

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

**IN THE DISTRICT COURT
AT AUCKLAND**

**CRI-2018-092-005049
THREE STRIKES WARNING
[2018] NZDC 12482**

THE QUEEN

v

WILLIAM SOANE

Hearing: 21 June 2018
Appearances: P Mugisho for the Crown
P Stokes for the Defendant
Judgment: 21 June 2018

NOTES OF JUDGE N R DAWSON ON SENTENCING

[1] Mr Soane you appear in Court today for sentencing on two charges of aggravated robbery, a charge of wilful damage and a charge of assault with intent to rob.

[2] At 7.57 am on [date deleted] 2017, you together with another person, who has not been identified, entered a superette in [location deleted]. The complainant was behind the front counter, you were holding a crowbar and walked past the front counter into the room where the complainant was present. While holding the crowbar you threatened him with it and repeatedly told him to sit down. You walked up to him and attempted to force him to sit down by kicking him three times to the leg and punching him twice to the back of his head. You demanded that the complainant give you his watch. Out of fear, he removed his watch and gave it to you.

[3] While you assaulted the complainant, the other offender opened the doors to the cigarette cabinet and emptied the contents into a blue plastic bag, approximately 300 packets of cigarettes were removed. The other offender then went to the cash machine and removed approximately \$400 in loose cash in the till. Also stolen was a cellphone belonging to the complainant. You both then ran out of the dairy and got into a waiting motor vehicle. The complainant complained of a sore body from being struck by you but no medical attention was required.

[4] At about 8.20 am on [date deleted] 2017, you and four others made plans to execute a robbery to take cigarettes. You drove up to a superette and four of you got out of the vehicle, including yourself and went into that superette. One of the offenders picked up a piece of wood that was sitting by the side of the road, as the four of you went into that superette.

[5] You were also armed with a crowbar and a piece of timber, collected from the roadside. You had a large rubbish bag with you. Armed with a crowbar you went to the back of the store, where the complainant was working and repeatedly hit a merchandise stand with the crowbar, causing that complainant to run from the store out of fear.

[6] The four of you then jumped over the shop counter and began loading cigarettes from behind the counter into the rubbish bag. One of your co-offenders uplifted the till from behind the counter and emptied the contents of approximately \$300 to \$350. You all then ran from the shop.

[7] On [date deleted] 2017 at about 10.10 pm the complainants were preparing to close the store of their shop for the day. One complainant was moving stock that had been displayed outside, back into the inside of the store, while the other remained behind the counter inside the store. The complainant moving the stock was confronted by you and three other associates, the group of you armed with lengths of wood. You grabbed the complainant by the beard and sweatshirt and dragged him inside the store. Once inside he was held down and struck a number of times with a piece of wood across the body by one of your group.

[8] Your group then attempted to get behind the counter to where the cigarette stocks were kept. And while that was occurring you swung a piece of 4x2 timber at the complainants in an effort to control them and prevent them from interfering with the robbery. They managed to grab hold of some brooms and started to defend themselves, as you and your associates with your weapons, striking them both including one of them on the right thumb.

[9] After a short time the complainants were able to drive you and your associates back towards the entrance door and you fled the store. You threw away the length of timber that you had, narrowly missing one of the complainants. The police attended and completed a scene examination and your DNA was found on the piece of timber.

[10] On 16 April 2018, you appeared in this Court for a bail application and were granted electronically monitored bail with a 24 hour curfew with a GPS bracelet fitted to your ankle. At 4.30 am on 3 May 2018, you cut off the GPS bracelet and left that address.

[11] One of the complainant's received bruising and tenderness to the lower back where he was struck a number of times with a piece of wood, but did not require medical treatment. The other complainant has sustained a fractured right thumb and did require medical treatment for that injury.

[12] I note Mr Soane that you are now 20 years of age and you have no previous convictions. I have read the pre-sentence report and I have had two references from your church handed up to me today. I have also read the submissions that have been made on your behalf and heard oral submissions on your behalf today.

