

**IN THE DISTRICT COURT  
AT MANUKAU**

**CRI-2017-092-008575  
[2018] NZDC 7343**

**THE QUEEN  
DEPARTMENT OF CORRECTIONS**

v

**FETELIKA OLIVE**

Hearing: 16 April 2018

Appearances: C Hallaway for the Crown  
R Cavill for the Prosecutor Department of Corrections  
P Le'Au'Anae for the Defendant

Judgment: 16 April 2018

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**NOTES OF JUDGE S PATEL ON SENTENCING**

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[1] Mr Fetelika Olive, you are 33 years of age and you face sentence on a number of charges. Firstly, there is a charge of aggravated robbery that occurred [in May 2017], there are also three charges which have been prosecuted by the Corrections Department, which arose in 2016 also, they are breach of community work, breach of supervision and breach of a sentence of community detention.

[2] I will start with the facts of the aggravated robbery charge. You were charged, together with two co-accused, Mr Leiataua and Mr Deed. The victim of the offending is [the victim], who is a store manager of a local store.

[3] I have read a victim impact statement from [the victim] and I take that into consideration in the sentencing process. I note that, as will be indicated when I go through the summary of facts, she was kicked on the ground and tied up and she was

required to undergo counselling as a result of the robbery; however, fortunately she was not physically harmed.

[4] [In May] you and Mr Leiataua, entered the store that was being run by [the victim]. You were wearing face masks in order to disguise your appearance and were wearing gloves also. Mr Deed was unmasked and he entered the store.

[5] You were armed with a cut down double barrelled shotgun, you advanced through the store to where the victim was standing, you yelled, "Where's the money," you presented the firearm and pointed it at [the victim]. You continued moving towards her demanding the money, you said, "Where, where's all the money, where's the safe." Naturally, [the victim] feared for her safety and she said that the safe was in the back office and she took you through to the safe.

[6] The safe was unlocked given the time of the evening, you grabbed the cash tin and you were yelling at the victim to look down. Mr Leiataua came into the office to where you and [the victim] were. You asked for more money, one of you said there should be \$17,000. [The victim] handed over two white envelopes containing just over \$19,000 in cash. She was instructed to get on the ground and she did. She was searched by either you or Mr Leiataua and her mobile phone was taken. She pleaded not to be hurt and that what where she was kicked in the hip. Mr Leiataua tied her hands behind her back using plastic cable ties and he used an extension cord to tie her feet together, and then he put her jacket over her head.

[7] While [the victim] was being tied up you searched the store for further funds. Shortly thereafter, all three of you left the premises and [the victim] was able to free herself and contacted the police. Fortunately, the incident was recorded on CCTV. You admitted being the gunman during the incident to the police.

[8] The Corrections Act 2004 charges, as I have said, there are three of those. In terms of the breach of community work, you were sentenced to 100 hours' community work in March 2016 in the Auckland District Court for a charge of demanding with intent to steal. You completed one hour of that sentence.

[9] In terms of the breach of community detention, you were sentenced to six months' community detention in this Court on 10 March 2016. The summary of facts indicates there were many breaches of that sentence in terms of your not complying with the electronic curfew period. You served about two months of the six months of that sentence.

[10] The breach of supervision relates to a sentence of supervision of one year, that was also imposed on 10 March 2016. You failed to undertake any of the special conditions of that sentence of supervision, and I understand that that has now expired.

[11] In terms of the sentencing process, I am required to have consideration of the purposes and principles of sentencing. In this case that is to hold you responsible for the harm done by your offending to the complainant, to promote in you a sense of responsibility and to denounce your conduct, and to deter you and other people from embarking on similar offending.

[12] In terms of the principles of sentence, I am required to consider the seriousness of the offending and also to be consistent with other cases of a similar nature, and also to impose the least restrictive outcome that is consistent with the principles and purposes Sentencing Act 2002.

