

**IN THE DISTRICT COURT  
AT HASTINGS**

**CRI-2017-020-003251  
[2018] NZDC 7499  
THREE STRIKES WARNING**

**THE QUEEN**

v

**SHANE HOWE WHARTON**

Hearing: 9 February 2018  
Appearances: S B Manning for the Crown  
E J Forster for the Defendant  
Judgment: 9 February 2018

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**NOTES OF JUDGE A J ADEANE ON SENTENCING**

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[1] Mr Wharton appears for sentence on two matters today.

[2] The first in time is a charge which has been amended to be one under s 196 Crimes Act 1961 and it is a lower order domestic assault. To that he pleaded not guilty back in August. The charge was amended down to its present form and a guilty plea entered.

[3] Overshadowing that of course, is the further charge of intentional wounding causing grievous bodily harm. This involves a different complainant but there is a connection with the first complainant.

[4] The facts are that the victim of the wounding [details deleted]. They had been out partying until the early hours of the morning. Walking home an argument broke out between the defendant and [a female]. The complainant intervened in this after

the [female] ran off. The defendant then punched him to the head, which caused him to fall to the ground, and according to the summary of facts, “When he was on the ground the defendant kicked him in the head on an unknown amount of times while wearing heavy steel capped boots.”

[5] The summary indicates that the police were called. The Crown solicitor this morning says that the call made by the [female] extended for more than a minute and throughout it she was enjoining the defendant to stop kicking the complainant. The Crown submits that this was a prolonged episode of very serious violence.

[6] That charge was admitted at the first possible opportunity. In terms of *Taueki*<sup>1</sup> classification, after further consideration by counsel, there is not much dispute remaining. The matter involved extreme violence, it involved an attack to the head, it involved serious injury and it involved a vulnerable victim to the extent that the complainant was almost certainly rendered unconscious in the first part of the attack which then continued while he was vulnerable in the extreme.

[7] In the circumstances, there are four aggravating features but each of those to either a high or very high degree. The consequences to the victim are the dominating feature of the case. He received permanent and serious brain injury and will henceforth require 24 hour residential care with no prospect of recovery.

[8] So the difference in categorisation has largely been resolved. The tariff case, as I say, is *Taueki*. The defence had originally said there were as few as two aggravating features but now abandons that point. The original submissions clearly undercounted the number of aggravating features and also undervalued the grave and permanent nature of the consequences of it for the purposes of sentencing.

[9] Mr Wharton’s personal circumstances are set out in a probation report. They are largely unexceptional, he is a 41 year old with a long history of dishonesty and a short and recent history of domestic violence all associated with a non-productive lifestyle which in turn is largely dominated by methamphetamine abuse. He was not

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<sup>1</sup> *R v Taueki* [2005] 3 NZLR 372 (CA)

employed at the time of the offending and explains to the Probation Service that he had been on a four day methamphetamine binge.

[10] The complainant as can be seen, is a mutual friend, all were together at the time notwithstanding conditions of bail on the first matter that Mr Wharton was not to associate with the complainant in that matter. There is a vague suggestion that Mr Wharton's jealousy of an interest [the complainant was taking in the female] might have led to this attack. Of course had bail been observed that would probably not have happened, but that is water well and truly under the bridge now.

[11] It has to be said for Mr Wharton that his history of violence is largely made up of two convictions for assaulting [victim's details deleted] and that other than that his offending history, while it is significant, turns rather round matters of property offending than serious violence. That in my view, is a matter which has to weigh today on the question of whether a non-parole period is justified at the moment.

[12] Other than that, as I say, there are no features in the personal circumstances which are positive. They are largely either neutral or negative to a point that does not affect sentencing today.

[13] Given all of these matters, the number of aggravating features, the magnitude of them and the degree of permanent harm, I accept the Crown submission that a starting point of nine years' imprisonment has to be adopted by the Court. It matters not whether that is treated as being at the top of band 2 or the bottom of band 3 the outcome is the same.

[14] The guilty plea was at the earliest time, that is the only substantial matter to Mr Wharton's credit. The need to denounce the harm done is built into the starting point and the previous history, in my view, does not require an uplift, nor does it disclose such a propensity for serious violence that a minimum non-parole period is required in the interests of public safety.

[15] So far as the denunciation of the offending and its consequences is concerned the Parole Board will be much better placed than I am today to weigh that matter when Mr Wharton becomes eligible for parole.

[16] Allowing a discount of 25 percent an end sentence of six years and nine months' imprisonment is imposed. Given that, he is sentenced to three months concurrently for the domestic violence matter, an effective sentence of six years and nine months' imprisonment. For the reasons outlined no minimum non-parole period is fixed in this case.

[17] Mr Wharton, the principle charge today, wounding with intent to cause grievous bodily harm is a three strike offence. All offences of serious violence are three strike offences. On the commission of a first offence you will be sentenced according to the circumstances and be eligible for parole in the ordinary way. If after the giving of this warning you commit a further three strike offence, you will be sentenced again, according to the circumstances of your offending, but you will receive no parole. Finally, if after a second three strike offence you then commit a third you will not be sentenced in this Court but instead committed to the High Court where absent special circumstances you will be sentenced to the maximum term of imprisonment which the law allows to be served without parole. You will be given a written notice of all these matters before you leave Court today.

A J Adeane  
District Court Judge