

**IN THE DISTRICT COURT
AT MANUKAU**

**CRI-2017-092-006469
[2018] NZDC 5291**

NEW ZEALAND POLICE
Prosecutor

v

SHANE WIKAIRA
Defendant

Hearing: 20 March 2018
Appearances: S Murphy for the Prosecutor
C Frederic for the Defendant
Judgment: 20 March 2018

NOTES OF JUDGE A J JOHNS ON SENTENCING

[1] Mr Wikaira, you appear here today for sentence in relation to a number of charges some still in the custody of the police, and charges that are in the custody of the Crown.

[2] Dealing with the police charges; first, from 26 October 2016, failing to attend, having been bailed by the District Court, 28 November 2016 dishonesty without claim of right, got into a Honda Torano; on 14 December, unlawfully took a Honda Integra; on 14 December, assaulted [constable 1], a police constable, with intent to obstruct the said [constable 1] in the execution of his duty; on 6 December, unlawfully getting into a Subaru Legacy; on 11 December, failing to answer District Court bail; on 14 December, having in your possession a methamphetamine pipe for the purpose of consuming methamphetamine and resisting a police constable in the execution of his duty. 17 March last year, having a psychoactive substance that was not approved in

your possession. 15 of May last year, unlawfully getting into a Nissan Cefiro. 29 of April last year, possession of a methamphetamine pipe for consuming methamphetamine. Dangerous driving and unlawfully taking a motor vehicle, namely a Nissan Skyline. On 13 May, being in the lawful custody of the Department of Corrections, escaped from such custody, injured a Corrections officer, [corrections officer 1], in circumstances that if death had occurred, you would have been guilty of manslaughter; did steal a screwdriver, valued at \$500 and unlawfully took a motor vehicle, namely a Toyota Starlet, and unlawfully interfered with a motor vehicle, and assaulted [victim 1], with intent to facilitate the commission of an imprisonable offence, namely, escapes lawful custody, and driving while forbidden; from 15 May, unlawfully getting into a motor vehicle, a Honda Accord, and 7 June, assaulted [constable 2], with intent to avoid the arrest of you upon the commission of an imprisonable offence, namely escaping lawful custody.

[3] The matters in the charge of the Crown are; between 1 and 3 December 2016, attempted to unlawfully take a Volkswagen Passat. On 3 March 2017, and at Papakura, attempted to take a Subaru Impreza. Between 6 and 7 April last year, got into a Subaru Legacy. Between 8 and 9 April, also attempted to take a Mitsubishi 380, and lastly between 8 April and 9 April, attempted to take a Nissan Primera.

[4] For the purpose of sentence today, I have full submissions from the Crown, who are also representing the police, submissions from Mr Frederic, your counsel, victim impact statements, which have been provided to the Court today, which I will refer to in a moment, plus various pre-sentence reports that have been obtained between July last year and today's date.

[5] If I can deal with the summary of facts in a chronological order, dealing with the police charges first, then the Crown charges.

[6] On 28 November 2016 at 12.20 pm, a Holden Torino was unlawfully taken from [address deleted] in Papatoetoe valued at \$4000. On 12 December, the vehicle was located on [address deleted] in Otara. It was forensically examined, and fingerprints were collected and they were matched to you.

[7] On 6 December at about 10.00 pm, a Subaru Legacy was unlawfully taken from [address deleted] in Weymouth. It was valued at \$7000. On 8 December, it was located near the top of Kirita Hill in Manaia in the Coromandel. It was forensically examined and your fingerprints were located in the vehicle.

[8] In relation to the next lot of offending, that is the aggravated assault, unlawfully taking, possession of utensils for consuming methamphetamine and resisting police, between 5.00 am on Sunday 11 December and 7.00 am on Monday 12 December, a Honda motor vehicle was stolen along with the car keys from an address in [address deleted], Manurewa.

