

POLICE

Vs

TEREAPII GREIG MOSE

Hearing date: 25 August 2020

Counsel: Ms J Epati for the Crown
Mr M Short for the Defendant

Sentence: 25 August 2020

**SENTENCING NOTES
OF THE HONOURABLE JUSTICE DAME JUDITH POTTER**

[12:39:06]

[1] Tereapii Mose, you appear before the Court for sentence on a number of serious charges, as follows:

- a) One charge of aggravated robbery which carries a maximum sentence of 14 years. This robbery took place on the 10th November 2019 when you were on bail following two burglary charges.
- b) Three charges of burglary which occurred on the 13th July 2019. The 12th or maybe it was the 18th October 2019 and the 21st December 2019. Maximum penalty for each of the burglaries is 10 years imprisonment.
- c) Two charges of theft on 18 August 2019, with a maximum penalty of 5 years.

- d) Four charges of contempt of Court with a maximum penalty at 6 months or a fine of \$500.

[2] You have entered guilty pleas for each of these charges.

Facts

[3] It is necessary that I endeavour to summarise the facts of your offending.

[4] In relation to the aggravated robbery charge on Sunday the 10th November 2019, you consumed liquor with friends and then formulated a plan with them to go to the Tex Mart store and steal cash. You donned hooded clothing as a disguise.

[5] There were no customers in the Tex Mart store when you arrived. You waited outside on the motorcycle that had taken you there and acted as the lookout.

[6] Your associate entered the store. He rushed towards the shop assistant and started punching him in his face numerous times. The assistant fell to the floor.

[7] Your associate started to walk towards the till when the assistant lying on the floor attempted to look up. Your associate walked back and started punching him again in the face and said to him, "You are dead". Then he walked to the cash till, ripped it from the counter and ran out of the store.

[8] You went back to your place of residence and shared approximately \$1,000 cash that was in the till. The cash till was found dumped the following morning. Only \$100 of the stolen money was recovered.

[9] On 13 July 2019 you were involved in a burglary, again at the Tex Mart store which was the focus of the aggravated robbery.

[10] Again there was a plan to go and burgle the store. You cut the lock with a bolt cutter to get inside with one of your associates waiting outside.

[11] You and an associate entered the store, walked straight to the counter, took \$200 cash, opened the safe, took another \$1,727 and also took cigarettes and alcohol having a value of just under \$2,400. The items were hidden and you returned with your associates to recover them the next day.

[12] On 21 December 2019 you and an associate went to a residential address in Arorangi. You opened and entered through the back door and disturbed people who were sleeping in the house. You and your associate hid, but you were discovered and chased out of the house.

[13] Another person who had been sleeping in the house was woken up by the noise and later found that a box of Woodstock had been removed from the fridge and a rubber spark removed from a motorcycle. The motorcycle tyres had been removed from their previous place.

[14] On 18 October you again burgled a private residence. This time the residence of the Heather family in Arorangi. The previous property was that of the Marsters family.

[15] You broke through the kitchen window on the mountain-side of the house and helped yourselves to anything that you could find in the house – which included watches, a Samsung phone, a silver led torch, two bottles of vodka – and then you exited the building through the main sliding door. Some of the items were found and returned to the owner.

[16] As to the thefts, they were opportunistic.

[17] On the 18th August the theft of a bag on Rutaki Beach containing a considerable amount of cash and phones. You simply took the bag while the owners were swimming in the sea. The stolen property was valued at \$3,798 and there was cash of NZD \$400 and €100 in Euros. Similarly at Papaaroa Beach.

Victim Impact Statements

[18] I have read victim impact statements from three of the Marsters family, from a member of the Heather family, and from Tex Maroro in respect of the aggravated robbery at Tex Mart. He was not the principal victim, that was an assistant who suffered physical injuries from the assault.

[19] The people whose residences you burgled refer to the shock and fright of the intrusion on their privacy when they were asleep. It is not difficult to imagine what that must have felt to them.

Purposes and Principles

[20] I must take into account the purposes and principles of the Sentencing Act 2002. The sentence the Court imposes must deter you and others from this type of offending. It must hold you accountable for your actions and very importantly the Court must take into account your youth. You are now 18. You were aged 17 at the time of offending and though you appear for a number of serious offences, this is the first time that you have appeared before the Court.

Aggravating Factors

[21] The Crown refer to the aggravating features of the offending. In relation to the aggravated robbery: that there were multiple offenders; that it involved premeditation and planning; that there was injury caused to the shop assistant in his facial area; and the public nature of the store which gave rise to the risk that members of the general public could also have been harmed.

[22] I note that only 4 months previously you had burgled this very store and that you were subject to bail conditions at the time of this offending.

[23] In relation to the burglaries the Crown note that these were burglaries that took place in private homes and members of the family were awoken. Again, you were subject to bail conditions at the time of this offending.

