

**IN THE DISTRICT COURT  
AT INVERCARGILL**

**CRI-2017-025-001162  
[2018] NZDC 5817**

**THE QUEEN**

v

**[WARREN DAY]**

Hearing: 23 March 2018  
Appearances: M Mika for the Crown  
H Young for the Defendant  
Judgment: 23 March 2018

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**NOTES OF JUDGE B A FARNAN ON SENTENCING**

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[1] I have before me [Warren Day], who is represented by Mr Young, and Mr Mika appears for the Crown. Mr [Day] is now aged, I understand, 31. On 29 September last year I gave Mr [Day] a sentence indication in respect of a raft of various levels of domestic violence offending which occurred between the period [2010 and 2015]. I have re-read my sentence indication notes and they form the basis for my remarks today and those notes are to be attached to these sentencing notes.

[2] Today, Mr [Day] has asked to be sentenced by AVL as he is currently incarcerated in the Otago Correctional Facility in Milton. Taking into account s 6 Courts (Remote Participation) Act 2010 which provides for the defendant to attend Court by such a method. Also, subs 5 and 6 have assisted in determining that sentencing the defendant by the use of AVL is not contrary to the interests of justice in his case.

[3] My sentence indication was for an end sentence of five years which is to be on top of the sentence Mr [Day] was then serving of two years and six months for related offending. I also indicated the defendant would be sentenced to a minimum parole period but there might be some slight adjustment to the five-year period depending on reports and similar matters at the time of sentencing.

[4] The pre-sentence report refers to Mr [Day] attributing his offending to relationship issues, especially jealousy, financial difficulties and some mental health issues as well as his addiction to methamphetamine. He stated to Probation that at the time of this fairly extensive period of offending, he was not well mentally, not in a very good place. Mr [Day] also acknowledged that he had a long history of violence towards others and substance abuse however he stated he was motivated and willing to address his rehabilitative needs.

[5] Of concern, Probation wrote, was the length of time and high level of violence and intimidation that was involved in the offending including power and control and psychological abuse that Mr [Day] subjected his victim to as well as the issue of exposing his children to varying degrees of his negative behaviour and offending. It is considered that Mr [Day] is at a high risk of re-offending and of harm to others, especially those with whom he may be in a domestic relationship. The inevitable outcome was a sentence of imprisonment as referred to in the pre-sentence report.

[6] Mr [Day] had indicated a willingness to attend restorative justice and the victim also has initially indicated a willingness but no conference ultimately was held. Mr [Day] has also written to the Court and expressed his remorse. While such letters are often self-serving, in this case having read Mr [Day]'s parole assessment report showing his progress on the two year six month sentence and the additional factors raised by Mr Young today in terms of what steps the defendant has taken while he has been in custody, I accept that Mr [Day] does appear to express genuine remorse but the proof of such remorse will only be shown once Mr [Day] is released and his behaviour changes for the better, particularly when he reflects on the victim's views which are clearly set out in the victim impact statement in which the defendant's victim sets out very clearly in three pages the impact of his offending on her, her reference to

[Warren] always being bad-tempered, dealing with his anger through violence, being a regular drug abuser and the impacts that his offending has had on all of their children.

[7] Mr [Day], if you are ever to have a relationship with your children in the future which I know you wish to have, then your behaviour must change otherwise you will not have a relationship with them and I am pleased to hear from Mr Young today that you are contemplating enrolling yourself in the residential rehabilitation programme at Moana House when you are able to take up such an option once you are placed on parole.

[8] As I indicated after reading your letter and the pre-sentence report, I can in my view slightly reduce the end sentence I indicated by five months which is on my calculation three months. That decision also takes into account the additional submissions made by Mr Young in which he details more thoroughly the steps that you have taken which he addressed me on today. That would give an end sentence of four years and nine months.

[9] In respect of the minimum parole period, the Crown in its submissions submit that there should be a period of 50 percent of the end sentence and I understand that Mr Young takes no particular issue with that. I may impose a minimum parole period, Mr [Day], if I am satisfied that the one-third default minimum is insufficient to either hold you accountable for the harm done, denounce your conduct, deter others, deter you and protect the community under s 86(2) Sentencing Act 2002. The central consideration is your level of culpability which necessarily is increased by matters such as unusual callousness, extreme violence, vulnerable or multiple victims and serious actual or intended consequences.

[10] Some of these factors apply in your case as I set out in my sentencing indication decision. They include the extreme violence, the vulnerable victim and the fact that some of this offending took place in the presence or at least the hearing of your children. Therefore, in this case, it is my view that a 50 percent minimum parole period is necessary. Your end sentence is four years and nine months so half of that, rounded up in your favour, is 28 months and that would be a minimum parole period of two years and four months.

[11] Therefore, Mr [Day], in respect of the charges I intend to deal with you in this way: in respect of the four charges of injuring with intent to cause grievous bodily harm, you are sentenced to four years and nine months. In respect of the assault with a weapon charges, the injuring with intent to injure charges, the threatening to kill charges, the end sentence is three years. In respect of the charge of unlawful possession of a firearm, the sentence is two years. All of those sentences are concurrent but are cumulative on the sentence you have been serving of two years and six months.

[12] You are also subject to a minimum parole period of two years and four months.

B A Farnan  
District Court Judge