

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

**I TE KŌTI MATUA O AOTEAROA
TE ROTORUA-NUI-A-KAHUMATAMOMOE ROHE**

**CRI-2021-063-002732
[2022] NZHC 3009**

THE KING

v

NATASHA BRIDGET LACY

Hearing: 17 November 2022
(Heard at Tauranga)

Appearances: A Maino for the Crown
S Mills for the Defendant

Judgment: 17 November 2022

SENTENCING NOTES OF HARVEY J

Solicitors: Gordon Pilditch, Rotorua
Lance Lawson, Rotorua

Introduction

[1] Natasha Lacy you appear for sentencing on the charge of aggravated robbery under s 235(b) of the Crimes Act 1961.¹

[2] Your guilty plea to the charge was entered following a sentence indication that, with the possibility of further discounts following provision of the PAC report and any other personal matters raised, a sentence of two years and five months' imprisonment was appropriate.² The possibility of a non-custodial sentence was left open.

[3] That sentence indication comprised:

- (a) a starting point of three years' imprisonment for the aggravated robbery;
- (b) one months' uplift for previous offending;
- (c) a 10 per cent discount for guilty plea; and
- (d) four months' discount for time spent on EM bail;

[4] As you accepted that sentence indication within time, absent any new information, that indication is now binding on the Court.³

The offending

[5] The facts of the offending are set out in the earlier sentencing indication, and I will not repeat them here. That sentence indication will be attached to these written remarks and forms part of them.

[6] However, for the benefit of those present at the sentencing, the charges relate to events which occurred early evening on 16 September 2021 where you, and your co-defendant Mr Rikihana, robbed two persons in a car after your vehicle blocked their vehicle into a remote location in Rotorua. Through threats, intimidation and physical violence from Mr Rikihana, you both extorted items from the complainants including

¹ Crimes Act 1961, s 235(b). Maximum penalty 14 years' imprisonment.

² *R v Lacy* [2022] NZHC 2216.

³ Criminal Procedure Act 2011, s 116(2).

bags, cellphones and wallets. That said, your role was more limited than Mr Rikihana's, who punched one of the complainants several times in the face. You personally wielded a large wine bottle to extort property from one complainant, threatened her not to call police, and snatched the driver's keys which you then attempted to throw into a nearby paddock.

Approach to sentencing

[7] As was said at sentence indication, determining an appropriate sentence involves two steps. First, assessing what the appropriate starting point is, taking account of any aggravating or mitigating factors of the offending itself. The second step adjusts that starting point to consider any personal aggravating or mitigating factors and the guilty plea. Many of these steps have already occurred in the sentencing indication given on 1 September 2022.

[8] The Sentencing Act 2002 sets out the purposes and principles of sentencing which I must take into account.⁴ The sentenced imposed is guided by the purposes of sentencing, which includes holding you accountable for the harm caused to the complainants and the community; promoting a sense of responsibility for and acknowledging that harm; providing for the victim's interests and providing reparation for harm done; denouncing your conduct; deterring you and others from committing similar offending; protecting the community; and assisting in your rehabilitation and reintegration.⁵

[9] The Court must also take into account the gravity of your offending, including the degree of culpability, the seriousness of the offending in comparison with other types of offending, and the general desirability of consistency with appropriate sentencing levels.⁶ The law also requires that the Court must impose the least restrictive outcome that is appropriate in the circumstances, in accordance with the hierarchy of sentences and orders. The Court must take into account any of your particular circumstances that would mean that a sentence that would otherwise be

⁴ Sentencing Act 2002, ss 7 and 8.

⁵ Section 7(1)(a)–(h).

⁶ Section 8(a)–(e).

appropriate, would be disproportionately severe. The Court must also consider your personal, whānau, community and cultural background in imposing a sentence with a rehabilitative purpose.⁷

Adjustment for personal circumstances

[10] Since the sentence indication was given, the Court has now received a pre-sentence report dated 11 November 2022. Your counsel, Mr Mills, has also supplied the Court with a comprehensive cultural and drug report and letters from yourself and your partner. Those reports share many of the same details about your personal life and circumstances, although the comprehensive report is considerably more in-depth. I have read and considered both, as well as both you and your partner's letter. While I do not record all the details here, I will note several points.

[11] The reports paint a picture of a disrupted childhood and adulthood involving drugs, a family deeply entrenched in gang culture, instability and grief including the death of your stepfather when you were 12. You left school at Year 10 with no qualifications after becoming pregnant with your first child. You also report having suffered significant and traumatising sexual abuse both at a young age and more recently in 2021.

[12] Now at the age of 32 you have three children, aged 16, 14 and nine years old. You report that you have been through significant health challenges in your life – including cervical cancer eight years ago. You began using alcohol after the relationship with your children's father ended and developed a dependency. Two years ago, you stopped using alcohol when it no longer assisted you and began using methamphetamine, which was provided to you by your brother. Its use was exacerbated by your sexual assault in 2021. The comprehensive report writers consider that you were suffering from severe methamphetamine use disorder at the time of the offending.

