

**IN THE DISTRICT COURT  
AT MANUKAU**

**CRI-2017-092-004379  
[2018] NZDC 4728**

**THE QUEEN**

v

**ILAISA'ANE ONESI**

Hearing: 13 March 2018  
Appearances: M Regan for the Crown  
S Lance for the Defendant  
Judgment: 13 March 2018

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**NOTES OF JUDGE A M WHAREPOURI ON SENTENCING**

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[1] Ilaisa'Ane Onesi, you appear for sentence following a jury trial in which you were convicted of aggravated robbery, dangerous driving, and failing to stop. The most serious charge which you face, being aggravated robbery, carries a maximum penalty of 14 years' imprisonment.

[2] Having had the benefit of hearing the evidence at trial, my view of the facts is that on [date deleted] 2017 you drove two men, Colin Rikona and Tex Vilikoka, to [a dairy] in [location deleted]. The two men went inside the dairy while you waited in the car, parked on the roadside nearby. While inside the dairy, Mr Rikona and Mr Vilikoka carried out an aggravated robbery which involved taking a large quantity of cigarettes and subjecting the dairy owner to a serious physical assault. The assault was committed by Mr Vilikoka, who repeatedly punched [the complainant] about the head and face to the point of unconsciousness.

[3] Concerned about being seen by members of the public, you left the car and entered the front of the store. Your movements were captured on the store's CCTV system. As you left the store, you wiped the door handle of the front door in a manner consistent with someone wiping down a surface so as to remove possible fingerprints. You then returned to the car, and Mr Rikona and Mr Vilikoka joined you a short time later. The three of you then drove from the scene.

[4] A member of the public, who had noticed the three of you acting suspiciously outside the dairy earlier in time, contacted the police by phone and reported your movements. The member of the public also gave police a description of the vehicle you were using and its registration details. For that reason, the police came across the fleeing vehicle only moments after the aggravated robbery, and gave chase. Instead of coming to an immediate stop, you drove at excessive speed and occasionally on the wrong side of the road to try and outrun police. You also undercut other vehicles on the road and drove between cars at times in an act of lane-splitting. After driving through a controlled intersection, you collided with another vehicle but continued on regardless until you came to a small residential side street. You were then forced to a stop by the positioning of several police cars.

[5] You remained in the vehicle while your two co-accused chose to run. However, they were captured by police a short time later.

[6] At trial, you gave evidence in your own defence. You claimed to have only met the men earlier that day, and accepted a ride from them. In driving them to [the dairy], you believed they were going to buy you a meal before later returning you home. Furthermore, you claimed that you drove from the dairy in a dangerous manner because you feared Mr Vilikoka was going to cause you serious bodily injury if you refused.

[7] It follows from the jury's verdicts that they rejected your evidence wholesale. In my view, they were right to do so. Your behaviour leading up to the robbery, entering the store while your two accused were in the back area and then leaving the same, taking care to wipe away any forensic evidence from the surface of the door

handle which you touched, pointed to your prior knowledge of the aggravated robbery and your participation in the same as the intended getaway driver.

[8] The offending is aggravated by the use of actual violence and the serious harm that was inflicted on the complainant. I accept, however, that you were not directly involved in the violence that was meted out.

[9] In sentencing you, I take into account the need to impose a sentence which deters and denounces your behaviour. Further, it is important to impose the least restrictive outcome warranted in the circumstances while making sure to impose a similar sentence as adopted for similar offending by similar offenders.

[10] I have been provided with a copy of the victim impact statement by the complainant. The offending has had a serious impact on his life. It took him approximately five to six weeks so as to fully recover from his physical injuries. Those injuries included a laceration to his ear, concussion symptoms, bruised ribs, stitches under one eye and above the other, and a broken tooth. The emotional and psychological trauma suffered, however, required even more time for him to recover. [The complainant] was forced to speak to a counsellor, given that he had relapses and could not even bring himself to return to the shop. His family were also understandably upset by the injuries to the complainant. The complainant made a subsequent decision that he could not guarantee the safety of those who might work or visit his store, and in the end he felt as if he had no choice but to sell his business. He suffered a large financial loss as a result of having to do so.

[11] Turning to your personal circumstances, I have read and considered a pre-sentence report for you. The report I have tells me that you are 35 years old and that you have six children, one of whom is a young infant. Following your separation from the children's father in about 2008, you have been responsible for their care and upbringing. The reason for your separation is rooted in domestic violence. At the time of the offending, you were in receipt of the benefit. You told the report writer, consistent with your own evidence at trial, that you were the innocent party, that you were not aware of the extent of what was to take place, and that your subsequent driving was the result of one of the men, Mr Vilikoka, threatening to stab you. In the

view of the report writer, the root cause of your offending is largely the result of poor relationships, an imbalance of personal lifestyle, a poor choice in friends, and a willingness on your part to associate with individuals who exhibit violent tendencies.

[12] The final recommendation in the report is one of intensive supervision and community work. That recommendation, however, is out of step with the seriousness of your offending and the sentencing of your co-accused, which I will refer to later.

