IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CRI-2008-092-001318

THE QUEEN

v

SONNY WAYNE MOA

Appearances: D A Marshall for Crown
F P Hogan for Prisoner

Judgment: 23 April 2009 at 9:00 am

SENTENCING NOTES OF COURTNEY J

Solicitors: *Meredith Connell, P O Box 2213, Auckland*
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Counsel: *F P Hogan, Dyke Road, R D 1, Papakura*
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[1] Sonny Wayne Moa, you appear for sentence today having been found guilty on one charge of wounding with intent to cause grievous bodily harm. The victim was your cousin, Charlotte Watene, with whom you were living as a flatmate in January 2008 when this offending occurred. You had lived in Ms Watene's house for, it seems, about a year and over that time it appeared from the evidence that your relationship had had its ups and downs. However, on the day of the offending there was nothing to suggest that it was going to end the way that it did.

[2] You came home in the late afternoon on the 28 January 2008 and as you arrived home your cousin started an argument with you. I accept your lawyer's submission that you had done nothing to provoke this argument and the evidence was that there was quite virulent abuse verbally by Ms Watene of you. Ms Watene then went to her room and came out with an axe, conveying that she was not in fact in the mood for any arguments with you and that you were not to mess with her. Although I reiterate I accept that you had done nothing to indicate to her at that stage that there was going to be any trouble from your quarter.

[3] On her evidence, which the jury accepted, rightly, Ms Watene then calmed down and went back to her bedroom and returned to the living room. She returned without her axe. However, while she was taking the axe back to her bedroom you took two knives from the living room area and armed yourself, presumably in anticipation of her returning with the axe. She, of course, did not do so. She returned to the living room unarmed. Nevertheless, you attacked her. You stabbed her on one side of the neck and as the two of you struggled you stabbed her several more times. The injuries that Ms Watene sustained were very serious. She had a large laceration on each side of her neck; on the left side the laceration came within 2 millimetres of the carotid artery and jugular vein. There were superficial lacerations to her face, the back of her neck, arm and hands. Given the nature of the laceration to her left side of the neck it was a near thing that she did not die.

[4] I note that there is no victim impact report from Ms Watene, however, it does not take much imagination to envisage the fear in a person being attacked in that way.

[5] Before I turn to consider an appropriate sentence in this case I want to comment on your personal circumstances. You are 26 years old now. You report a good upbringing and a supportive family. You seem to have a good relationship with your family. Although you have had periods of unemployment you have also had lengthy periods of good employment. You do not have any drug or alcohol problems. You have some minor convictions but none for violent offending. You have never been imprisoned before.

[6] Before this offence your most recent conviction is 2003. Looking at your background, including the nature of your previous offences, violent offending seems out of character for you. I note from the pre-sentence report that for the last few years your mother has noticed some changes in your behaviour following you being punched unconscious. There is no indication as to whether there is any physical reason for the change of behaviour following that incident or whether it has ever been investigated, but she has noticed you have become withdrawn and uncommunicative and relationships with family members have been affected since then. That might be something significant that ought to be investigated when you are in prison. It might account for the fact that you appear to lack insight into your offending. Although the pre-sentence report conveys that you do not feel remorse, in fact I hear from your counsel today that you are very sorry for what happened and I accept that you do feel some remorse for the way things turned out.

[7] I turn now to the offence on which I am sentencing today. It is a very serious offence. The object in sentencing on a charge such as this is to hold you accountable for the harm done to your cousin, to promote in you a sense of responsibility and acknowledgement for that harm and to denounce that conduct.[1] In order to achieve these aims I am required to apply the principles that are set out in the Sentencing Act 2002.[2] The principles that are relevant in this case are the gravity of the offending, the seriousness of this type of offence which is indicated by the maximum term of imprisonment of 14 years that it carries, and the desirability of consistency in sentencing levels as well as the need to impose the least restrictive outcome that is appropriate.

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[1] s 7(1)(a) – (c) and (e) Sentencing Act 2002
[2] s 9

[8] Sentencing Judges are assisted in sentencing on offences involving serious bodily harm by the Court of Appeal's decision in *R v Taueki*[3] which identified appropriate starting points depending on the particular circumstances of the case. The case here involves some of the aggravating features that the Court of Appeal identified as relevant. The first is the use of extreme violence. Of course, as your lawyer has submitted, it is inherent in a charge of wounding with intent to cause grievous bodily harm that there will have been serious violence. But in this case the stabbing went on, there were many stabbings, many wounds to Ms Watene, and it was a sustained attack which I view as extreme violence. The use of a weapon, a knife, is always regarded as a serious aggravating feature, as is targeting the neck and head area, some of the most vulnerable parts of the human body. The nature of the neck injuries that Ms Watene sustained were described by the doctor who gave evidence as quite extensive and you heard me describe them already.

[9] The Crown also asserts an element of premeditation in your attack. Even if you had picked up the knife in fear of being attacked yourself with the axe you should have been able to see that Ms Watene was returning to the living room unarmed and nevertheless you proceeded to attack her in a really vicious and sustained way. However, it was only a very short time that you had to assess the situation. When Ms Watene went back into her bedroom with the axe you had no way of knowing whether she would come out with it or not and therefore, you had only a few moments to decide what the situation was. So for that reason, although there was some slight premeditation I do not, in fact, ascribe much weight to it.

[10] At trial you maintained that you acted in self-defence and the jury rightly rejected that. You were not in any actual danger when you attacked Ms Watene, and even if you had reasonably thought that you were at risk the nature and extent of your attack went well beyond what could be regarded as reasonable self-defence.

[11] Nevertheless, Ms Watene's actions are relevant as you have heard me say to your counsel. Where there has been provocation by the victim that has contributed to the violence the Court can take that into account as well in assessing the overall circumstances and seriousness of the offending. In this case I accept that Ms Watene

[3] [2005] 3 NZLR 372

had abused you verbally, had presented the axe. The abuse was only verbal and Ms Watene had put her weapon back before you attacked but, as I have said, the time frame was very short and I do take into account and place some considerable weight in what happened in the period leading up to the attack.

[12] Your counsel says that this offending ought to be treated as what is termed as band 1 of *Taueki*[4] which carries a lower range in terms of sentencing for terms of imprisonment. But looking at all of the circumstances I am satisfied that the offending falls into band 2 which carries a suggested starting point of five to ten years imprisonment. I have also been referred by the Crown counsel to other decisions that are similar or have similar features to this case. Looking at the approach other Judges have taken to cases of this type and taking into account all of the factors that I have talked about, I consider that the lowest reasonable starting point that I could take would be five-and-a-half years but that that should be reduced to reflect the provocation that you were presented with that afternoon.

[13] I do not intend to treat your previous convictions as an aggravating factor. They are minor but of course I cannot treat you as a first offender either. The result is that an appropriate final sentence, in my view, is four-and-a-half years imprisonment and that is the term that I impose on you. I wish you good luck though Mr Moa because, as I have said, I do not believe that violent offending is something that is in your nature and I am sure that you can move on from this incident once you leave prison and resume a perfectly normal life with your family. Stand down.

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P Courtney J

[4] *R v Putt* [2009] NZCA 28; *R v Konui* [2008] NZCA 401; *R v Thomas* HC WN CRI-2007-091-000715 22 August 2008 Dobson J