

**IN THE HIGH COURT OF NEW ZEALAND
TAURANGA REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TAURANGA MOANA ROHE**

**CRI-2022-463-131
[2022] NZHC 3004**

BETWEEN MARSH MAIHI TAIKATO
Appellant

AND TAURANGA CITY COUNCIL
Respondent

Hearing: 15 November 2022
(Heard at Rotorua)

Appearances: M M Taikato in person with assistance from L Taikato
J Libbey for Respondent

Judgment: 16 November 2022

**JUDGMENT OF WOOLFORD J
(Appeal against sentence)**

This judgment was delivered by me on Wednesday, 16 November 2022 at 4:15 pm.

Registrar/Deputy Registrar

Solicitors: Rice, Speir, Auckland

Copy to: Appellant

[1] Mr Marsh Maihi Taikato appeals a sentencing order for the payment of \$1,000 in reparation and the destruction of Bugaboo, a Staffordshire Bull Terrier dog.

[2] On 6 September, Mr Taikato pleaded guilty and was convicted under s 57(2) of the Dog Control Act 1996 (the Act). Judge Mabey ordered:

- (a) the destruction of the dog;
- (b) payment to the victim for emotional harm reparation in the amount of \$1,000; and
- (c) payment of \$157 towards the victim's medical costs.

[3] The payments were to be made in instalments.

Facts of the offending

[4] I take the facts of the offending from the Tauranga City Council's caption. As Mr Taikato has pleaded guilty, he has accepted to be sentenced on these facts.

[5] Mr Taikato became the owner of the dog, Bugaboo on 25 November 2021. Mr Taikato's former wife, Lynette Taikato, was previously the owner of Bugaboo, but she was disqualified from being a dog owner at the time.

[6] On 25 December 2021, at about 1 am, the victim received a text message to uplift a bicycle from Lynette Taikato's address. She arrived at the address at about 1 am. She heard a dog barking from inside the house. As she walked around the back of the property, she heard the door open and a dog, who she recognised as Bugaboo, came out of the house and approached her. The dog then started to sniff and lick the victim. It then growled at her. She yelled at the dog to get out.

[7] As the victim turned to run away, the dog suddenly and without warning bit the victim on the right foot and ankle area. The victim felt the dog's teeth penetrating and tearing the skin of her ankle. This left her in excruciating pain which required hospital treatment and subsequent surgery.

[8] Ms Taikato and two associates came out to the address and took Bugaboo back inside the property. Mr Taikato was not present at the time.

[9] A short time later, the dog came out of the house and tried to attack the victim again. Ms Taikato stood between the dog and the victim, but the dog was able to rush at the victim's throat. The victim put her left arm up to defend herself. The dog bit her on the arm, leaving a superficial injury which did not require treatment. Ms Taikato then took the dog inside.

District Court decision

[10] The sentencing notes of the Judge are brief and give no reasons.

Approach on appeal

[11] Mr Taikato can bring this appeal of his sentence under s 244 of the Criminal Procedure Act 2011. Section 250(2) of the Criminal Procedure Act 2011 states that the court must allow the sentence appeal if satisfied that:

- (a) for any reason, there is an error in the sentence imposed on conviction;
and
- (b) a different sentence should be imposed.

[12] In any other case, the court must dismiss the appeal.¹ An appeal against a dog destruction order is a general appeal and the appeal court will come to a conclusion based on its own assessment of the merits.²

Submissions

[13] Mr Taikato has attached submissions to the Notice of Appeal. It is signed by "Lynette; Clarke Authorised Agent for and on Behalf Marsh Maihi Taikato" and by Mr Taikato. Though the notice names a lawyer, it seems she has not had any input into the submissions on appeal.

¹ Criminal Procedure Act 2011, s 250(3).

² *Auckland Council v Hill* [2018] NZHC 3315, [2020] 3 NZLR 603 at [28], citing *Austin, Nichols & Co Inc v Stichting Lodestar* [2007] NZSC 103; [2008] 2 NZLR 141 at [16].

[14] The notice of appeal states he is appealing the “charge and fine”.

[15] Mr Taikato says:

Since the Government is a creation of the people it cannot possibly have jurisdiction over its creators unless by consent. Each and every statute enacted by government Legislation requires consent from each and every man and woman including me.