[13] When I sentence you, I need to impose sentences that hold you accountable for the harm that you caused to a number of victims of your offending. I need to impose a sentence that will promote a sense of responsibility within you, as a young man and an acknowledgement of the harm that you caused to those victims.

[14] The principal sentencing factors I need to take into account are denunciation and deterrence. I denounce your behaviour because the community continue to be

shocked and are fed up with this type of offending taking place within the community. The element of deterrence is required because these offences are occurring far too often. Proprietors of dairies who should not be in a position where their lives and safety are at risk because of their occupation. You and others need to get the message that there are consequences to you for this type of offending. And hopefully the message those consequences will get through to others so that this type of offending stops.

[15] There are aggravating factors I need to take into account. There is the actual violence you inflicted and the threatened violence and the use of weapons. The crowbar was used to smash a merchandising stand and causing that victim to be terrified and to flee. In another charge you used a 4x2 piece of wood to assault the victims, with a particularly dangerous weapon. There is the extent of loss from the offending, of a significant amount of cash and an unknown quantity of cigarettes and confectionary and there is also the harm from the offence, being the injuries to two of the complainants. The victims were vulnerable, they each faced multiple offenders and the offenders were armed with weapons. There is a medium level of premeditation in that some effort was made to conceal your identities.

[16] In mitigation you are 20 years of age. At the sentence indication hearing for the aggravated robbery charges, I indicated a 20 percent discount would apply if guilty pleas were entered and they were. For the remaining charges you entered guilty pleas on the third appearance, so it was not the earliest possible stage, and therefore a 20 percent will be appropriate for those charges.

[17] You seem to have expressed some remorse for your offending but I think the remorse you seem to have demonstrated is more for yourself rather than the victims of your offending. The pre-sentence report notes you expressed regrets, stating you feel down and let the family's name down. But it goes onto say you lacked insight into your offending and you showed no remorse towards the victims. Your main offending related factor is assessed as poor problem-solving skills, propensity for violence, alcohol use and offending supportive attitude and entitlements.

[18] Your risk of harm is assessed as high, your likelihood of re-offending is assessed as medium. You are assessed as being at a medium risk of alcohol abuse. It notes that you justified possessing a weapon, stating it was for your safety as the shop owners have weapons on premises. If you want to be safe Mr Soane, you do not offend, it is quite simple.

[19] At the sentence indication hearing for the aggravated robbery charge, I indicated the starting point of four years would be appropriate and I adopt that now. I also indicated that an uplift for the second aggravated robbery of two years would apply, bringing it to a total of six years. I also indicated the 20 percent discount for apply for a guilty plea which was entered for both charges and therefore your sentence is reduced by 15 months. For your youth and not having had previous convictions, I deducted nine months, taking it to four years.

[20] I then need to look at the remaining charges of assault with intent to rob and wilful damage. For the charge of assault with intent to rob, I am applying a further uplift of two years. From that I deduct five months for a guilty plea and a further four months for your youth, taking it to one year and three months. That makes a total of five years and three months. I am not applying any uplift for the wilful damage charge.

[21] For the charges of aggravated robbery and also the charge of assault with intent to rob, you are convicted and sentenced to prison for five years and three months on each of those charges, all to be served concurrently on each other. For the charge of wilful damage you are sentenced to one month in prison, to be served concurrently.

[22] Given your convictions for aggravated robbery and assault with intent to rob, you are now subject to the three strikes law. I am now going to give you a warning of the consequences of another serious violence conviction. You will also be given a written notice outlining these consequences, which list the serious violent offences:

- (a) If you are convicted of any serious violent offences, other than murder committed after this warning and if a Judge imposes a sentence of imprisonment, then you will serve that sentence without parole or early release.

- (b) If you are convicted of murder committed after this warning, then you must be sentenced to life imprisonment, that will be served without parole, unless it would have been manifestly unjust. In that event the Judge must sentence you to a minimum term of imprisonment.

Judge NR Dawson
District Court Judge

Date of authentication: 04/07/2018

In an electronic form, authenticated pursuant to Rule 2.2(2)(b) Criminal Procedure Rules 2012.