[9] At about 9.50 am on 14 December, you were at an address in [address deleted] in Otara. You were standing next to the stolen Holden vehicle along with an associate, several police officers arrived at the address, and the police yelled out to you to stop, that you were under arrest. You ran, and you were chased by police into your home, out the back door, and then around the house twice, and then you re-entered the house. You then attempted to evade police by exiting the house and getting into the stolen motor vehicle. You attempted to put the vehicle into reverse gear to drive away, but the police were able to intervene and turn the engine off, and then they tried to remove you from the vehicle. You lashed out with your arms to avoid handcuffs being placed on you, and used your fists in an attempt to punch officers to avoid being restrained.

[10] Once they got you out of the vehicle, you broke the grip that the police officers had, pushed them away from you which enabled you to run a short distance, police followed and again, attempted to place cuffs on you. You struggled by thrashing around, stiffening your arms to avoid your arms being placed behind your back. In the struggle, you took hold of [Constable 1]'s genitalia through his trousers, squeezing tight for about five seconds, causing him significant pain. Ultimately, police gained control of you and you were placed in the patrol car. At the time of your apprehension, you had in your pants pocket a pipe that is used for consuming methamphetamine. [Constable 1] suffered a considerable amount of tenderness and soreness to his genitals for some hours after the incident.

[11] In terms of possession of a non-approved psychoactive substance, you were in a car on 17 March on Great North Road in Henderson. It was involved in a police pursuit and when the vehicle stopped, you left on foot, but were located and arrested. A small zip case containing two medium size snap lock bags and eight other snap lock bags were located containing the non-approved psychoactive substance.

[12] Then there are the series of unlawfully getting into motor vehicles. First, between 9.30 am and 12.00 pm on Saturday 15 April, the victim's Nissan Cefiro was stolen outside his address. It was recovered on 15 April a short time later outside a Papakura address. It was forensically examined, a sample of blood located on the gear lever was analysed and identified as belonging to you.

[13] On 29 April the victim had left his car locked and secured outside his address in Papatoetoe. About 12.30 am, the victim's mother heard her son's car being started and realised that somebody was taking it. It was immediately reported to police as being stolen. It was described as having no power steering, large wheels on the left and small back wheels on the right side, and may be missing a front bumper, and a registration plate on the front. The registration it did have is reported as [deleted] and it was a Nissan Skyline.

[14] Shortly before 12.45, a police unit reported seeing a vehicle matching this description and the police helicopter unit was notified to assist to look for the vehicle. The Eagle advised the police ground units it had been observed leaving an address in [address deleted], Papakura. The ground units attempted to locate the vehicle while it was being driven by you and observed by the Eagle helicopter. The Eagle reported that the vehicle had begun to travel at high speeds through Papakura, including cutting corners while travelling at high speed. It was observed to be travelling in excess of 100 kilometres an hour in several residential streets of Papakura, where there are 50 kilometre zones. It was observed to travel at the speed of 140 kilometres per hour in Kelvin Road in Papakura, which again is a 50 kilometre area. Because of the dangerous manner and the excessive speed the vehicle was travelling at, no units engaged in a pursuit or activated their lights and sirens, because of their risks you were posing because of the manner of your driving and speed of your driving.

[15] The Eagle continued observations and reported that the vehicle was travelling at speeds of up to 180 kilometres per hour on Mill Road in Papakura, which is governed by an 80 kilometre speed limit. The Eagle helicopter continued to follow. The vehicle was observed to travel to Manurewa, where it was followed through several streets around the Manurewa East area. The vehicle lights were turned off in an attempt to continue to evade police. The vehicle travelled down Great South Road, Manurewa, and was observed by the Eagle helicopter turning into Mahia Road. The vehicle slowed to speeds of between 60 and 80 around residential streets, while its lights were still off. It was followed by Eagle onto Coxhead Road, then Mahia Road towards the [location deleted] area of Manurewa. It was then followed to a driveway at [address deleted], where three occupants were observed running from it. The Eagle continued to keep observations on you as you exited the driver's side of the vehicle. You attempted to continue to evade police by running through several properties and climbing fences. The Eagle was able to direct ground staff and a police dog unit to where you were, and you were caught trying to run through properties in Moncrieff Avenue. You were arrested, upon being searched, you were in possession of a pipe for consuming methamphetamine, and two small amounts of methamphetamine.

