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

IN THE DISTRICT COURT
AT CHRISTCHURCH

CRI-2016-009-009609
[2018] NZDC 5393

THE QUEEN

v

[BRAEDON HOLLAND]

Hearing: 21 March 2018

Appearances: C C White for the Crown
K G Feltham for the Defendant

Judgment: 21 March 2018

NOTES OF JUDGE D J L SAUNDERS ON SENTENCING

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[1] [Braedon Holland], you have pleaded guilty to a charge relating to an incident that occurred on 23 July 2016. It involved injury to your partner. There was a breach of a protection order that clearly occurred because of what you did and the salient factor, as I have pointed out, is that were already on bail for an assault at the time of this particular offence.

[2] The plea of guilty to this charge that you are being sentenced on of injuring your partner was before the Court for quite some time. I note the plea was recorded on 16 February which was very shortly after I had delivered a pre-trial ruling in which I had accepted the Crown's application to be able to put before the Court what is termed propensity evidence and which the jury would have been entitled then to know the full background to your previous violent offending.

[3] I am well aware that the complainant in this case had elected not to co-operate with the police and that she was potentially not going to be available as a witness. There was, however, another person in the house at the time who was going to be available and the strength of evidence of there being an assault by you was, in my view, sufficient for you to have made a decision about pleading to this charge at a much earlier point in time. The victim has also chosen not to file a victim impact statement. I am aware that she is somewhere in the North Island and she is getting on with her life with the [children].

[4] The evidence upon which I sentence you is really now contained in not only the formal statements but the summary of facts that was delivered at the time of the plea. You returned to the house about 7.20 pm on [date deleted] July. You had been drinking alcohol. You were clearly intoxicated. The assault took place away from the kitchen area but was heard by a person who was working in that area and as a result of what happened in the bedroom she lost a tooth. There were other punches and kicks to the head and she had to be hospitalised for a period of time to have the injuries treated. An aggravating factor of this was that your [age deleted]] child saw some of this assault take place and it only came to an end when another family member intervened.

[5] The victim's injuries involved a fracture to the eye socket, required surgery and there was significant bruising. A police search of the scene a day or so later revealed blood-staining although it is clear that some attempt had been made to try and clean up the bedroom area. Text messages from you to the victim made it clear that you did not wish to go to jail and that you knew that you had messed up. An aggravating factor, as I have already indicated, is that you were already on bail for an offence that had occurred on her in [date deleted]. Subsequently in [date deleted] you received nine months' imprisonment for the charge of male assaults female and so it is clear that you are not somebody who easily accepts responsibility for your bad conduct to your partner.

[6] In the face of a sentence indication which was given in May 2017 you rejected the indication given of 38 months' imprisonment. Mrs Feltham has today addressed me as to the reasons that were operating your mind at the time as to why you did not

wish to accept that. You remained in custody. There was clearly delay until a new trial date was scheduled and then the argument about the admission of propensity evidence of which I gave a ruling on just a few days before you pleaded guilty.

[7] The sentence indication given at the earlier point of time involved a 25 percent credit for the guilty plea, saving the cost of the trial. I do not accept that you can now command a 25 percent discount on the sentence today for the guilty plea which came in February.

[8] Insofar as the sentencing is concerned, I am required to have regard to the penalty that is imposed for an offence of this kind. It is a maximum penalty of 10 years' imprisonment. The Court is required to look at assessing where a starting point is having regard not only to the principles and purposes of sentencing which involve denunciation, deterrence and protection of the public but also by reference to cases decided at appellate level. The case of *R v Taueki*[1] is a relevant case and it talks about various aggravating factors that can be present in cases of violence. Clearly the attacking of the head of a person is seen as an aggravating factor. The second factor in this case was the vulnerability of the victim. She was covered by a protection order but you paid no regard to that and the offending occurred in her home where young children were present. Thirdly, there is the serious injury which resulted in, I find, significant harm to the complainant.

[9] Your prior history is also then relevant in assessing any uplift to the starting point which I will fix in a moment. The fact, as I have said, that you were already on bail for an assault on her make it clear that deterrence and protection of the victim is indeed an important aspect of sentencing today.

[10] I consider that a starting point of around five years is appropriate when I look at the three aggravating factors that I just mentioned a moment ago. It is my assessment that this is in the top end of band 1 of the *Taueki* case and at the lower end of band 2. To the starting point of five years an uplift is appropriate to recognise the prior history of offending, the fact that it happened on bail and in breach of the protection order. I consider that an uplift in your case of nine months would be

[1] R v Taueki [2005] 3 NZLR 372 (CA) AKA R v Ridley, R v Roberts

appropriate to recognise that aggravating factor before allowing any credit for what was effectively a late guilty plea. The credit, as I have said, is necessarily limited by the timing of the plea. I accept that there was an amendment to the charge but it was still a significant injury that you caused and there is, in my view, limited credit for the late guilty plea. I allow something in the order of 12 percent which will be a nine month credit and that comes off the 69 months that I had earlier reached, applying the aggravating factors. The end point is that there is a sentence of five years' imprisonment on the lead charge.

[11] A term of 18 months' imprisonment concurrent will be imposed for the breach of the protection order. I do not consider that there was sufficient remorse expressed until recently in relation to this and I make no further allowance in that regard. I certainly hope, however, that what is expressed by you in terms of a desire to better yourself by way of your learning about your background and the carving that you are participating in will help you develop a better attitude to life when you are next before the community. Your history of violence has gone before you and the time has come for you to take stock of that by the appropriate programmes in prison. Obviously the time that you have already spent in custody by way of remand will be taken into account in assessing your date for the Parole Board. I have resisted imposing a minimum non-parole period to reflect the need for extra deterrence.

[12] Overall, the end sentence is one of five years on the lead charge and 18 months concurrent for the breach of protection order.

D J L Saunders
District Court Judge