[13] Your relationship with Mr Rikihana, your co-defendant, was brief lasting only four months. However, during this time you report enduring physical and

⁷ Section 8(f)–(i).

psychological abuse. You say Mr Rikihana was controlling, possessive, manipulative and mentally ill. You report being relieved when he was sent to prison and that it saved you from him, as there was no other way to get out of the relationship. Regarding the offending, you explained your version of events to the report writers. The reporting of this varies between the two reports, however effectively, your version is that you only became involved in the offending because of Mr Rikihana. You told the PAC report writer that you accepted the guilty plea so you could “move on”.

[14] You now live with your current partner, Ms Ryan, and one of your children, your 14 year old, in Manurewa. By all accounts it is a healthy relationship and you have been rehabilitating well while on EM bail at that address. Both reports state that you have been free of alcohol and illicit substances for over a year.

[15] In this way, both reports identify your rehabilitative prospects as a core consideration. In particular, now that you are in a stable situation away from Rotorua you will be able to access services, including counselling, and move on with your life including gaining employment. In the PAC report your ability to comply with a community based is assessed as high and you are assessed as a low-risk of reoffending. Your EM bail address remains suitable for EM sentencing. Overall, the PAC report recommends a sentence of intensive supervision in order to provide oversight of your rehabilitation. The comprehensive report states that you are in an “ideal position” to rehabilitate further.

[16] The letters which you and your partner have provided corroborate the above details. You apologise for the offending and explain the manipulation of Mr Rikihana. You explain that with him now gone, you have one of your daughters back and are in the process of getting back your other two children who you lost care of while with Mr Rikihana. You say you have had time to reflect and are now with someone who cares about your wellbeing and that you want to be there for your children.

[17] In addition, Ms Ryan speaks to the situation you were put in by your previous relationship with Mr Rikihana. She confirms that you have developed considerably for the better since you have been on EM bail and distanced yourself from Mr

Rikihana. Ms Ryan implores that the court impose electronic monitoring rather than imprisonment given the support you now have available.

Crown submissions

[18] Ms Maino relied primarily on the Crown's sentencing indication submissions.

[19] Counsel also contended that Ms Lacy's version of events is not accepted, that the offending was part of a drug deal that went wrong. She also points out that this issues did not form part of the key facts relied on for the sentencing indication. As a result, Ms Maino argued that this stance of Ms Lacy demonstrated a lack of insight and the absence of any genuine remorse with the result that any discounts must be heavily reduced.

[20] That said, Ms Maino accepted that discounts for personal factors as identified in the reports that had been filed were appropriate.

[21] As foreshadowed, regarding any discount for remorse, Ms Maino urged the Court to dismiss this possibility entirely, or if any discount was entertained, it should be at the very low end of the scale. The letters of remorse were also provided very late in the piece according to counsel which must necessarily compromise their sincerity according to counsel.

[22] On the issue of rehabilitative prospects, Ms Maino submitted that there appeared positive, while noting that Ms Lacy had previously received a sentence of home detention with special conditions and yet despite that, was once more before the Court on serious charges. In summary, counsel argued that, given Ms Lacy's history of serious offending, and taking into account the circumstances of this case, a sentence of imprisonment was justified.

Defence submissions

[23] Your counsel, Mr Mills, submitted that the victim impact statements, as they relate to allegations of ongoing threats, should be put to one side since there was no evidence to support those claims. As to the issue of your claims of a drug deal gone

wrong, Mr Mills pointed to the fact that the female victim's statement made it plain that she knew or had some previous encounter with Mr Rikihana. This then would enable an inference to be drawn that the drug deal narrative you have explained is not entirely without foundation or plausibility.

[24] He also submits that there are significant personal factors at play in your case which have led to your offending which are raised in the comprehensive report, the PAC report and in you and your partner's letters. He submits that, once these factors are considered, home detention is available and should be imposed given your rehabilitative prospects and lengthy compliance on EM bail.

[25] In particular, Mr Mills says that one of the issues which has become clearer through the sentencing reports and other material, is the reality of the previous relationship between you and Mr Rikihana, where you suffered from being controlled and manipulated. These factors go not only to the 'personal circumstances' stage of offending, but also speak to the offending itself.

[26] Mr Mills has referred to the Court of Appeal's comments in *Zhang v R*⁸ and *Carr v R*,⁹ where matters such as addiction, social and cultural dislocation, poverty and deprivation raised in a cultural report, provided under s 27 of the Sentencing Act, must be considered in sentencing and may attract a discount. He submits that there is no fixed limit to such discounts, and that it is often difficult to assess the correct range for discounts resulting from personal, circumstantial and cultural factors.¹⁰

[27] In your case, Mr Mills contends that there are both addiction and personal factors at play, which have a strong causal link to the offending. Of particular importance is the significantly abusive relationship you suffered from with Mr Rikihana. If your account of events is accepted, then your actions in the offending were committed with the intent of placating him. Moreover, they occurred while you

⁸ *Zhang v R* [2019] NZCA 507 [2019] 3 NZLR 648 at [10].

