

**IN THE DISTRICT COURT
AT MANUKAU**

**CRI-2017-092-002890
[2018] NZDC 8924**

THE QUEEN

v

**MANU FUKOFUNKA
(AKA) MANU FUKOFUKA**

Hearing: 7 May 2018
Appearances: A Devathasan for the Crown
V Feyen for the Defendant
Judgment: 7 May 2018

NOTES OF JUDGE A J JOHNS ON SENTENCING

[1] Mr Fukofunka, you appear here for sentence today in relation to a charge of aggravated robbery and using a firearm against a law enforcement officer (they each carry a maximum term of 14 years' imprisonment), dangerous driving and failing to stop.

[2] The summary of facts indicates there were three of you involved in this offending, Mr Harris and Mr McDonald, and I have dealt with Mr McDonald today. [In March] Mr McDonald was in possession of a green Honda motor vehicle. He went to Manurewa and picked you and Mr Harris up. You then travelled from Manurewa to Māngere and at about 1.50 pm you arrived outside the [convenience store] in the green Honda. Mr Harris remained in the car as the getaway driver and you and Mr McDonald disguised yourselves by wearing gardening gloves and bandanas across your faces. You were armed with a cut-off .22 calibre pistol. It had been modified with the barrel shortened and the stock removed.

[3] Mr McDonald entered the store first and went behind the counter, targeting the cash register. You followed behind and after you went inside the store you closed the door. The victim was working in the store with his [family members] and there were a number of schoolchildren present in the store. Mr McDonald went behind the counter and yelled at the victim, "Where is the money?" He picked up a metal chair to stop Mr McDonald. At that point you aimed the gun in his direction and fired a shot which struck the wall behind the victim. You then continued to point the gun at the victim and walked towards him. He put the chair down and Mr McDonald took the cash till from one of the countertops and left the store first with you following.

[4] Mr McDonald ran to the getaway car which was on [street name deleted] and got into the front seat. Mr Harris then drove to [street name deleted]. You were chased by a member of the public up [street name deleted] but you got into the left passenger seat of the getaway vehicle once you got to the corner of [street names deleted]. The green Honda was observed by police who were responding to a 111 call. Mr Harris accelerated away from police in an effort to evade apprehension. He first drove onto the footpath to pass vehicle traffic on the road. He turned right into [street name deleted] and drove at speed towards the Manurewa area which is primarily a residential area with a 50 k speed limit. The roads were heavy with traffic both vehicular and pedestrian.

[5] An unmarked patrol vehicle spotted the Honda on Browns Road in Manurewa. As the vehicle accelerated away this policeman activated the car's flashing red and blue lights and the police pursued the Honda through the streets of Manurewa. The getaway car regularly drove up to speeds of 80 to 100 ks an hour, turned left into Hutt Road and at this stage the second victim, who is the policeman, took over as lead pursuit vehicle.

[6] You were in the back left passenger seat and you leant out the window, holding the firearm with both hands, and began to aim at the lead pursuit vehicle. He swerved to the right to get out of the sight of the firearm but the vehicle also turned right, reopening the line of sight. You stayed in this position for about 10 to 15 seconds before moving back into the car. As the getaway vehicle turned a corner, the pursuit vehicle approached so that it was only about 20 metres away and you again moved

your body outside the window and aimed the firearm at the police officer, then you moved back into the car.

[7] The getaway vehicle continued to accelerate up to 100 ks an hour. As it turned again you leant out the window for a third time and aimed at the vehicle for about two to three seconds. You then fired a shot which caused the police officer to stop the pursuit. Mr Harris continued to drive away from the police. You ejected the spent cartridge from the firearm and reloaded. Mr Harris drove to Awakino Place where he stopped the vehicle in a residential driveway and the three of you got out and fled on foot. You were arrested on Rowandale Avenue but declined to comment, but the firearm was located at a residential address on Rowandale Avenue not far from where you were arrested.

[8] By way of background, you appeared before Judge Wharepouri in this Court on 7 March seeking a sentence indication. I had already given Mr McDonald an indication in relation to this offending and I had had a starting point of nine years' imprisonment for the aggravated robbery and discharging of a firearm. The Crown in their submissions had suggested a nine to 10 year start but I concluded that nine years was appropriate. On that basis Judge Wharepouri also said that for parity reasons it would be the same starting point for you with a three month uplift for offending while on bail and another three months for your previous convictions, 25 percent discount for plea and possible further discounts at sentencing if there is anything that has arisen.

[9] In terms of the victim impact statements, the man whose [convenience store] it was did not suffer any injuries but his wife was pushed to the ground during the robbery. They are both much more cautious about having male customers in the shop and he now has another male staff working in the shop at all times and he says whenever teenagers come in with their hoods up he thinks something else is going to happen and obviously it has had a major impact on he and his family. In terms of the police officer, he said that the incident is still fresh in his mind. He was relieved to hear that no one was injured at the dairy. He does not believe that he was exposed to this level of violence and his wife obviously was extremely upset that he was shot at and he is pleased that the three of you were apprehended.

[10] In setting the starting point of nine years the Court took into account the case of *R v Mako*¹ which set sentencing bands for aggravated robberies, together with the purposes and principles of the Sentencing Act 2002, primarily to hold you accountable for the harm done to the victims, to denounce your conduct, try and deter you and others from like offending, while being consistent in sentence and imposing the least restrictive outcome. You could have easily killed someone and then you would be facing life imprisonment, Mr Fukofunka, and I hope you appreciate that.

[11] The pre-sentence report indicates that you were under the influence of, I think, methamphetamine on that day. I see that you have had a number of clean tests since you have been on remand which is excellent and today Ms Feyen has presented a large amount of documents to me, firstly a letter to the Court in which you say that you have had time to reflect since you have been on remand and you appreciate how serious your offending was on that day and you have also written a letter to the victims apologising and expressing the same sentiments.

[12] You have also completed a large amount of courses while you have been on remand and I have certificates indicating that you have undertaken some issues around literacy and numeracy, critical thinking skills, you have managed to sit and pass your licence and you were photographed with the Attorney-General, Mr Parker, and you got an award for that.

[13] You have been attending Tāne Ora, you have got a certificate of participation, and four sessions of alcohol and other drug programme, so Ms Feyen is right that you have been using your time wisely and even though the pre-sentence report is not a positive one, suggesting you do not have insight, certainly by the work you are doing suggests to me that you do have some insight about the issues that let you to offend on this day. Like many people that come before the Court, your upbringing was less than ideal and we frequently see that when people involve themselves in serious crime.

[14] With the 25 percent discount that was indicated by Judge Wharepouri, that would have taken us down to seven years' imprisonment but I am prepared to discount your sentence by a further six months to reflect your remorse and the excellent work

¹ *R v Mako* [2000] 2 NZLR 170 (CA)

you have done while you have been on remand. So, in relation to the two charges of aggravated robbery and discharging a firearm you are convicted and sentenced to six years, six months' imprisonment. In relation to the driving while disqualified you were party to that offending. I have to disqualify you even though you are in custody for six months from holding or obtaining a motor driver's licence from today's date and the final charge of being a party to failing to stop is fineable only so I am simply convicting and discharging you. All right, so it is an end sentence of six years, six months.

A J Johns
District Court Judge