

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

CRI 2007-019-7228

THE QUEEN

v

JERRY ANDREW NGAHERE PIRA

Charges: Aggravated Robbery (2);
Receiving

Plea: Guilty

Appearances: Ross Douch for Crown
Wayne Dollimore for Prisoner

Sentenced: 21 April 2009
Aggravated Robbery (2) – 8 years 3 months imprisonment
Receiving – 2 months imprisonment
(all terms concurrent)

SENTENCING NOTES OF HARRISON J

SOLICITORS

Almao Douch (Hamilton) for Crown
WN Dollimore (Hamilton) for Prisoner

Introduction

[1] Mr Pira, you appear for sentence today having pleaded guilty to two charges of aggravated robbery. You know that the maximum sentence which can be imposed on each is 14 years imprisonment. You have also pleaded guilty to an unrelated charge of receiving. On that the maximum term of imprisonment is three months.

[2] In these sentencing remarks I shall deal first with the facts. They will largely dictate the length of the sentence which I will impose.

Facts

[3] Up until late August 2007 you lived at Tauwhare. Also resident at that address were your mother, your two daughters and their boyfriends. The boyfriend of one is David Sutton. He was then aged 20 years. In August 2007 you were aged 47.

[4] At about 7.30 pm on 15 August 2007 you and an accomplice went to the Liquor Inn on Clarkin Road in Hamilton. Your accomplice entered the premises first through a roller door. You followed him. Upon entry you closed the roller door. Both of you were disguised. Your faces were covered with brown coloured women's stockings. You were wearing a hat and a hooded sweatshirt. The two of you were wearing gloves.

[5] Your accomplice pointed a handgun at Mr Zhou, the attendant at the Liquor Inn. He told Mr Zhou to get away from the counter and lie on the floor. Mr Zhou complied. Your accomplice "hog tied" Mr Zhou while he was lying face down on the floor. He was left lying in that position throughout the robbery.

[6] You and your accomplice then filled a large red bag which you had taken to the premises with cigarettes and other property. A large amount of cash was also taken from Mr Zhou together with personal property such as a Panasonic digital camera, an electronic dictionary and a mobile telephone. Items of liquor were also taken. The robbery lasted about 20-30 minutes. Mr Zhou was able to free himself

once you and your accomplice had left. The police have valued the property stolen as in excess of \$5,000 including cash.

[7] Shortly after, on 20 August 2007, you and Mr Sutton travelled with other family members to Wellington. A settled purpose of the journey was to sell the stolen cigarettes and tobacco that you had taken five days earlier. That robbery had yielded a large amount of cash which was shared with Mr Sutton.

[8] On 23 August 2007, that is eight days after the first robbery, you and an accomplice went to the Broderick Road Dairy at Johnsonville in Wellington. You arrived at about closing time, 8 pm. You and your accomplice entered through a store room door. Both of you were carrying guns. You pointed them at the female occupant of the dairy as you entered. You, Mr Pira, struck the female proprietor on the left side of the head with the gun. You told her not to scream or that you would smack her. You pushed her, causing her to fall backwards into the wall. As a result she struck her head and fell. That blow caused bleeding and she suffered a swollen lip.

[9] Again you and your accomplice were disguised in the same manner as for the previous robbery. Both of you were also wearing gloves.

[10] You demanded that the victims lie on the floor. You took cigarettes and cash. Your accomplice tied the female proprietor's hands behind her back by using black plastic ties. The two victims were taken to the toilet area of the dairy. There they were forced to lie on the floor. Again the robbery took about 20-30 minutes. On that occasion a much larger amount of cash was stolen including \$4,500 which the owners had collected in a voluntary capacity for hockey club subscriptions.

[11] On the receiving charge, a search of your property on 28 August 2007 revealed a trailer which had been stolen from Cambridge. It had an approximate value of \$500. You admitted to the police that you received the trailer, knowing it was stolen property.

Starting Point

[12] Against that background, Mr Pira, I must set the starting point for your sentence. The starting point is the term of imprisonment which is appropriate to recognise your wrongdoing for the circumstances of the offending. Once that is set I must take into account any bad or aggravating personal features and any mitigating or good features, particularly your pleas of guilty.

[13] The circumstances of the offending tell their own stories. Both robberies followed a similar pattern. You had an accomplice, a younger person. You used firearms. While they were not loaded, they were designed to instil fear into your victims. There was a considerable degree of pre-planning in deciding both on the targets and the timing. It was cold blooded. You were not affected, Mr Pira, as so many are by drugs or alcohol. You used disguises. One of your victims was bound. As I have noted, you used particular violence towards a female victim while, of course, she was in a defenceless position.

[14] In both cases you stole significant amounts of cash and property. The Crown now estimates the value of the stolen items at Johnsonville at \$18,840. A particularly cruel element of the Wellington robbery, as I have noted, was that the proprietors of the dairy have had to bear out of their own pockets the cash that you stole and which they had collected in subscriptions for their hockey club.