[13] I will deal first with the most serious offence which is the charge of aggravated robbery. I am required to establish a starting point for that offending. There is a tariff or guideline case of *R v Mako*<sup>1</sup> and paragraph 56 encapsulates the general nature of your offending. The aggravating features here was that there were three accomplices, there was a legal weapon involved which was the firearm that you brandished, you and at least one other person was disguised, [the victim] was bound and a moderate amount of funds were taken.

[14] The starting point that was arrived at in respect of your co-defendants was one of five and a half years' imprisonment. To be consistent with what the other starting points were that is the starting point that I adopt.

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

[15] I then take into account the other offences; namely the Corrections Act charges and I uplift the five and a half years by two months' imprisonment, so that brings me to a sentence of 68 months' imprisonment.

[16] I then look to your personal circumstances. As I said you have previous convictions and one is relevant, that is a conviction for demanding with intent to steal, that occurred in February 2015.

[17] You were on bail for the Corrections Act charges when the aggravated robbery occurred. So, to take those two issues into account; namely the previous convictions and the offending whilst on bail, I increase the starting point by two months. That brings me to 70 months' imprisonment.

[18] I then turn to the mitigating features, the features that decrease the sentence for you, and I acknowledge that there are a number. Firstly, there was a willingness on your part to undertake a restorative justice process and I consider that is a very good yardstick of remorse, having a willingness to meet face to face with the victim of your offending.

[19] I turn to matters in the pre-sentence report. You were polite, engaged and forthcoming with information to the writer of the pre-sentence report, you demonstrated insight into your offending, you took responsibility for your actions, you showed remorse and some victim empathy, the factors assessed as contributing to your offence include the antisocial influence of others and I think that is clear given that this was a joint enterprise with other people. There are also the factors of drug use and your use of violence. The writer of the report says that decision making and attitudes towards offending pose particular issues for you and that you will require appropriate interventions and counselling, and I hope that you undertake that during your sentence. The report indicates there was a prolonged period of time when you were using methamphetamine and you admit that you strayed from your role as a father and a provider from the family, and I note that you have four young children, all of school age. You have been together with your wife for 16 years and as I said, you have demonstrated remorse and considerable shame in relation to your participation in this.

[20] I have also read a very well thought out and I consider genuine, letter of apology where you have shown considerable insight into your offending, and you have outlined the steps that you wish to take in the future to ensure that you do not come back before the Courts, and I certainly hope that you follow through on those. I note also, that you have undertaken a CADS course, a Critical Thinking course, a parenting programme and literacy and numeracy courses while in prison, so while you have been remanded in custody and I congratulate you for that and I hope you follow through on that.

[21] I have also considered a cultural report. You have had a difficult upbringing. There was violence in your household and inevitably you fell into the clutches of the gang environment. There are also other personal difficulties which I take into consideration but I will not go into in open Court, but you and your counsel will know what I am referring to.

[22] For all those matters I agree with your lawyer that a discount of 20 percent ought to be adopted. That is a reduction from the 70 months' imprisonment of 14 months so that brings me down to 56 months' imprisonment.

[23] I then take into consideration the discount that can be given for a plea of guilty and I consider that is the full amount, which will also be 14 months. So that brings me down to a final sentence of 42 months' imprisonment.

[24] Unfortunately, that is not a sentence whereby I can consider a sentence of home detention. So, this is how I am going to sentence you, and before I do, I would like to thank and acknowledge the presence of your family that are here in Court today, it must be a very difficult situation for all concerned. This is how I am going to sentence you Mr Olive:

[25] On the charge of aggravated robbery, you are convicted and sentenced to a term of imprisonment of 40 months.

[26] On the three charges of breaching community work, breaching supervision and breaching your sentence of community detention, two months on each, but they are to

run concurrently which means two months total for those three offences, but that two months is going to be on top of the 40 months' imprisonment for the aggravated robbery charge.

[27] So an overall sentence of 42 months' imprisonment.

[28] And I will cancel the three respective sentences, that is community work, supervision and community detention.

[29] All right, Mr Olive, I hope you do follow through with the very good progress that you have made whilst you have been remanded in custody.

S Patel  
District Court Judge