[13] On your behalf, Mr Lance accepts that the lead charge for sentencing purposes is the aggravated robbery. For that, he submits in his written submissions that the starting point should be somewhere in the range of three and three and a half years' imprisonment. In his oral submissions to the court today, he suggests that the starting point could even be lower so as to achieve what he submits is the appropriate end sentence, being one of home detention. He submits that a starting point of no more than three or three and a half years would adequately reflect your lower culpability as compared to your co-offenders, and achieve a just sentence.

[14] The Crown submits that the starting point for you should be four and a half years' imprisonment for the lead charge, being aggravated robbery. The Crown points to the fact that your two co-offenders both received a sentence indication where the starting point was four and a half years' imprisonment. It is further submitted by Mr Regan that the parity principle requires that the same starting point should apply to you.

[15] The guideline sentencing decision which governs aggravated robberies is a case called *R v Mako*.<sup>1</sup> *R v Mako* sets out that for the robbery of a small retail shop where the shopkeeper is confined or assaulted and/or where there are multiple offenders, the starting point can be in the range of five to six years' imprisonment. *R v Mako* also makes clear, referring to another Court of Appeal decision called *R v Smart*,<sup>2</sup> that those people involved in the robbery who are given roles other than confronting the victim or victims should be treated as equally culpable, unless they are truly less than full participants in the offending.

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<sup>1</sup> *R v Mako* [2000] 2 NZLR 170 (CA).

<sup>2</sup> *R v Smart* CA57/94, 24 May 1994.

[16] My view is that you were less than a full participant in the robbery. While getaway drivers in some instances can be the ringleader of the robbery, there was no evidence in the trial which suggested that that was the case here. From the evidence, instead it appeared that Mr Vilikoka was the more prominent figure and that he and Mr Rikona, being in the store at the relevant time, were both actively engaged. There was no hint in the evidence that you were aware of the extent of actual violence that might be inflicted, and your entry into the shop was relatively fleeting. For these reasons, I see your culpability as being slightly below that of your two co-accused.

[17] Accordingly, for your role in the aggravated robbery I adopt a starting point of four years, three months' imprisonment.

[18] I note that you do have previous convictions, although nothing directly relevant to the most serious charge you face. You have other driving convictions, but these are from 2005 and 2004. Given that they are from some considerable time ago, I decline to impose any uplift for them.

[19] Mr Regan for the Crown submits that there should be some further upward adjustment to recognise the other charges which you face, most notably the charge of dangerous driving. While that offending is separate from the lead charge of aggravated robbery, I decline to impose a further uplift. In my view, your culpability overall can be subsumed within the starting point adopted for the lead charge of aggravated robbery.

[20] You are not entitled to any discounting for mitigating features such as early guilty pleas, previous good character, or relative youth.

[21] I have had the benefit of reading a number of letters of apology by you and in support of your good character put forward by others. Dealing first with your expressions of remorse, it is important to note that higher courts have made it clear that discounts applied for remorse over and above that which is incorporated in guilty pleas must be for real remorse. While I acknowledge that you have expressed in your letters remorse, the expressions seem largely related to your situation rather than the offending itself. I also note that your pre-sentence report and some of the comments

contained in it would be inconsistent with real remorse. Accordingly, I do not extend any discounting for remorse.

[22] However, in your personal circumstances I do find the basis for the exercise of some limited mercy. This basis is the level of hardship that will be inflicted on your children, who will be separated from you for a considerable period and without their father being present daily to care for them. In fact, based on the views of a social worker in court today here to support you, it seems almost inevitable that your children will fall to state care.

[23] The other letters which I have seen speak positively of your character, at least insofar as to when it comes to the efforts you have made in raising your children. Mr Lance submits, and I accept, that your children and their behaviour is very much a credit to you. Some hardship on the part of children whose parents commit offending is, however, to be expected, and while it is fair to say that the suffering of an offender's children and dependents is largely a direct consequence of the offender's actions, higher courts have recognised that the family situation of a convicted offender, including the well-being of an offender's children, can be a relevant sentencing factor. Further, a modest discount can be applied for this feature without encouraging the view that family circumstances will allow people to think that they can do what they like, or detracting from the seriousness of the offending.

[24] In the end, the weight to be given to this hardship imposed on children depends on the overall circumstances. Those circumstances here include the number of your children, the age of your youngest child, the fact that you are without another member of your whānau able to care for the children, and the fact that their father resides in Australia and will not have regular contact with them. I also take into account here your limited role in the offending. For these reasons, I make a deduction of nine months in recognition of your children, who will be deprived of your care for some meaningful time.

[25] When that deduction is made, the end sentence for you then becomes three years, six months' imprisonment or 42 months.

[26] Accordingly, on the lead charge of aggravated robbery, you are convicted and sentenced to three years, six months' imprisonment.

[27] On the charge of dangerous driving, you are sentenced to one month's imprisonment. That sentence will be concurrent with the sentence imposed for the charge of aggravated robbery.

[28] On the dangerous driving charge, you are also disqualified from holding or obtaining a driver's licence for six months from today's date.

[29] Finally, on the charge of failing to stop, which is fineable only, you are convicted and discharged.

A M Wharepouri  
District Court Judge