[15] In my judgment you were the more culpable offender. As Mr Douch has said today, you were the leader of the household. You are an older man. You are an experienced criminal. You have written a letter to the Court expressing remorse, which I appreciate. But you have also used that correspondence as an attempt to diminish or downplay your role. You describe yourself as merely an accomplice. I do not accept that, Mr Pira. In my judgment you were the more culpable of the two.

[16] There is one other particularly aggravating factor. It relates to your choice of victims and their vulnerability. As Mr Douch emphasises, you targeted neighbourhood commercial premises. They serve a vital role in a local community

by allowing easy access to the product they supply. They are, as Mr Douch says, invariably family businesses. They are undermanned and they do not enjoy the benefit of sophisticated security systems. Frequently, as you know, Mr Pira, these neighbourhood businesses are run by new migrants. They are hard working, industrious people seeking to make new lives for their families and themselves in a country said to offer peace and security. You destroyed that ideal.

[17] Consistently with the pattern that you adopted in the 1992 robbery, you targeted businesses run by Indian and Chinese people. I am satisfied that you knew, because of their disposition, that each victim was particularly vulnerable to you. You knew of your ability to instil fear in them and your ability to take advantage of your superior physical strength. Your treatment of the female victim in Johnsonville was, as acknowledged in your letter, cruel and cowardly. She and her husband understandably have been deeply affected by their ordeal. The Hamilton victim, a Chinese man, had come to this country in 2001 in search of a better life. He has now returned to China disillusioned. His message, Mr Pira, is that New Zealand is not a safe place.

[18] I am familiar with the leading authorities in the Court of Appeal which discuss the principles applicable to fixing the appropriate starting point. I was the sentencing Judge in one of those cases: *R v Delegat* CA327/02 24 February 2003. In 2001 the Court of Appeal has said that for this type of aggravated robbery where violence is involved a starting point of eight years imprisonment is appropriate: *R v Mako* [2000] 2 NZLR 170. In my judgment that is the minimum. If the two offences or charges were aggregated, the starting point would be 16 years. However, I must look at the totality of your offending in the round.

[19] The Johnsonville offending, because of the violence to the female victim and the amount stolen, was arguably the more serious. I will treat that as the lead or index charge and the Hamilton robbery as the secondary one. Accordingly I find that the appropriate starting point is one of 12 years imprisonment, divided between the Johnsonville count of eight years and the Hamilton one of four years.

[20] Mr Douch submitted that an appropriate starting point would be 15 years. I have some sympathy for that submission. In my experience over the past seven or so years since guidelines were set, this type of offending has become more prevalent and sinister. It may be time to adjust the sentencing levels upwards. However, as a trial Judge, I do not have that power.

[21] There is one other feature that affects the starting point. You have a shocking previous record dating back to 1978. You are not being punished again for it, Mr Pira, but it is appropriate to take it into account as an aggravating factor because of your history of serious dishonesty offences. That shows a propensity for this type of offending. In particular, as Mr Douch emphasises, you were sentenced to a term in excess of 10 years imprisonment in 1992 for aggravated robbery accompanied by rape. You did not learn. As recently as 2004 you were sentenced to a term of two-and-a-half years imprisonment for burglary. In my judgment that feature justifies an upward adjustment in the starting point to 13 years.

Mitigation

[22] Against that starting point I must take into account your favourable or good features. Principally, Mr Pira, you are entitled to a substantial credit for your pleas of guilty. I plan to give you a slightly greater discount than I would otherwise to take account of Mr Dollimore's submission that DNA testing undertaken for the police only implicated you in the Johnsonville robbery. You elected to admit to the Hamilton robbery after that evidence from Johnsonville emerged.

[23] I do accept that you are remorseful. I give proper weight to your letter. I take account of the experienced probation officer's assessment that you are sincere in your remorse. Otherwise, Mr Pira, there is nothing in your personal history that assists you. You did, to your great credit, make a determined attempt to rehabilitate yourself at one stage. It is a tragedy that that did not succeed.

[24] In the result, Mr Pira, I sentence you to terms of eight years and three months imprisonment on each of the two robberies. Those sentences are concurrent; that is, they are to be served together and are not cumulative or additional upon each other.

Additionally, you are sentenced to a concurrent term of imprisonment of two months on the receiving charge.

[25] I make an order discharging you on counts 1, 2, 3, 4, 6 and 8 under s 347 Crimes Act 1961.

[26] The Crown does not seek a minimum term of imprisonment, and I do not intend to impose one. However, the Parole Board will consider carefully any application by you for parole within the legal time limit, given the probation officer's assessment that you remain at high risk of re-offending. You know, Mr Pira, that this is the last time that you will be sentenced to a fixed or finite term of imprisonment for serious violent offending. If you appear before a court of law again for any type of crime approaching this severity, you will be eligible to a sentence of preventive detention. You know that that means you will be detained in prison for an indefinite period but at least of many years duration.

[27] Mr Pira, at 48 years of age you are at a turning point in your life. You can choose to use the next eight-and-a-quarter years profitably and attempt again to rehabilitate yourself. If you do, I wish you well. If you do not, you know the consequences. Please stand down.

Rhys Harrison J