

**IN THE DISTRICT COURT
AT TAURANGA**

**CRI-2018-070-000372
[2018] NZDC 5661**

THE QUEEN

v

NOREEN MASON

Hearing: 21 March 2018
Appearances: S Davison for the Crown
R Adams for the Defendant
Judgment: 21 March 2018

NOTES OF JUDGE T R INGRAM ON SENTENCING

[1] Ms Mason, you are before the Court at the age of 54 years. You are facing a single charge of wounding with intent to cause grievous bodily harm. The maximum penalty for that charge is 14 years' imprisonment.

[2] The circumstances of the offending are straightforward. Your husband and a woman, [relationship details deleted], became engaged in a sexual relationship. That led to your husband leaving you. He returned to you and then left again. You went around to this lady's property and you attacked her when she walked outside.

[3] The injuries she received were reasonably substantial. A broken left thumb, a fractured right hand, fractured right eye socket with a cut. I have seen a photograph of those injuries. There was a skull fracture which was not serious and a lacerated left ear and superficial lacerations to her left arm. She was able to leave hospital after seven days but suffers from memory loss, headaches and sensitivity to loud noise.

At her age and stage in life in her sixties it has been a devastating attack on her. The consequences will likely never leave her for the rest of her life.

[4] You have promptly pleaded guilty and acknowledged your role in this particular occurrence. On your behalf, Ms Adams has emphasised to me in particular that this was not a planned or premeditated incident, that it was something that arose on the spur of the moment. I am prepared to accept that it is not proven beyond reasonable doubt that this was a planned premeditated attack. If it was there would have been a higher sentence.

[5] The level of violence however was high. The home was invaded, to the extent that the victim was attacked on her own property as she stepped out the door. Her head was attacked in a serious way, but it would be fair to say that the injuries could not be described as at the top end of the scale. They are more in the nature of moderately serious injuries in a case of this kind, having regard to the statutory criteria applicable to grievous bodily harm.

[6] You have a tragic personal background in a number of ways, Ms Mason. That also raises the question of your prior criminal offending and you have a moderately long list of prior offences. The leading authority that I must have regard to is the case of *R v Taueki*.¹ It seems to me that this is exactly the sort of case which falls into the top end of band 2 and the bottom end of band 3. Those overlap at a point of around about nine to 10 years as a starting point.

[7] The aggravating factors here are that I accept that the violence here was more than ordinary. It was violence that can fairly be described as “extreme.” As I have indicated I am prepared to give you the benefit of doubt as to premeditation. The injury was moderately serious and the head was attacked. I accept that the victim was not expecting the attack and it was at night, just outside her back door. She was to some extent vulnerable.

[8] One of the factors that is mentioned in the *Taueki* case is the fact that the offending arose in a domestic situation is not something that I can take into account as

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

reducing the seriousness. Accordingly, this seems to me to fall exactly at the point that counsel have suggested to me, as being appropriately dealt with on the cusp of band 3, the top end of band 2 or the very bottom of band 3. This was a serious domestic violence assault with a non-premeditated home invasion with lasting injuries. It seems to me on any view of it, it would not be appropriate to reduce it below the bottom end of band 3.

[9] The Sentencing Act 2002 requires me to hold you accountable for what you have done and promote a sense of responsibility in you. You have spoken to me today and I accept that you do have a sense of responsibility to what occurred. You are still incensed by your husband's infidelity and the deceit that was engaged in by both your husband and your victim. I understand that and I take that into account.

[10] I am however required to take into account the interests of the victim, whose life has been changed and is very unlikely to return to good health and be the person she was prior to this attack.

[11] I need to denounce your conduct, deter you and others and protect the community with the sentence that I impose. You need rehabilitation and that can be adequately handled by the Parole Board. This is a serious type of offence and of its kind it is certainly towards the upper end of moderately serious cases.

[12] I need to be consistent with sentences imposed in similar cases. My attention has been drawn to a number of authorities. I do not propose to go through all of them but certainly the defence have raised with me the case of *R v Wilson*.² That involved a weapon and two people were stabbed. Whilst I accept that a lower starting point was adopted there I am not persuaded that these really are comparable. This, in my view, was indubitably an attack borne out of jealousy with a sense of revenge and it stands on its own facts. I consider that the *Wilson* authority is not an accurate guide at least to the starting point.

[13] I am required to impose the least restrictive outcome that is appropriate in the circumstances and, here, it seems to me that the sentence imposed must be a sentence

² *R v Wilson* HC Auckland CRI-2006-092-015152, 12 May 2009 Potter J

of imprisonment. No sentence short of imprisonment could ever be appropriate. The aggravating features of course are the seriousness of the violence and the injuries. I take the point made by Ms Adams, that I must be careful not to double-up on those two points and the nature of the charged faced. The injury must be reasonably substantial to meet the statutory definition. I note there was no weapon used and there is no indication anything like a weapon being used.

[14] I am required to consider the extent of the damage and the harm resulted. As I have indicated, I accept that although the injuries could fairly be described as “moderate” in the context of a charge of grievous bodily harm they are, nevertheless, devastating for a woman of the age of your victim. She was vulnerable on the night and not expecting the attack and certainly not an attack of the nature and seriousness that she faced as she stepped out the back door of her own home.

[15] I am further required to consider your prior convictions. I am required to give you full credit for your guilty plea. I accept on the material that has been placed before me you are entitled to further credit, because of the difficult background that you have and the mental issues that clearly have plagued you from time to time during the course of your life which have seriously affected your judgement.

[16] I am satisfied, on the basis of the authorities and the statutory factors, that a sentence of imprisonment is required. Nothing less could ever be appropriate for what has occurred here. I consider an appropriate starting point would be at the very bottom end of band 3. I take a starting point of nine years accordingly.

[17] The aggravating factors include your prior record and I consider that is worth an uplift of six months.

[18] I am prepared to allow you a discount of 28 months for your guilty plea. I allow a further 12 months’ discount for your co-operation with the authorities. I accept that you are remorseful although you are unable to forgive either your husband or the victim for the wrong done to you. You are, nevertheless, accepting that what you have done is not justified in the circumstances. I consider too that some credit should be

given to you for the difficulties of your life and the mental health issues that you have faced.

[19] The total of the credits I am prepared to allow you amount to some 40 months. Nine years and six months by my calculation is 114 months. If I do the deductions I end up with an end sentence of six years and two months.

[20] On this matter then Ms Mason, you will be convicted and sentenced to imprisonment for a period of six years and two months.

[21] Your existing sentence of supervision is cancelled.

T R Ingram
District Court Judge