[16] The most serious set of offending from 13 May last year, when you were at Greenlane Hospital, which is located in Greenlane West, Epsom, receiving medical treatment. At the time, you were remanded in custody at the Mt Eden Correction facility and you were in the lawful custody of the Department of Corrections' staff for the duration of your treatment.

[17] About about 10.00 am, you were in the lawful custody of Corrections officers, [corrections officer 1] and [corrections officer 2]. You were being transferred back into the Corrections prisoner transporting vehicle. The officers placed you in the rear of the vehicle, and while [corrections officer 1] removed the tethering chain from you, you jumped towards the open door into her and [corrections officer 2]. [Corrections officer 2] stumbled back as she tried to grab your right arm. You yanked your arm several times with such force that her middle finger on her right hand was caught and fractured. The pain of the fracture caused her to let go, and you fled through the Greenlane Hospital carpark towards Greenlane West. The break to the Corrections officer, [corrections officer 1]'s middle finger required surgery to repair.

[18] Following your escape from the Corrections officers, you approached [name deleted], who was sitting in his motor vehicle on Greenlane West Road. You opened his driver's door and told him to get out, at the same time you grabbed the steering wheel. He accelerated forward and you lost your grip of the steering wheel and he fled.

[19] At about 10.20 you entered a tool shed located in the property of [address deleted] in Epsom. It was occupied by [name deleted], you took a screwdriver belonging to him from his shed. He confronted you. He attempted to take the screwdriver off you, but you ran down the driveway, got onto a bike and fled.

[20] A very short time later, [victim 1] was parked in his Toyota Starlet on [address deleted] in Greenlane, Auckland. You approached the driver's side, opened it, and held a screwdriver to his stomach and told him to get out of the vehicle, and threatened to stab him if he did not. You then grabbed him by the arm and started to drag him out of the vehicle. He was fearing for his life, and he allowed you to pull him out of the vehicle. You fled in his vehicle at high speed and were last seen entering the South-Western motorway. It was valued at about \$1800. You were, at the time, forbidden to drive.

[21] On 15 May, another motor vehicle was stolen from Flatbush, Auckland. It was recovered on the same day and your fingerprints were located on the driver's Monsoon shield.

[22] The last police charge is the aggravated assault from 7 June of last year. You were located at [address deleted] in Weymouth during an inquiry on an unrelated matter. You were arrested by [Constable 3], and upon your arrest, attempted to escape by jumping out of a bedroom window. [Constable 2] grabbed hold of you from outside the window as [Constables 3 and 4] held you from the inside. You thrashed about in an attempt to break free from police grip as they tried to restrain you. You threw a number of punches towards [Constable 2]'s face and body as you struggled with the police officers, though none connected. You were pulled from the window where a brief foot chase ensued into [address deleted], where you were stopped by police. As

police attempted to put handcuffs on you, you continued to fight against police until you were restrained and taken into custody.

[23] Then lastly, in terms of the Crown charges, between 1 December and 3 December 2016, a Holden Passat was parked outside the victim's drive in [address deleted] in Thames. At some point, you entered the property and went up to the Passat and opened the unlocked driver's door. You damaged the ignition barrel in an attempt to take the vehicle. Your fingerprints were located on the gear stick inside the vehicle.

[24] Then at 7.30 am on 3 March 2017, the victim parked his vehicle on a grass traffic island at the end of a cul-de-sac in [address deleted] in Conifer Grove. You attempted to jemmy the door of the Subaru to gain entry to the vehicle, and then you damaged the ignition barrel with a screwdriver in an attempt to take the vehicle. Again, your fingerprints were located in the interior of the driver's window.

[25] At about 6.30 pm on 6 March last year, the victim parked her car in her driveway at [address deleted] in Weymouth. Sometime between 6.30 pm and 6.35 am the next day, you entered her Subaru Legacy, damaged the ignition barrel and took the vehicle from the driveway. The vehicle was recovered directly opposite her driveway, and your fingerprints were located on the exterior of the driver's door and there was damage done to the property.