[16] He then records that “I Marsh Maihi Taikato do not accept the alleged Charge against me and I do not consent to this or any further proceeding”.

[17] He takes issue with the warrant that was issued to authorise the Dog Control Officer to take custody of Bugaboo when it was in Ms Taikato’s ownership. He says the warrant was executed on two occasions despite it stating it would only be valid once.

[18] Mr And Ms Taikato seek the restoration of their dog and are fearful for his life. They say “It [is] just not right that he dies because of the inconsiderate, inappropriate disrespect of some human who should know better, where[’]s [the] common sense and respect”.

[19] They also seek “Reparation for all damages whatsoever in the amount of \$25,000” in order to, as I understand it, deter dog officers from acting similarly in the future.

[20] Finally, Mr Taikato says he is protected under the Declaration of Independence 1835 (he Whakaputanga) and the common law jurisdiction.

[21] In a separate letter filed at the Court, Ms Taikato makes a plea for the restoration of the dog based on “truth and Common Law”.

[22] In oral submissions, Mr Taikato said that Bugaboo had been taught to guard the safety of his partner’s house and its occupants. He said the victim turned up unannounced and uninvited in the middle of the night. She did not come to the door or make it known she was there. Bugaboo was outside in the fully fenced section. Ms Taikato could not avoid and stop what happened.

[23] Mr Taikato explained that he was the owner of Bugaboo, who he left with relations while he was shifting house. The relations were unable to continue looking after him and tried to contact him but could not. They therefore took Bugaboo back to his partner's house even though she was disqualified from being a dog owner at the time.

[24] Ms Libbey for the respondent, Tauranga City Council, submits that the District Court orders should be upheld. She submits that:

- (a) there are no errors in the sentence imposed;
- (b) the dog's destruction was mandatory as there were no exceptional circumstances to the offending;
- (c) the order for reparations is well within the generally accepted range of penalties imposed for similar offending under similar circumstances; and
- (d) the medical costs ordered to be paid were modest.

[25] In relation to the destruction of the dog order, she says that there are not any exceptional circumstances. Mr Taikato was not present at the time of the attack. He left Bugaboo with his former partner whom he was aware had been disqualified from dog ownership due to failures to register and control Bugaboo. She says that Bugaboo was wholly uncontrolled while the victim was attempting to pick up her bicycle from Ms Taikato's property. Ms Libbey submits that as no exceptional circumstances were put forward for consideration, Judge Mabey had no option but to make the destruction order.

[26] In relation to the orders for payments for reparation and medical costs, Ms Libbey submits they were appropriate and not manifestly excessive. She refers to three cases.

Discussion

[27] Mr Taikato submits that the Court has no jurisdiction to make any orders against him. This submission is untenable. The laws of New Zealand apply to everyone in New Zealand. Mr Taikato's invocation of his rights as a one of a "Sovereign People" does not change this, nor does he Whakaputanga as discussed by the Court of Appeal in *Ngaronoa v Attorney-General*.³ The Court therefore does have jurisdiction over Mr Taikato.

[28] Mr Taikato pleaded guilty to s 57 of the Act which provides:

57 Dogs attacking persons or animals

- (1) A person may, for the purpose of stopping an attack, seize or destroy a dog if—
 - (a) the person is attacked by the dog; or
 - (b) the person witnesses the dog attacking any other person, or any stock, poultry, domestic animal, or protected wildlife.
- (2) The owner of a dog that makes an attack described in subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$3,000 in addition to any liability that he or she may incur for any damage caused by the attack.
- (3) If, in any proceedings under subsection (2), the court is satisfied that the dog has committed an attack described in subsection (1) and that the dog has not been destroyed, the court must make an order for the destruction of the dog unless it is satisfied that the circumstances of the offence were exceptional and do not warrant destruction of the dog.

[29] The objects of the Act include imposing obligations on dog owners designed to ensure that dogs do not cause a nuisance to any person and do not injure, endanger, or cause distress to any person.⁴ This reflects Parliament's determination that risk of a dog's attack being repeated, and another person being injured is an unacceptable risk. The consequences of dog attacks can be very serious with, in some cases, enduring consequences.

³ *Ngaronoa v Attorney-General* [2017] NZCA 351, [2017] 3 NZLR 643.

