

**IN THE DISTRICT COURT
AT PORIRUA**

**CRI-2017-091-001941
[2018] NZDC 4417**

NEW ZEALAND POLICE
Prosecutor

v

EDWIN EEJAE HOLTHAM
Defendant

Hearing: 7 March 2018
Appearances: Sergeant M Craig for the Prosecutor
L C Brown for the Defendant
Judgment: 7 March 2018

NOTES OF JUDGE J M KELLY ON SENTENCING

[1] Mr Holtham, you appear for sentencing today having pleaded guilty to 21 charges. Those charges are as follows:

- (a) On 28 July 2017, burglary;
- (b) On 29 July 2017, driving while suspended;
- (c) On 7 August 2017, theft using a document x three;
- (d) On 9 August 2017, breach of conditions of parole;
- (e) Between 14 September and 16 September 2017, unlawful taking of a motor vehicle;

- (f) Between 17 September and 18 September 2017, unlawful taking of a motor vehicle;
- (g) Between 17 September and 18 September 2018, unlawful interference with a motor vehicle;
- (h) On 18 September 2017, unlawful interference with a motor vehicle;
- (i) On 19 September 2018, theft under \$500;
- (j) On 19 September 2017, theft under \$1000 and theft under \$100;
- (k) On 28 September 2017, theft under \$100 x two;
- (l) Between 4 October and 6 October 2017, theft under \$100;
- (m) On 7 October 2017, failing to stop and dangerous driving; and
- (n) Between 2 October and 3 October 2017, unlawfully getting into a motor vehicle and theft under \$100.

[2] The lead charge for the purposes of sentencing today is the charge of burglary, which carries a maximum penalty of 10 years' imprisonment.

[3] It is relevant for the purposes of sentencing that on 12 April 2013, you were sentenced to five years six months' imprisonment on four charges of burglary, three charges of arson and three charges of unlawful taking of a motor vehicle.

[4] On 20 June 2013, you were sentenced to a cumulative sentence of six months' imprisonment on one charge of injuring with intent to injure.

[5] You worked at [the supermarket], Petone prior to release through the Release to Work programme starting in November 2015.

[6] Your parole assessment report dated 10 June 2016 stated as follows, “Mr Holtham is highly regarded by his employer and he is considered to have promotional prospects in his future.”

[7] You were released on parole on 1 August 2016 with employment at [the supermarket], Petone. You continued to work at [the supermarket] for approximately six months following release.

[8] On 13 April 2017, you were convicted and discharged on a charge of breach of release conditions.

[9] You then embarked on a spree of offending between July and October 2017.

[10] I note you were recalled to prison on 9 October 2017. Your sentence end date is 11 February 2019.

[11] In relation to the current charges, I sentence having regard to the following facts which are not disputed.

[12] In relation to the burglary charge, at approximately 10.00 pm on Friday, 28 July 2017, you entered [the supermarket], Petone. As I have said, you had previously been an employee of [the supermarket] and you knew the layout of the store.

[13] You entered the produce storeroom and acquired a set of store keys. You entered the butchery area and unlocked the butcher roller door and the back gate. You left the door and gate unsecure before returning the keys and leaving the store.

[14] Approximately 10 minutes later, you and an associate entered the butchery area via the insecure gate and door. You and your associate filled two supermarket trolleys with meat valued at \$8000. You and your associate exited the store via the butchery door and open gate without paying for the meat. You did not have permission to enter the store.

[15] Reparation of \$8000 is sought.

[16] You then proceeded to commit four theft ex car offences. The total value of the property taken in relation to these offences is \$714.

[17] You then unlawfully took two motor vehicles valued at approximately \$4100.

[18] The total value of the items you stole in relation to the theft charges was approximately \$571.25.

[19] The value of the use of a bank card for pecuniary advantage was approximately \$191.40.

[20] Therefore, the total value of your offending amounts to approximately \$13,500.

[21] I have read the eight victim impact statements that have been provided to the Court.

[22] The victims of the theft ex car, theft of cars and theft of various items, the victims all talk about the significant effect your offending had on them.

[23] For example, one of the victims, whose car you stole, talks about the financial costs they incurred. Although they had insurance, they were still required to pay an excess of \$650. The victim also talks about the emotional impact of your offending on him and his wife as they had a 10 month old baby with a heart condition and they needed their car to be able to take their child to various appointments.

[24] The victim also says that there was a significant amount of inconvenience in getting to work given they were without a car for some time. The victim also talks about the significant effect of feeling unsafe in their neighbourhood.

[25] I have read the pre-sentence report dated 15 December 2017. You are now aged 29. You advised Probation that your offending was to fund your drug addiction, to repay drug debt to gang members from whom you had bought drugs, and to pay for day-to-day necessities. You agree that you require treatment for your drug use.

[26] Probation notes that you completed the Medium Intensity Rehabilitation programme in 2013 and the maintenance requirements in the community in 2016.

[27] I have also read the restorative justice conference report. To your credit, you attended a restorative justice conference with the victims of your burglary offence.

[28] The summary of the conference says that you apologised saying, "I cannot say how sorry I am to you and your family after all you have done for me, gave me a job, more money, accommodation. For me to do this, I am scum of the earth. I am sorry."

[29] In response, the victim said he believed your apology to be hollow and said the apology needs to be made to the other [supermarket] staff and the people at that Corrections seminar that you gave the presentation to, as that was where the damage was done. The victim also said, "If you want to apologise, do the work," referring to the fact that you are now engaged in the drug treatment programme at Rimutaka.

