

**IN THE DISTRICT COURT  
AT NELSON**

**CRI-2017-042-001262  
[2018] NZDC 9140**

**THE QUEEN**

v

**NGATAU IWHEA RYAN**

Hearing: 8 May 2018  
Appearances: J M Webber for the Crown  
E J Riddell for the Defendant  
Judgment: 8 May 2018

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**NOTES OF JUDGE A A ZOHRAB ON SENTENCING**

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[1] Mr Ryan, you are for sentence, having pleaded guilty to a charge of burglary and also a charge of aggravated robbery.

[2] I have written submissions from the Crown and also from your lawyer. The lawyers are pretty much in agreement as to how to approach matters.

[3] I have been referred to the summary of facts, the victim impact statement, your list of previous convictions in Australia, and also your co-offenders' sentencing notes. Everybody is agreed that I should adopt the start point of four years three months, adopted for Mr Pritchard.

[4] The culpability factors, or the blameworthiness factors, for you, that were applicable were that there was a degree of planning involving the three of you. There were three participants. The target premises were the complainant's private room

inside [accommodation deleted]. There was violence towards the complainant. It was a joint attack and whilst Mr Pritchard might have been delivering the violence first-up, involving the stomping on the face, you then punched the victim in the head. There was property stolen, with a significant impact to the victim. There is also, arguably, a gang presence, or aspect to it, though there seems, potentially, a dispute about that.

[5] In terms of sentencing authorities, I have been referred to the *R v Mako*<sup>1</sup> decision and the guidance that this Court gives. I have also been referred to the fact that, whilst you have no previous convictions in New Zealand, you have a relevant conviction for aggravated robbery in Australia, where you were sentenced to three years' imprisonment.

[6] You have previously been given the strike warning.

[7] Your lawyer acknowledges the start point suggested by the Crown, of four years and three months, as being appropriate. She notes that you threw the one punch only, also that Judge Ruth did not place too much weight previously, as far as the gang aspect to it. She acknowledges the uplift suggested of three months for your history.

[8] There is a 25 percent discount for a plea sought. Mr Webber, on behalf of the Crown, acknowledged the delay in getting this matter to trial. He also acknowledged the positive comments about you but was concerned that there perhaps might be some double counting if you were to get discount for steps taken to improve your situation plus a full 25 percent discount.

[9] I note, also, Ms Riddell's comments about your being in full-time employment and your being well regarded by your employer and the good statements about you and it does seem a real shame that the only possible outcome is a prison sentence but balanced against that this is not an isolated incident, when one takes into account what happened in Australia but, hopefully, after this sentence you can see your way clear to keeping out of prison.

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<sup>1</sup> *R v Mako* [2000] 2 NZLR 170 (CA)

[10] So in terms of fixing a start point, I have to be consistent with the start point taken for Mr Pritchard, that is four years and three months, which is 51 months. There will be an uplift of three months for your history in Australia, which takes me to 54 months.

[11] It is arguable that you should not be given the full 25 percent credit for a plea, that it should be around 15 percent, or thereabouts. I think you are entitled, also, to credit for the steps that you have taken to better yourself and so what I am going to do is as follows. I am going to wrap up personal circumstances and guilty credit into 30 percent, so I will take 30 percent off the 54 months. If I take 16 months off the 54, that then brings me back to 38 months, or three years and two months. Standing back and looking at it that would seem to be an appropriate response to a nasty incident, more particularly, given the nasty incident in Australia.

[12] So you will be dealt with as follows. It is three years two months on the robbery charge.

[13] I make no order as far as reparation is concerned, given that there is no reparation ordered in relation to your co-offenders.

[14] As far as the burglary matter is concerned, there is 12 months' prison, all running at the same time as the three years two months.

A A Zohrab  
District Court Judge