

POLICE

v

GENE MAXWELL

Sentence: 7 December 2017

Counsel: Ms A Mills for the Crown
Mr M Short for the Defendant

SENTENCING NOTES OF THE HONOURABLE JUSTICE CHRISTINE GRICE

[10:16:05]

[1] Mr Maxwell, you are charged with three offences today. Two of them are serious. They are two charges of wounding with intent relating to Mr Tuakanangaro and Mr Tiro respectively. These offences each carry a maximum period of imprisonment of 7 years.

[2] The third offence is a breach of probation due to drinking alcohol before this incident. This carries a maximum penalty of 3 months imprisonment.

[3] The summary of facts indicates that you were in an incident or a fight outside Raro Fried Chicken in the early hours of 29 July.

[4] You had been drinking with friends in the wharf area. You saw your associate in an argument with some other people and you went over. You said you were trying to sort it out but ended up in the middle of the fight.

[5] You pulled out a small pocket knife from your pocket and stabbed two people. Mr Tuakanangaro was more seriously wounded in the leg. Mr Tiro was trying to get the knife off you. Fortunately, neither were seriously injured. You cannot remember much of it at all.

[6] There is some confusion about who was doing what in the fight but it seemed that you willingly got yourself in the middle of it. Mr Short has done his best to portray your involvement in the best light possible. Nevertheless, you should have kept well away but the alcohol stopped you from thinking clearly.

[7] Mr Short summarised the situation very clearly when he says you were stupid and drunk and driven by testosterone. That is an accurate summary but the law does not accept those factors as excuses.

[8] This is not your first appearance in this Court for offending. On 30 March 2017, you were convicted and fined \$40 with Court cost of \$50 for breach of your probation. You were sentenced to a period of 12 months in January 2017 when you were convicted on a charge of burglary. Your probation period was due to expire next month.

[9] On the same day you were charged with a theft charge. In June 2017 you were sentenced on a further burglary charge and ordered to do six months of your probation on community service. You have been given warnings and chances. Probation and community service penalties were not enough to make you understand that you cannot keep on getting yourself into trouble.

[10] As the Crown submitted I must consider the sentencing principles. The law requires me to take into account a number of matters before I sentence you.

[11] I must hold you accountable for the harm that you have caused both to the victim and the community, to promote in you as far as possible a sense of responsibility as well as an acknowledgement of the harm. The sentence must also deter you and others from committing similar offences. At the same time I must try to impose a sentence that will assist your rehabilitation and reintegration.

[12] I must take into account the seriousness of the offence as well as your personal circumstances.

[13] In this case the Crown says that this offence needs to be treated relatively seriously and it is seeking a term of imprisonment. It says that the things that make this more serious, or the

aggravating factors: that you carried a knife and you used it; that two people were injured in this fight as a result of you using that knife and that you were under the influence of alcohol at the time of offending. This is despite being on probation with a condition prohibiting you from drinking alcohol. The Crown also points out that you have previous convictions.

[14] One of the victims continues to have trouble with his thigh – including numbness at night. Both the victims say that they have suffered a degree of trauma.

[15] Mr Short on your behalf made detailed submissions on your behalf. He pointed out that you are a good young man and apart from being in trouble. Your mother says this is because of the people that you hang out with. They are a bad influence. You have the support of the Pastor who wrote a letter on your behalf and the support of your family. Your mother also wrote a letter saying that she is concerned about you, will always support you and seeks leniency. You are fortunate to have that support.

[16] Mr Short noted that you apologised. He made strong points including you entered an early guilty plea and you readily accepted the facts. I take that into account. The early guilty plea is a factor which requires me to lessen the term of imprisonment that I would otherwise impose. The other thing that Mr Short urged on me was that you are only 17 years of age. He said at 17 you were driven by things that may not make sense. There is a lot of research concerning the development of responsibility in 17 year olds. I cannot take that issue too far but what is of concern is your youth and the fact that you have already got a history of offending. This is a serious crime.

[17] The provisions for dealing with children charged with crimes only apply to children under the age of 16. Otherwise they are treated as adults. The new Family Protection and Support Act defines a child as someone under the age of 18 for the purposes of care and protection. That and the age for criminal responsibility are a mismatch.

[18] Nevertheless, this sentencing is in the criminal court, I am bound by the law applying here.

[19] I must consider other cases in similar circumstances and the sentences imposed. The Crown referred me to the New Zealand case of *Taueki*¹ which is regarded as a leading case to assist in the assessment of the level of appropriate sentence for this type of offence.

[20] I have set out the factors which aggravate this offence. This is not the most serious case of its type, there was no premeditation but the fact you were drunk and stupid are not discounting factors.

[21] The use of a knife is serious. Mr Short said it was only a little knife and used generally for repairing motorbikes and a lot of kids carry them.

[22] The Crown said the use of weapons in fights and brawls in the Cook Islands is unusual and has to be stopped short. I bear in mind the need to deter other people from doing it.

[23] The Crown also referred me to a number of other cases. In *Police v Kakino*² the offender faced a charge of aggravated wounding. It was a serious and violent offence which carried a maximum of 14 years. In that case it was young first offender. He was sentenced to 1 year and 3 months imprisonment.

[24] In *Police v Leroy Robinson*³ a sentence of 12 months imprisonment was imposed on a charge of injuring with intent and assault. This was an attack on a policeman involving serious violence. In that case the starting point for imprisonment was taken as 18 months to 2 years.

[25] In another case called *Lailebure*⁴ the offender was charged with one charge of injuring with intent to cause grievous bodily harm. That carries a maximum penalty of 10 years. In that case the offender was imprisoned for 6 months.

[26] Your offending poses a dilemma. In particular your age causes concern. However I see no option but imposing a term of imprisonment given your previous offending and the chances that you have been given.

¹ *R v Tuaeke* [2005] 3 NZLR 372 (CA)

² *Police v Kakino* [2007] CKHC 15 June 2007

³ *Police v Leroy Robinson* CRNs 934/12 & 177/13, 6 December 2013, Grice J

⁴ *Police v Lailebure* CKHC 25 November 2016, Grice J

[27] The elements of the offending or the factors in the offending lead me to a starting point of 10 months imprisonment.

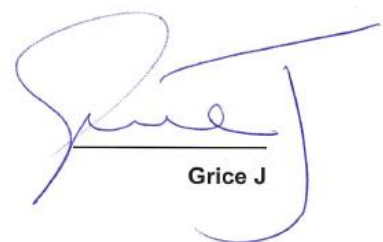
[28] For the guilty plea you are entitled to a discount of one third. I also consider your youth. Prison will do nothing to assist your rehabilitation. Mr Short has emphasised that. However, a term of imprisonment is inescapable.

[29] This matter was recalled to clarify your sentence. You were remanded in custody for 2 weeks when you first came before the Justice of the Peace. I take that into account by deducting that period off your sentence. My initial sentence was a term of 6 months imprisonment on each charge of wounding with intent. That will now be reduced for the remand in custody. I sentence you to a term of imprisonment of:

- a) 5 months, 2 weeks on the charge of wounding with intent (Mr Tuakanangaro);
- b) 5 months, 2 weeks on the charge of wounding with intent (Mr Tiro); and
- c) 1 month on breach of probation.

[30] These are to be served concurrently.

[31] You may now stand down.



Grice J