

**IN THE DISTRICT COURT
AT HAMILTON**

**I TE KŌTI-Ā-ROHE
KI KIRIKIROA**

**CRI-2019-019-001732
[2020] NZDC 393**

THE QUEEN

v

ZION SEBASTION POIMAFISI

Hearing: 13 January 2020
Appearances: A Pell for the Crown
T Tran for the Defendant
Judgment: 13 January 2020

NOTES OF JUDGE K B F SAUNDERS ON SENTENCING

[1] Mr Poimafisi, you are for sentence on four charges. There are three charges for offending on 3 March last year; an aggravated robbery, a burglary and an assault with intent to rob. That offending comes from your repeatedly going to an address back in March with an associate. On the first occasion you approached the victim, who was at home and at that stage by a gate. He was told to empty his pockets and was asked whether there was anything valuable in the garage on the property, you and your associate then went inside. I acknowledge you did not have a weapon with you but your associate had a hunting knife, he presented that at the victim and held it to his throat while he pushed him on to a couch that was in the garage. You left but you returned later and that is the subject of the burglary. You entered a locked garage, you took a toolbox containing miscellaneous tools.

[2] The aggravated robbery occurred in circumstances where there was another confrontation. You and your associate jumped over a gate on the property. Your associate presented a pistol at the complainant's chest, again demanding to know if there were valuables inside. You were taken inside; a television was taken. When the victim tried to stop you, it seems that your associate held a firearm to the back of his head.

[3] The police charged you because the stolen television was advertised for sale on Facebook using your profile but certainly, when I gave the sentence indication to you in September 2019, your associate was still at large.

[4] There was then a charge of robbery from 7 February. Again you were with an associate and on this occasion you approached a victim who was simply sitting on the footpath in Grey Street, Hamilton East. You threatened to stab him, demanding money. He gave you a cellphone and a lighter valued at about \$42 in total. You kicked him before you left.

[5] I gave you a sentence indication on 16 September last year with an overall starting point of six years and nine months' imprisonment, a 20 percent discount for a guilty plea and I would look at a further discount for youth depending on matters that came to light in a pre-sentence report.

[6] What I have before me now paints two pictures of you, Mr Poimafisi. The pre-sentence report is not a positive report at all. The writer of the report tells me that since you have been on remand you have been now moved to Auckland Maximum Security Prison because of a recent risk assessment. What is concerning is that you were reported to be associated with Tribal Huks at the time of the offending and while on remand have moved from that gang to the Killer Beez. The writer of the report does not seem to have any faith that you have left gang life behind you.

[7] On the other hand, you have provided a relapse prevention plan which sets out goals for release and strategies in place to prevent offending. You have also written a letter of remorse to the victims apologising and using words such as being "devastated" by your actions and for the permanent and any long-term suffering you

may have caused. You also, in your letter to the Court, accept responsibility. It seems it is drug-fuelled offending and you are motivated to change.

[8] I need to somehow reconcile those two diametrically opposed positions, Mr Poimafisi, and it is not easy to do that. Mr Youn tells me that your involvement with both gangs has now ended. I accept that the comment in the report where you deny some of the summary of facts is based on a summary that is not the same as the summary of facts I have just read to the Court.

[9] I need to reconcile the two versions of you I have. What I do know is that at the time of the offending you were 22 and a half years old, you are now 23. So you are a relatively young man. Your history, however, is such that you were last sentenced to imprisonment for six months on 2 August on a charge of permitting premises to be used, although the rest of your history is not that great. While you are still relatively young you are not a first offender and you are certainly not someone who is just transitioned out of Youth Court.

[10] While there will, as I indicated to you, be a further discount for youth it is going to be tempered somewhat by the opposing views of you and the fact that you do have a history.

[11] In terms of the indication, I accept you did not present either the knife or the firearm. However, clearly the March offending was planned, it was premeditated, those weapons were used and violence was inflicted. Perhaps the February offending was a spur of the moment.

[12] In accordance with the indication the starting point is one of imprisonment for six years and nine months. No other uplifts are warranted. Twenty percent credit for a guilty plea gets to an end sentence of five years and five months' imprisonment. As to your youth and the *Churchward v R* principles, I am persuaded that I can give a further discount to you of around 10 percent, essentially it is going to be a five month discount.¹

¹ *Churchward v R* [2011] NZCA 531, (2011) 25 CRNZ 446.

[13] That means that the end sentence on all charges is imprisonment for five years.
Your current release conditions are cancelled.

K B F Saunders
District Court Judge