

**IN THE DISTRICT COURT
AT HAMILTON**

**I TE KŌTI-Ā-ROHE
KI KIRIKIROA**

**CRI-2017-019-006503
CRI-2019-019-003500
CRI-2019-019-005679
CRI-2020-019-000318
[2020] NZDC 2353**

THE QUEEN

v

HAMISH WILLIAM GROOBY

Hearing: 12 February 2020
Appearances: K Whyte for the Crown
J Bell for the Defendant
Judgment: 12 February 2020

NOTES OF JUDGE P R CONNELL ON SENTENCING

[1] Mr Grooby, you are now for sentence in relation to four charges that you entered a plea of guilty to after I had given you an indication as to what sentence would be and today is the day where that sentence is imposed.

[2] I gave you an adjournment for the purposes of trying to arrange a restorative justice conference with your victim. That is something that has not been able to be arranged and at least do note your willingness to meet with the victim in this case and to some extent a small credit will be given to you in relation to that but your request for a restorative justice consideration was just all a bit too late.

[3] The sentence indication was based on a summary of facts that told me that on 18 May of last year you and associate went to a Te Aroha address and prior to going there you had disguised yourselves. You knocked on the door, you confronted the victim with a crowbar so you had a weapon in your possession. You were threatening to use it. He was a small-time cannabis grower, you demanded cannabis from him and he was told to sit down while one of you guarded him and the other went through the house looking for what you had come visiting for. You ended up removing a double-barrel shotgun and a lever action 22 rifle and an air rifle and the victim was threatened that illegal items would be planted at his address should he then call the police. Of course you know that police had a search warrant, they found the firearms and they had found certain items of property that had come from where you had gone visiting and threatened the victim in this case.

[4] The other charges that are before the Court are police ones that were included in the indication. They related to theft of some spanners, theft of petrol, a sander, a door lock, things of that sort and there was also a theft of a car transporter and trailer and a generator valued at around about \$12,000. Then on top of all that there was a review of sentence from the probation officer because you had breached your sentence of community work and that you just did not report in for that sentence meaning the Probation Service are seeking I impose a sentence of imprisonment. So it was a failure of sentence and I said it to you at the time of the indication, it did not really greatly help you in all of that.

[5] Today I have read your letter to the victim where you are expressing remorse and I have read the probation officer's report where you also express remorse. You can hear the Crown being a wee bit cynical about that and a bit sceptical about your remorse because they say you have been here a number of times previously, you offer remorse and regret for what you have done and then say you are sorry but you do not stop offending. It makes your remorse today a little bit hollow if you get my drift. I do not doubt that at the moment it is a genuine remorse but you have to understand the Crown position is that if it is not remorse it is probably more likely to be regret at what you have done.

[6] The saddest part of all this to me is what is happening with your kids. That to me is a very sad situation and I appreciate to some degree why you got so upset at that Christmas visit when you had very little time with them. I understand that and can understand what it was that then made you go into drugs, that was your relief from the unpleasantness and the upset that you suffered in the course of that.

[7] I do not understand why someone like you at the age of 36 does not appreciate that if you want to be a part of your kids' life, that you need to lay off criminal offending. It is as simple as that in my view because that means that you lay off the drugs because that is, at the end of the day, why your kids were taken away from you and your partner. Because you were getting into drugs, you were neglectful parents and of course the kids were taken from you. It is a horrible thing, children taken from their natural parents, but is it not time you woke up and realise you are the cause of that? You know, you are at an age and have intelligence to work that out. Enough of that, you do not need me to say anything more, I think you well understand it.

[8] In terms of that indication I took into account those other police charges and the review of sentence and you know that having traversed the various legal authorities that I should and did consider in the course of this sentencing I came to a view that what was warranted was a six year term of imprisonment and I reached that by applying the law and considering the circumstances of everything that I had to in the course of this sentence.

[9] The only change today is the probation officer's report. Your counsel says in his submissions to me that that is a reasonably positive report and it is, so long as you are genuinely remorseful, not just regretful and perhaps some allowance can be made for that but you will understand that the allowance given to you must be limited and that is simply because it is a bit of the same old, same old is it not? It is something you have said before in Courts and something that you understand there is some doubt being cast on the genuineness of what you are saying because you just do not stop offending.