[26] On 8 April, the victim parked his Mitsubishi motor vehicle in [address deleted] in Randwick Park. Sometime between 9.00 pm and 6.50 am the following morning, you entered the vehicle, you damaged the ignition barrel in an attempt to take the vehicle.

[27] In terms of victim impact statements, I have a number from the car owners, but only one from any of the victims of your assaults. If I can deal with that one first. This is [Constable 1], and he describes having superficial scratches on his hands from the scuffle, and whilst he was not bruised, he describes the soreness and tenderness on his genital area. He was deeply and emotionally disturbed by the assault he sustained during the incident. Despite not having any visible injuries, as a result of the scratches, his hand became infected and he had to go to the doctor, and the injuries meant that

his ability to work was delayed for two weeks when he was supposed to be deployed over New Year.

[28] In terms of the victim impact statements from people whose cars you interfered with, or took, there is a common theme that it caused huge inconvenience. Many of them are out of pocket for the damage done. People describe being angry at you, frustrated by your actions, feeling violated because you have come onto their property and interfered with their property, and extremely inconvenienced by often having no vehicle, because it had been taken or damaged, so it was not able to be driven.

[29] For the purpose of sentencing today, I need to take into account the purposes and principles of the Sentencing Act 2002, and consider any relevant case law. I need to determine what a starting point for your offending is, and what appropriate discounts should be made available to you.

[30] The sentencing exercise is not an easy one because of the number of charges you are facing, and because they vary in their seriousness but it is clear to me that the most serious offences, and the lead offences for the purpose of sentence today, are those that were committed by you on 13 May 2017.

[31] In terms of the Sentencing Act, I firstly need to hold you accountable for the harm done to each and every one of your victims. People are entitled to leave their cars parked without having to consider that somebody is either going to try and take it, or take it, and people that are serving as Corrections officers and police should not be abused and assaulted in the manner that you did, and of course, there was injury to at least one of the people that you assaulted during the course of your attempted escape.

[32] So I need to hold you accountable for the harm done to each and every one of your victims.

[33] I need to denounce your conduct and try and deter you and others from like offending through the sentencing process. I need to be consistent in sentence and impose the least restrictive outcome. Obviously, the only sentence today is a term of

imprisonment, and nobody is trying to persuade me otherwise. The question for me is to set the starting point, what uplifts there are for further offending, and what discounts are available to you.

[34] The Crown have suggested in their submissions, and I do agree, as does your counsel, that it is the set of offences from 13 May that are the lead offences, and the Crown have suggested that there should be then an uplift for the other assaults, and an additional uplift for all the vehicle charges. They are seeking an uplift for your previous convictions, which I will come to in a moment, and suggest that there should be a global discount for your guilty pleas.

[35] Your counsel, Mr Frederic, has accepted that that is an appropriate way to sentence, but he has suggested slightly different starting points and uplifts. Counsel have referred me to a number of cases where offending of similar type has been looked at by Higher Courts and I have considered those cases. This is a difficult sentencing, as I say, because you have been offending over a seven month period and there are so many different sets of offences, that whilst those cases are of some use, really your sentence turns on its own set of facts and the charges that you face.

[36] In terms of the charges from 13 April, obviously the escaping charge and the fractured finger that the officer suffered, the use of the screwdriver to threaten and get that victim out of his car, to facilitate your escape, which could have in my view been a robbery charge, but you are lucky it was not, make this serious offending. The Crown suggested that a starting point of three years would be appropriate for that offending. Mr Frederic has suggested somewhere between 26 and 29 months, and having read the summaries of facts, considered the serious nature of the offending, the determined effort you made to escape and the injury caused, that a starting point for those offences is one of three years' imprisonment.

