeing the knife and simply acted as you did without thinking. The recommendation in the pre-sentence report is one of imprisonment.

[10] I earlier referred to the victim impact statement. In it, your victim records that he did not make a complaint to police as he did not want anything to be done about your offending. In his opinion, you should be kept out of jail because it is better for you to remain with your children. Mr Hirschfeld submits that some weight should be given to the views of the victim. I accept the general proposition that the victim's views are one factor to be taken into account, but I do not give the views of the victim here any primacy.

[11] The Crown submits that the starting point for your offending should be five years' imprisonment. Ms Murphy submits that there should be some modest uplift for your previous convictions of relevance, and that you should be afforded a 25 percent discount for your early guilty plea.

[12] Mr Hirschfeld adopts the starting point set out in the written submissions. That starting point is between four and four and a half years' imprisonment. He also submits that you should be afforded a discount for mitigating circumstances. He refers to some remorse on your part and your early guilty plea.

[13] The guideline authority is a Court of Appeal decision called *R v Taueki*.¹ That case applies to serious violent offending, including the charge of wounding with intent to cause grievous bodily harm. The case sets out a number of recognised aggravating features and then identifies a number of sentencing bands based on the presence of

¹ *R v Taueki* [2005] 3 NZLR 372 (CA).

those same features. Band 1 cases are those at the lower end of the spectrum which do not involve extreme or life-threatening violence. Band 1 cases can attract starting points somewhere in the range of three to six years' imprisonment. Band 2 cases are those which feature two or three of the aggravating features. Band 2 cases can attract starting points between five and 10 years' imprisonment.

[14] Band 1 domestic assault cases can often be characterised as impulsive acts which do not involve the use of a weapon and do not cause long-lasting or permanent injuries, but where the victim is properly classified as vulnerable. Where there is a degree of premeditation or there is use of a weapon, but again where no long-lasting injuries are inflicted, a higher starting point could be expected, perhaps five years or more.

[15] The Crown also points to a number of authorities. Those cases include *Paterson v R*,² *R v Wickliffe-Brown*,³ and *Mareikura v R*.⁴ While no two cases are alike, the authorities referred to the court by the Crown are helpful. They suggest that the starting point for this type of violence could be anywhere in the range of five to six years.

[16] I note that the case of *R v Wickliffe-Brown* resulted in a lesser starting point, but that would seem to be because the Judge there adopted a lenient view given the special circumstances of the defendant, which included, for example, that she suffered from a post-traumatic stress disorder.

[17] Taking into account the authorities referred to, and in particular *R v Taueki*, as well as the aggravating features here, my view is that the starting point should be five years' imprisonment. I agree that there should also be some modest uplift for your previous convictions of relevance. The uplift should be three months' imprisonment. That then produces a headline starting point of five years, three months or 63 months.

[18] In mitigation, I recognise that you are remorseful. According to the pre-sentence report writer, you expressed your remorse and it was assessed to be

² *Paterson v R* [2014] NZCA 235.

³ *R v Wickliffe-Brown* [2013] NZHC 940.

⁴ *Mareikura v R* [2012] NZCA 108.

genuine. I make a deduction of three months to reflect your remorse. You are also entitled to the maximum discount for your early guilty plea, being 25 percent or approximately 15 months. That then produces an end sentence of three years, nine months' imprisonment.

Judge AM Wharepouri
District Court Judge

Date of authentication: 16/08/2018

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