[30] One of the victims said that his main concern was the damage you had done to the Release to Work programme because your behaviour has effected the whole programme. The presentation you made to the programme organisers saying you would never return to prison and what you subsequently did put the programme into jeopardy.

[31] The victim also says the [supermarket] staff are so angry because you made them look stupid. They felt their jobs were on the line.

[32] The victim also said that you made them look like fools because they had bent over backwards to help you providing accommodation for you and your partner. If you needed more help, all you had to do was ask.

[33] The manager of the Release to Work programme at Rimutaka Prison said, "I was embarrassed by your behaviour. You screwed it up for all of us. You should have said you needed help. I am glad you had the guts to face up today and say sorry. If you want to do something good, you need to get well."

[34] I have also read the letter that you have written to the Court and seen the letter confirming that you are currently attending the Drug Treatment Unit programme in prison.

[35] I have read the written submissions filed on your behalf by Miss Brown and listened to the submissions she has made.

[36] The purposes of sentencing you today are encapsulated in the Court of Appeal decision of *R v Southon*¹ when the Court said at [12]:

The seriousness of burglary is not to be underrated. Although the nature and risks of intrusion into private dwellings are obvious, such risks are not entirely absent in the case of burglary of commercial premises. There is always the possibility of an encounter with someone lawfully on commercial premises. The potential for property loss goes without saying.

[37] The Court also went on to say at [14]:

In our view, the most significant sentencing purposes in relation to a habitual burglar are deterrence and community protection. We place particular emphasis on the inadequate deterrence of previous terms of imprisonment and the severely aggravating feature of your offending that it was while on bail for burglary offences.

[38] Miss Brown has made the submission that one of the purposes of sentencing today is to assist in your rehabilitation. With respect, I do not think agree. I am of the view the paramount purposes of sentencing you today are denunciation, deterrence and to protect the community.

[39] In sentencing you, I am required to take into account the general desirability of consistency with appropriate sentencing levels.

[40] In that regard, I am of the view that *R v Southon* is directly on point. In that case, the appellant was sentenced to four and a half years' imprisonment for burglary and related offences and that sentence was confirmed on appeal.

¹ *R v Southon* CA 314/02 13 February 2003

[41] I am also required to take into account any information provided to the Court concerning the effect of your offending on the victims, which I have already mentioned.

[42] I now need to assess an appropriate starting point to reflect the nature and seriousness of your offending and your culpability. The aggravating factors relating to your offending are:

- (a) The extent of the loss, damage and harm resulting from your offending, which I have already mentioned;
- (b) In relation to the burglary of [the supermarket], in my view, you were significantly abusing the trust that had been placed in you by the owners of [the supermarket], Petone; and
- (c) There was a degree of premeditation on your part.

[43] There are no mitigating factors relating to your offending.

[44] Taking into account all the factors I have discussed, I consider a starting point of three years for the burglary charge to be appropriate together with an uplift of 18 months for the other offences, which gives an overall starting point of four and a half years.

[45] I now need to consider whether your offending was aggravated or mitigated by your personal circumstances.

[46] The aggravating factors relating to you are that these offences were committed while you were on parole and your previous convictions, some of which I have already mentioned. For those factors, I consider an uplift of 12 months to be appropriate, which takes the sentence to five and a half years' imprisonment.

[47] The mitigating factor relating to you is the remorse you expressed at the restorative justice conference. For that, you are to be given credit. In my view, a

reduction of your sentence of six months is appropriate, which reduces the sentence to five years' imprisonment.

[48] I now need to consider the appropriate reduction of sentence for your guilty pleas. Some were entered early and some were entered later. Overall, I think a further reduction of 12 months is appropriate because your guilty pleas did save the victims of your offending from having to give evidence in Court.

[49] That leaves an end-point sentence of four years' imprisonment.

[50] When I look at your overall culpability, I am satisfied that a sentence of four years' imprisonment is appropriate for the totality of your offending.

[51] Therefore, on the charge of burglary, you are convicted and sentenced to imprisonment for three years. The Parole Board will specify any conditions of release.

[52] On the charge of unlawfully taking a motor vehicle, CRN3432, you are convicted and sentenced to 12 months' imprisonment, which is cumulative.

[53] On the other unlawfully taking a motor vehicle charge, you are convicted and sentenced to 12 months' imprisonment, which is concurrent.

[54] On the two charges of unlawful interference with a motor vehicle, you are convicted and sentenced to imprisonment for six months.

[55] On the three charges of using a document and the charge of theft under \$1000, you are convicted and sentenced to imprisonment for six months.

[56] On the seven charges of theft under \$500, you are convicted and sentenced to imprisonment for one month.

[57] On each of the charges of driving while suspended and dangerous driving, you are convicted and sentenced to imprisonment for one month. You are also disqualified from holding or obtaining a driver's licence for six months commencing today, 7 March 2018.

[58] On the charge of failing to stop, you are convicted and sentenced to three months' disqualification, which is cumulative. That means it will commence when the previous disqualification ends, which is 3 October 2018.

[59] On the charge of breach of parole, you are convicted and sentenced to imprisonment for six months.

[60] On the charge of unlawfully getting into a motor vehicle, you are convicted and sentenced to imprisonment for one month.

[61] Given the sentence I have imposed today, it is clear that you do not have the means to pay any reparation. Therefore, there is no order for reparation.

J M Kelly
District Court Judge