[24] The Tex Mart burglary again involved multiple offenders, premeditation and planning and there was the significant value of the goods and cash taken.

[25] In relation to the thefts, it is noted that most of the stolen property was returned to the victims.

[26] The Crown observes in relation to the issue of intoxication that it should be treated as a neutral factor in this offending. It is clear that you had been drinking before the aggravated robbery and possibly before some of the other offending. I treat it as a neutral factor.

Mitigating Factors

[27] In relation to mitigating factors: you are, as I say, young – 17 years at the time of the offending, 18 years now. This is your first appearance. You have been cooperative. You have helped locate the property stolen and it has been, in most cases, returned to the owners – not so the cash. You are remorseful.

[28] A helpful pre-sentence report has been provided. It notes the mitigating factors in your favour: that you acknowledge now that what you did was stupid; that you are apologetic and regretful. Nevertheless the probation report notes that the offending was planned. It recommends a custodial sentence.

Authorities

[29] I have been referred to a number of authorities, particularly that of the *R v. Manuela*¹ – a decision of Justice Keane on 5 August 2020, a very recent decision.

[30] Your situation is quite similar to that of *Manuela*. In that case Justice Keane took a starting point of 3.5 years, and making an allowance for the guilty plea and remorse, reached a sentence of 2 years imprisonment.

[31] He noted, as is relevant in this case, that when a number of associates are involved in this type of criminal offending all are equally responsible whether their role is that of breaking and entering or as the getaway driver. There is equal responsibility on all involved in this criminal offending.

¹ *R v Manuela & Ors*; (CRN 218-220/2020); Keane J., 5 August 2020.

Submissions

[32] The Crown submit that a starting point for this offending is 4 years, that is the starting point of 3.5 years as in *Manuela* but with an uplift of 6 months to recognise the other serious offending for which Mr Mose must be sentenced.

[33] Nevertheless, in oral submissions this morning the Crown submitted that an end sentence of 12 months would be appropriate followed by a period of probation proposed at 18 months.

[34] Ms Epati acknowledged that applying the usual arithmetical steps to the construction of the sentence would not produce a custodial sentence of 12 months. But she submitted, given the international obligations to take into account the extreme youth of this offender, that a sentence of 12 months was appropriate. This would enable a period of probation to be imposed which should be helpful to Mr Mose in the future conduct of his life.

[35] Mr Short in oral submission this morning submitted that Mr Mose is a naive young man who got into the wrong crowd and became involved in multiple offending; that he wants to reform; that he is employed by T&M Heather who had written a letter in his support undertaking that he would maintain his job and receive supervision.

[36] Mr Short noted that Mr Mose has retained his position with T&M Heather since January and submitted that there has been a dramatic change for the better. He notes that the family accept whatever sentence is imposed by the Court and apologises for the defendant's wrongdoing.

[37] Mr Short supports the submission by the Crown for a custodial sentence of 1 year with 18 months supervision.

Sentencing

[38] As I work through the sentencing process, from a starting point of 3½ years as was adopted in the case of *Manuela*, and applying an uplift of 6 months for the other offending in addition to the aggravated robbery offending I reach a revised starting point of 4 years as submitted by the Crown.

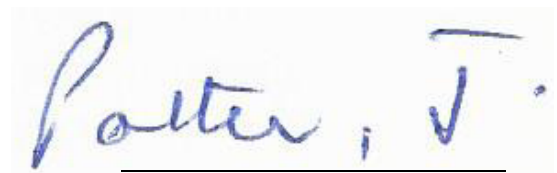
[39] An appropriate allowance for youth and remorse would be in the vicinity of 20 percent. This being acknowledged by the Court of Appeal in the case of *Tonorio*² as appropriate for young offenders. Applying a discount of approximately 20 percent or 12 months, I reach a revised sentence of 3 years. Then there is a discount available for the guilty plea of one-third which would reduce the sentence to 2 years.

[40] That was the end sentence imposed by Justice Keane on Mr Manuela. He was 19 at the time of sentence; younger at the time of offending by about a year.

[41] I am very sympathetic to the Crown's lenient approach and I have listened carefully to the submissions of Mr Short. Nevertheless, I have reluctantly reached the decision that a sentence of less than 2 years imprisonment in this case simply is inadequate and inappropriate to reflect the seriousness of Mr Mose's offending.

[42] Because the sentence I impose is 2 years imprisonment, it is not available to me to also impose a sentence of probation.

[43] Mr Mose, the sentence I impose on you is 2 years imprisonment. You may stand down.

A handwritten signature in blue ink that reads "Potter, J." with a horizontal line underneath.

Judith Potter, J

² *Tonorio v R*; CA 2/19 (CRN 590-592/18); Williams, Asher & White JJ.
R v Tonorio; (CRN 590-592/18, 89-90/19); Doherty J; 9 August 2019.