IN THE HIGH COURT OF NEW ZEALAND
INVERCARGILL REGISTRY

CRI-2009-425-2

PETER ANTHONY TEDDY
Appellant

v

NEW ZEALAND POLICE
Respondent

Hearing: 31 March 2009

Appearances: Ms K L McHugh for Appellant
Mr M A Mika for Respondent

Judgment: 31 March 2009

(ORAL) JUDGMENT OF LANG J
[on appeal against sentence]

Solicitors:
Preston Russell Law, Invercargill
Crown Solicitor, Invercargill

[1] Mr Teddy was charged in the District Court with the theft of a 1939 Chevrolet truck. He was also charged with breaching a protection order, assaulting a female, being in possession of drug-related utensils (a pipe) and breaching the terms of his bail.

[2] He pleaded guilty to those charges and on 17 December 2008 His Honour Judge Phillips sentenced to him to two years six months imprisonment. He now appeals to this Court against the sentence on the basis that the Judge erred in principle and/or that the sentence was manifestly excessive.

[3] In order to understand some of the issues that the appeal raises it is necessary to briefly set out the factual background. This is to be ascertained from the agreed summary of facts that was presented to the Judge at the time that he sentenced Mr Teddy and his co-offender, Mr Te Kahu.

Factual background

[4] The summary records that the complainants in this matter were the owners of a 1939 Chevrolet truck. They had restored the vehicle and were storing it at a workshop in Clyde Street, Invercargill. The restoration of the vehicle had obviously occupied a good deal of their time and attention and had also cost the complainants approximately $25,000.00. Relevantly, Mr Teddy had at some stage been employed by the complainants and was aware that they owned the truck.

[5] Mr Teddy evidently has close associations with the Mongrel Mob in Invercargill. In mid April 2008 he spoke to the complainants and told them that there was a "hit" out on them and that this was to be carried out by the Mongrel Mob. A few days later, Mr Teddy and Mr Te Kahu visited one of the complainants at her Tuatapere address. At the time Mr Te Kahu was the President of the Invercargill chapter of the Aotearoa Mongrel Mob.

[6] When Mr Te Kahu spoke to the complainant on this occasion he requested that she give him "a gift". This visit was followed up over the next few days with telephone calls confirming that Mr Teddy and Mr Te Kahu wanted the complainants

to give them a gift and asking whether they had made their decision in that regard. The complainants ultimately told Mr Te Kahu that they were not prepared to give him anything.

[7] A few days later the truck was stolen in a burglary of the Clyde Street workshop. Some days after that, Mr Teddy telephoned the female complainant and told her that Mr Te Kahu had taken her truck. He also said that the person who had been restoring the truck wanted a further payment in respect of work done to date.

[8] Mr Teddy appears to have been the go-between at this stage between the complainants and Mr Te Kahu. When he sent a text message to Mr Te Kahu to the effect that the complainants were not prepared to make any further payment, Mr Te Kahu replied by responding that the truck was now "gone forever", that the complainants had had their chance and that the truck was going to be "stripped".

[9] On 23 May 2008 Mr Teddy telephoned the complainants again. He told them that Mr Te Kahu had taken the truck and that he, Mr Te Kahu, wanted the sum of $5,000. The complainants told Mr Teddy in no uncertain terms that they would not be paying any money for the return of the truck.

[10] In early June 2008 the police visited the Mongrel Mob headquarters on an unrelated matter. Whilst there they located the stolen truck in a garage on the property.

The Judge's decision

[11] The Judge clearly took the view that this was serious offending. He noted other authorities in which other high value items had been stolen and significant sentences of imprisonment imposed. He noted that there was a hint of extortion involved in the matter, or demanding with menaces. On that basis he selected a starting point of two years six months imprisonment on the charge of theft.

[12] He then turned to aggravating factors personal to both offenders. Both of them had significant criminal records. He took this as an aggravating factor and

applied an uplift of six months to the starting point of two years six months. He then added a further three months imprisonment to Mr Teddy's sentence to reflect the charges of breaching a protection order and assaulting a female. The Judge referred to those as the "domestic offences". He also imposed concurrent sentences of one months imprisonment on the charges relating to the pipe and the breach of bail.

Grounds of appeal

[13] Mr Teddy now contends on appeal that the starting point that the Judge adopted was too high. He also argues that the end point resulted in a sentence that was manifestly excessive because of the fact that the Judge did not give him sufficient discount for his early guilty pleas.

Decision

[14] I do not consider that issue can be taken with the starting point that the Judge adopted. This was clearly serious offending. It extended over some period and did not involve just the theft of the truck. It involved the threats that occurred before the truck was stolen and the threats that continued thereafter. This would have caused great anxiety to the complainants, who obviously refused to be intimidated by Mr Teddy and Mr Te Kahu.

[15] In my view, offending such as that must be met by a stern response. Although the starting point may be said to be at the upper end of the range available, I have no doubt that it was within the appropriate range and I do not consider that the sentence can be criticised on that basis.

[16] No real complaint can be made, either, regarding the uplift that the Judge applied to reflect Mr Teddy's appalling criminal record. Counsel did not advance this as part of her grounds on appeal.

[17] The only real issue that needs to be determined is whether the Judge gave Mr Teddy a sufficient discount to reflect his early guilty pleas. These were entered at a very early stage in proceedings.

[18] The Judge did not express his conclusion in relation to a discount in percentage or proportionate terms. Rather, he simply noted that he proposed to give a discount of nine months from the starting point of three years imprisonment that he had selected after taking into account aggravating factors. This means that he must have applied a discount factor of 25 per cent to the theft charge.

[19] The Judge does not, expressly at least, appear to have applied any discount at all to the sentences to be imposed in relation to the so-called domestic offences. They, too, ought to have qualified for a discount on the basis of the early guilty pleas.

[20] I consider that, in most cases where very early guilty pleas are entered, a discount of 33 per cent or one-third ought to be given. That is now virtually the norm in this Court and, from what I have been able to see in recent cases, in the District Court also. It has also been the subject of mention in the Court of Appeal in cases such as *R v Walker* CA435/2008, 6 March 2009. In that case the Court said at [19]:

> … an accused can expect a 30-33% discount for a guilty plea entered at the earliest opportunity; …

[21] The Court of Appeal made a similar comment in *R v Patrick* CA440/07, 9 May 2008 where it said at [31]:

> It is now well established that a guilty plea at the earliest opportunity should give rise to a discount of 30-33% …

[22] I consider that in the present case the Judge ought to have applied a discount factor in that order when sentencing Mr Teddy because of his very early guilty pleas. Had that been done, it would have had a reasonably significant impact on the end sentence that the Judge imposed. It would have resulted in an end sentence of two years two months imprisonment rather than the end sentence of two years six months imprisonment that Mr Teddy ultimately received.

[23] Regardless of whether the result can be categorised as having been reached through an error of principle or an end sentence that is manifestly excessive, I consider that this Court on appeal needs to take account of this factor and reduce Mr Teddy's sentence accordingly.

Result

[24] For these reasons, the appeal is allowed. The sentence on the lead charge of theft is reduced to two years imprisonment. The sentences on the domestic offences are quashed. In their place there is a sentence of two months imprisonment on each charge. Those sentences are to be served concurrently with each other but cumulatively upon the sentence of two years imprisonment imposed on the theft charge.

[25] The sentences of one months imprisonment on the utensils charge and the breach of bail are not affected, and are to be served concurrently with the other sentences.

[26] The order for destruction of the pipe is to stand.

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Lang J