

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

**IN THE DISTRICT COURT
AT HAMILTON**

**CRI-2017-019-005949
[2018] NZDC 5062**

THE QUEEN

v

TE KOTUKU MOANA

Hearing: 16 March 2018
Appearances: A Pell for the Crown
J Keung for the Defendant
Judgment: 16 March 2018

NOTES OF JUDGE M L S F BURNETT ON SENTENCING

[1] Mr Moana you are 20 years of age and you pleaded guilty and were convicted on a sentence indication that you accepted on a charge of aggravated robbery on complainant number two, and a charge of wounding with intent to injure also on complainant number two. There was an original charge of assault with a weapon on complainant number one and a charge of wounding with intent to cause grievous bodily harm on complainant number two, but on the sentence indication it was agreed by Crown that would be reduced to the wounding with intent to injure. For the purposes of the sentence indication the lead charge was aggravated robbery. It carries a maximum penalty of 14 years' imprisonment.

[2] The circumstances are that at approximately 7.00 pm on [date deleted] 2017 both female complainants had been asked by a mutual friend to give you and your two co-defendants a ride into [central Hamilton]. When you arrived at the carpark you were armed with a pocket knife and your two co-defendants, one was armed with a

handgun and together you robbed victim number two of her car keys, a backpack and cash. Initially your actions were focused on the first victim and whilst you were making demands on her, victim number two was repeatedly struck about the head and face with the handgun by one of your co-defendants while she was resisting the robbery.

[3] You were then observed to have possession of both the handgun and the knife in your hands as you re-entered her vehicle in which victim number two was seated. During the course of the subsequent attack on victim number two, she sustained a stab wound to her abdomen which punctured one of her lungs and also a cut to her ear.

[4] As I say the aggravated robbery charge is the lead charge and the purposes and principles were set out by the Crown in Crown submissions in paragraph 12 of their submissions and they are in particular the need to hold you accountable, the need to deter you from offending and deter others from offending in a similar way, to denounce this conduct and the need to rehabilitate you where appropriate and where appropriate to impose the least restrictive sentence.

[5] The authorities that were taken into account in starting points are all recorded in the sentence indication notes but the aggravating features of your offending were identified as the use of weapons, there was both the handgun and the knife and the presence of your co-defendants. There were numbers involved plus the weapons and the Court of Appeal's comment in *R v Mako*¹ to the effect that there is danger of knives in the hands of nervous or aggressive offenders when confronted by the unexpected is all too familiar. Obviously this victim has sustained injury.

[6] The second aggravating feature was the planning and preparation. Although it was largely opportunistic in nature there was nevertheless the presence of the weapons that you had there and had taken with you into the car and were still present at the [destination]. There is also the use of actual violence and in addition the victim was threatened with a handgun. She was repeatedly struck in the face and head with the handgun and then you stabbed her puncturing her lung. You stabbed her in the abdomen and also her ear was cut.

¹ *R v Mako* [2000] 2 NZLR 170

[7] The fourth aggravating features as I have already identified is the fact that there were three offenders and each of you were involved.

[8] The fifth aggravating factor was the impact on the victim. She received a punctured lung, she was hospitalised and the wound required stitches as did the wound to her ear. She has ongoing physical issues as a result of nerve damage and no doubt she has ongoing emotional issues as a result of your attack on her.

[9] You do have a number of previous convictions although none are for offending at this level. Your previous convictions include selling or supplying cannabis, driving, common assault, possession of an offensive weapon and two wilful damage.

[10] The starting point is imprisonment and the sentence indication was six years' imprisonment with a 20 percent discount for the guilty plea.

[11] I have heard from both Crown and from Mr Keung on your behalf as to whether there ought to be any further additional reductions.

[12] I am asked to reduce the sentence by three months for that change in the charge from wounding with intent to cause grievous bodily harm to that of wounding with intent to cause injury, which I am willing to acknowledge. Mr Keung seeks a further 10 percent discount of seven months for your youth. The Crown acknowledges a discount of five percent on the basis that you have already a number of convictions which I have referred to. Whilst your previous convictions are nowhere near the level of this offending, there is an earlier possession of an offensive weapon, two wilful damages and a common assault which are violence-related. I am willing to give you a discount of seven percent in acknowledgement of your youth and prospects of rehabilitation.

[13] Then there is the issue of whether there ought to be a further discount for the fact that you have been on a 24 hour curfew over the Christmas period. As Crown points out you were fortunate to have that time with your family rather than to be in custody over this period. I will allow a discount of one month for that.

[14] I am asked to take into account the fact that you suffer from ADHD which I do not dispute, but it did not in any way contribute to your offending. You have not been on medication for two years and whilst I am asked to take into account that a prison sentence may weigh more heavily as a result of ADHD, whilst I do not necessarily agree with that under the circumstances, I do allow a further one month reduction.

[15] Your end sentence is three and a half years' imprisonment which is a long period of time and you will be subject to parole and release conditions when the time comes. I do not think I have anything further to add.

M L S F Burnett
District Court Judge