[37] The Crown then suggested originally that there should be an uplift of 12 to 18 months in relation to the assault from 14 December where you targeted the constable's genital area, and the assault on police on 7 June when they were trying to arrest you, but they accept that the punches thrown by you on 7 June, did not actually land, they were just punches thrown, and on that basis, suggest that perhaps 12 months

would be appropriate. Mr Frederic on your behalf has suggested that a lower uplift of four months would be appropriate.

[38] In terms of the vehicle charges, there are 13 charges of either taking, attempting to take, getting into, and one of interference, and the Crown have suggested, I think, between 12 and 18 months would be appropriate, and Mr Frederic has again suggested something lower.

[39] Dealing first with the two aggravated assault charges, my view is that they do warrant an uplift of 12 months from that three year starting point, which takes us to four years' imprisonment, and given the number of charges of either taking, getting into, or attempting to take motor vehicles, my view is that warrants a further uplift of 14 months' imprisonment, which takes us to a starting point of five years, two months.

[40] In terms of the remaining charges, of possession of utensils, dangerous driving, breach of bail, I am not satisfied that they would require any uplift, but in terms of your previous convictions, you do have a number of previous convictions, you have a number of notations from the Youth Court, and whilst I acknowledge that they have less weight than convictions from the District Court, you have a number of convictions in the District Court also. You have been convicted of a number of serious property offences. You first came to the Youth Court in 2007, you have a number of notations for unlawfully taking, burglary, and receiving, and then when you graduated to the District Court in 2009, you have acquired a number of convictions for burglary, theft ex car, you have convictions for breaching community work, intensive supervision and release conditions.

[41] I accept that your offending in terms of its seriousness had slowed in the beginning of 2016, but of course it accelerated towards the end of that year. My view is that that would warrant a further uplift of three months, which takes us to a starting point of five and a half years' imprisonment.

[42] In terms of the pre-sentence reports I have read, and the letter you have written me today, you are suggesting that you deeply regret your actions. You acknowledge frankly that this spree of offending over seven months was fuelled by your addiction,

particularly to methamphetamine, that you have been clean while you have been in custody, and that you are wanting to remain clean and get appropriate rehabilitation, either in custody or when you are paroled.

[43] In terms of your remorse, you express remorse, though there are some matters contained in the pre-sentence report which perhaps give me some cause to doubt about how genuine it is. But the one thing it does concern me about the contents of the report dated 13 December last year, is that though you say you want to turn your back on this lifestyle, you were keen to show the report writer your new tattoos, and explained that they are Black Power, and they were still in the process of being completed. A person wanting to turn their life around upon release and parole, is best not to be involved with gangs, and if you maintain your connection with the Black Power gang, it is going to be very difficult, in my view, for you to remain crime free when you are released.

[44] In terms of discounts, whilst you did plead reasonably quickly, the reality is that these are very serious offences and some were committed while you were on bail for others, and of course, there was the issue of your escaping and not being before the Court for a period of time, which, in my view, would warrant a discount of 20 percent, with five percent for your remorse that you have expressed, which would give you a discount then of 25 percent, which takes you down to a sentence of four years, four months, in totality. I do not believe it needs any further discount because of the serious nature of the charges, and I sentence you as follows:

[45] In relation to the charges of escaping lawful custody, injuring a Corrections officer in circumstances that if death had occurred, you would have been guilty of manslaughter, and assaulting a victim with intent to facilitate escape, you are convicted and sentenced to three years' imprisonment.

[46] In relation to the two charges of aggravated assault, you are convicted and sentenced to a cumulative sentence of nine months' imprisonment.

[47] In relation to all the driving charges, an additional cumulative sentence of seven months' imprisonment.

[48] In terms of the remaining charges that carry terms of imprisonment, that is the breach of bail, possession of pipe and driving while disqualified, you are convicted and sentenced to three months' imprisonment. That's an end sentence of 4 years 4 months.

[49] You are disqualified from holding or obtaining a motor driver's licence for 12 months, starting from today's date in relation to dangerous driving.

[50] In relation to the charge of possession of a psychoactive substance and driving while forbidden, they are finable only, so you are convicted and discharged.

[51] So it is an end sentence of four years, four months.

A J Johns
District Court Judge