[10] You are someone now who will also suffer the heavy penalty that occurs when you are on a second strike warning and that is something else that had me think why

was it not enough for you to stop offending. When you had that warning hanging over your head why did you do what you did knowing that if you were caught you are going to be in the very position you are today and that has been discussed with your counsel as a matter of law. I am not able to in any way soften the heavy nature of the penalty that is imposed on you because of that second strike warning and I regret it to some extent but I have to comply with the law.

[11] In summing up his position for you Mr Bell your counsel has asked me to consider the letter, a genuine one, it is one of remorse. You have pleaded guilty and of course I have made that allowance in the course of my indication. He says I should bear in mind that you are not minimising what you did on this occasion of these offences, that you had slipped back into drug use and really that is what he says you blame this offending on and on top of that he says what you said to the probation officer about the loss of hope for your kids is high in your mind and I should take that into account as well.

[12] You have been working with a pastor who has been helping you and he should get a great deal of credit for persisting with his help with you. I think a great deal of him for actually working alongside you in the way that he has. Mr Bell tells me that you are not past a point of being able to rehabilitate successfully. He has pointed to your past where you have been able to work and earn a good income, where you are capable of working, holding down a job, things of that sort.

[13] I take into account the fact that I have cancelled the rest of your community work sentence. Mr Bell asked me to consider you can comply with sentences, he particularly looked at the fact that you had repaid a large amount of reparation the last time you were in trouble with the Courts. You can hear Crown saying that you should not be able to blame drugs for your offending, that they do not accept you are genuinely remorseful, that simply at this point as you are being sentenced you are saying these things as a matter of regret, not remorse. So those things have to be weighed up by me. At the end of the day I am concerned about the heavy effect that a second strike warning will have on you. I feel able to make some concessions around your remorse, fairly limited though I have to say because of the doubt cast by the

Crown on the genuineness of that but I still think that you are, at least at this point in time, remorseful for what you did.

[14] I cannot deal with your fines because I have to have a declaration before me signed by the collections department in Court before I am allowed to remit fines but I am going to suggest to you you might like to raise that with the prison authorities, they will give you a form by which you can make that application to the Court to have your fines remitted and you should try and do that in the next month or so because indeed that can be done.

[15] Mr Bell has also pointed out a mistake in my calculation of the allowance I made for your plea of guilty. He says given the correct deduction for your plea of guilty, the sentence would become one of four years and nine months. So that is the one imposed. Taking account of some matters of your remorse and your position and the hope for rehabilitation that you have I will take a further three months from that sentence. So that gets you down to a four and a half year sentence that is imposed on that charge of aggravated burglary.

[16] In relation to the other matters, cancellation of your sentence, that is the review application before the Court from the Probation Service. On that matter I am simply going to cancel that sentence and so there is no substituted sentence for it. I do that in light of the principle of totality, not wanting to add anything more to the lengthy term that you have now had imposed on you.

[17] On the charge of stealing the spanners there is a one month concurrent term of imprisonment imposed. It is not on top of, it is not cumulative, it just runs alongside the present sentence of four and a half years.

[18] Theft of the car, in relation to that there is a concurrent sentence of one year's imprisonment.

[19] In relation to the theft of the sander and nail gun, that is a one month concurrent term.

[20] Theft of the door lock for Mitre 10 , also a one month term.

[21] Theft of the petrol, likewise, a one month term.

[22] On that review I have just simply cancelled the sentence altogether with no penalty in relation to it.

[23] I do not make any order for reparation in this case. The time that you will be away which will be almost for that full sentence, because of the second strike warning you will not be in a position to meet reparation so that is not ordered.

[24] I will just impose sentence in respect of those firearms too. To be clear, four years, six months on charge 1. On charge 2 that is now formally dismissed and charges 3, 4 and 5 will have concurrent sentences of 18 months on each.

Judge PR Connell
District Court Judge

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