⁹ *Carr v R* [2020] NZCA 357 at [56] and [60].

¹⁰ Citing Gendall J's comment to that effect in *Murray v Police* [2022] NZHC 696 at [21]. Counsel also cites, by way of comparison where addiction issues were given issues in non-methamphetamine cases, *Ropitini v Ministry of Social Development* [2021] NZHC 2273 (15 per cent discount for interlinked addiction and cultural issues); and *Stuart v R* [2021] NZHC 710 (25 per cent discount for personal and addiction factors).

were under the influence of methamphetamine and a severe methamphetamine use disorder. Accordingly, Mr Mills submits that a 25 per cent discount is appropriate.

[28] Mr Mills further speaks to your whānau circumstances and prospects of rehabilitation. In your case, what is important is a rehabilitative approach. You have demonstrated a willingness to rehabilitate, your current domestic situation is stable and supportive, and you now have your daughter living with you. Further, you have been on EM bail at your current address for a significant period of time with no breaches. At this stage, imprisonment could have a devastating impact on your progress and negatively impact the child in your care. On this basis, a further discount of 5 to 10 per cent is appropriate.

[29] As to additional discounts, Mr Mills argues that a small discount of 5 per cent is appropriate for the genuine remorse detailed in your letter and that of your partner to the Court. Further, he says that an extra discount of one month to reflect the extra time spent on pre-sentence EM bail since the sentence indication is justified.

[30] Finally, Mr Mills highlights that imprisonment is a sentence of last resort. In circumstances where you have complied with EM bail for a significant period of time in a positive and rehabilitative domestic situation, he submits that home detention is appropriate.

Discussion

[31] As I said at the beginning of this sentencing, and the reasons for which are given in the sentence indication, a starting point of three years' imprisonment for the aggravated robbery is appropriate. Added to that figure, is one months' uplift for previous offending. I then deducted 10 per cent discount for your guilty plea and gave a further four months' discount for time spent on EM bail. Without taking account of your personal circumstances, that means a sentence of two years and five months' imprisonment.

[32] Taking account of your personal circumstances, as set out in the above reports and submissions, and acknowledging the link, which Crown counsel accepts, between

those circumstances and your offending, I consider that a further discount of 20 percent is appropriate.

[33] Further, since the sentence indication and your guilty plea in September, you have spent some further months on EM bail and complied with all conditions. Crown counsel notes that this grant of bail was technically in error given you are subject to s 11 of the Bail Act 2000, which was overlooked by all parties at arraignment. However, they accept that a further small allowance may be appropriate to reflect the additional time spent on EM bail. Whether given in error or not, the reality is that you have spent the time on restrictive bail and have been fully compliant. I discount a further month to acknowledge this time. I also take account of the fact that you have, since the sentence indication was accepted, spent a further period of time on EM bail. Accordingly, your end sentence is 21 months.

[34] The next issue is to determine whether, in all the circumstances of your case, a sentence of home detention or if some appropriate alternative is justified. Your counsel has argued that it is. Crown counsel submits that it is not and that a term of imprisonment is appropriate. The report writers have suggested that a form of supervision is warranted.

[35] I accept that you were heavily influenced by Mr Rikihana and that your role was different to his during the offending. In any case, what is important here is removing the drivers of offending. Mr Rikihana has already been removed as an anti-social driver as has, by the account of the reports, much of your drug and alcohol issues. You have also made some progress while on EM bail it would appear, which is an encouraging sign in the context of your future rehabilitative prospects.

[36] I consider intensive supervision or supervision is insufficient to fulfil the purposes of accountability and denunciation. Aggravated robbery is not a trivial crime, and, as noted in the sentence indication, you cannot be described as a secondary offender – notwithstanding that you did not personally carry out any physical violence. In this context, I have also carefully considered the victims' statements, especially how they have been impacted by this offending both financially and emotionally. Furthermore, and as foreshadowed, if you have been sober and clean since the

offending, it appears that EM bail conditions, which are comparable to home detention, have been working in that respect.

[37] In my assessment, taking into account your role in the offending, your personal circumstances and the objectives of sentencing, particularly rehabilitation, I consider that a sentence of imprisonment on this charge would not be appropriate. Conversely, I reject the PAC report's suggestion that intensive supervision is warranted in this case. Instead, I accept the submissions of Mr Mills that home detention is justified.

Decision

[38] Natasha Lacy, would you please stand.

[39] On the charge of aggravated robbery, I sentence you to 10 months' home detention.

[40] Please stand down.

Additional comment

[41] For completeness, I note that following the issue of the sentence Mr Mills made a submission on a pretrial detention discount. Ms Maino did not wish to make a submission in response. This matter had not been raised before me previously. Having reviewed the file again, taking into account all relevant considerations, in the round, the sentence will remain 10 months' home detention.

Harvey J