⁴ Dog Control Act 1996, s 4(a)(iii).

[30] Under s 57(3), a dog that has attacked a person must be ordered for destruction unless the circumstances were exceptional and do not warrant its destruction. The Court of Appeal in *Auckland Council v Hill* set out a two-step approach to the application of s 57(3). The first step is to identify the relevant circumstances of the offence.⁵ This enquiry should focus on the immediate circumstances.⁶ The second step is for the Court to ask whether the circumstances were exceptional and do not warrant the destruction of the dog. It proceeds on the basis that the attack itself establishes that there is a risk of the dog attacking again in similar circumstances.⁷

[31] The attack occurred at 1:00 am when a person known to Ms Taikato and to Bugaboo came to the property to uplift a bicycle. Although Mr Taikato says his partner did not know about it, a formal statement taken from the victim discloses that Ms Taikato's nephew who was staying with her at the time texted the victim and asked her to come and get a bicycle from the back section. The statement was provided to Mr Taikato as part of disclosure, and there was no challenge to it when Mr Taikato pleaded guilty. The victim therefore did arrive at the house by invitation and with the knowledge of at least one of the occupants. The circumstances are not exceptional. Bugaboo ran out of the house twice to attack the victim. Even when standing between Bugaboo and the victim, Ms Taikato could not stop the attack. The victim was bitten on her foot and ankle, and on her arm. She required hospital treatment for her injury and crutches afterwards. The risk that Bugaboo will attack another person in a similar fashion because he cannot be controlled is too high. I therefore uphold the order for the destruction of the dog.

[32] I also uphold the orders for the payment of \$1,000 to the victim for emotional harm reparation and \$157 towards the victim's medical costs. It appropriately reflects the purposes of sentencing, being to hold the offender accountable for harm done to the victim, to promote a sense of responsibility, and to provide reparation for the harm done by the offending. I note that no fine payable to the Council was sought at trial nor here on appeal.

⁵ *Auckland Council v Hill* [2020] NZCA 52, [2020] 3 NZLR 603 at [64].

⁶ At [67].

⁷ At [75].

[33] Finally, I note Mr Taikato's complaint about the wrongful use of the warrant. One of the rights enshrined in the Bill of Rights Act 1990 is the right against unreasonable search and seizure. An allegation of misuse of a warrant to enter Ms Taikato's property is serious. However, there appears to have been no misuse of the warrant. In a brief of evidence proved to Mr Taikato by way of disclosure, a dog control officer, Gary Dixon, confirms that the warrant was dated 18 January 2022 and was valid for 14 days from that date. It was executed once at 9 am on 19 January 2022 by Mr Dixon and two Police officers. Mr Taikato pleaded guilty and there was no challenge to the validity of the warrant at the time. I am therefore satisfied that the warrant was validly executed and meets all the requirements of ss 57(5) and 57(6):

- (5) If a dog control officer or dog ranger has reasonable grounds to believe that an offence has been committed under subsection (2), he or she may—
 - (a) seize and take custody of the dog; or
 - (b) if seizure of the dog is not practicable, destroy the dog
- (6) A dog control officer or dog ranger may enter land or premises for the purposes of subsection (5), but may enter any dwellinghouse on the land or premises only if—
 - (a) he or she is in fresh pursuit of a dog that—
 - (i) he or she has reasonable grounds to believe has committed an attack described in subsection (1); and
 - (ii) has been identified by a witness to the attack; or
 - (b) he or she is authorised to enter by a warrant issued by an issuing officer (within the meaning of section 3 of the Search and Surveillance Act 2012), made on application by the dog ranger or dog control officer in the manner provided for an application for a search warrant in subpart 3 of Part 4 of the Search and Surveillance Act 2012, who must not issue a warrant unless the issuing officer is satisfied that there are reasonable grounds to believe that an offence has been committed under subsection (2), and, in the case of a dog control officer, he or she is accompanied by a constable.

[34] In any case, the validity of the warrant is not material to the current charge. Whether or not the dog was uplifted with or without a warrant in 2022, does not change the fact of the dog attack that occurred on 25 December 2021. Mr Taikato's charge arose from that attack. Therefore, the sentencing orders stand.

Result

[35] The appeal is therefore dismissed.

[36] The orders made by Judge Mabey on 6 September 2022 are upheld.

Woolford J