

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

CRI 2007-019-7228

THE QUEEN

v

DAVID JEROME ABRAHAM SUTTON

Charges: Receiving (6)

Plea: Guilty

Appearances: Ross Douch for Crown
Michael Robb for Prisoner

Sentenced: 23 April 2009
2 years 4 months imprisonment on each count

SENTENCING NOTES OF HARRISON J

SOLICITORS

Almao Douch (Hamilton) for Crown
Michael Robb (Hamilton) for Prisoner

Introduction

[1] Mr Sutton, you appear for sentence today having pleaded guilty to six counts of receiving. The maximum sentence which could be imposed on any one of those charges is seven years imprisonment.

[2] Before I deal with the formal parts of the sentence, I acknowledge the presence in Court today of your mother and your former partner. Also I wish to acknowledge the quality of the written and oral submissions from Mr Douch for the Crown and from Mr Robb for you, and also the assistance I have received from the report prepared by Mr Lance Judd for the Probation Service. All of them will have a direct influence on the sentence I impose.

[3] Also I note my familiarity with the circumstances of your offending. On 21 April 2009 I sentenced Mr Jerry Pira, your accomplice in much of this crime, to a term of eight years and three months imprisonment following his pleas of guilty two counts of aggravated robbery and one of receiving. You were at the time of this offending in August 2007 living in Mr Pira's household. He was then 47 years of age. You were 20 years of age. You had a relationship with his daughter. Immediately I acknowledge that you were very much under his influence. You were subordinate to him in every way. Mr Pira is an experienced criminal. He was able to use his power to influence you to act in a sustained course of criminal conduct.

[4] Also I acknowledge that you have been in custody since 27 August 2007. Initially, as Mr Douch confirms this morning, you were charged with some of the aggravated robberies for which Mr Pira has pleaded guilty. Later the Crown substituted charges of receiving. You pleaded guilty to those immediately they were laid. That is to your credit.

Facts

[5] I shall deal first, and relatively briefly, with the facts.

[6] Over the course of a month or so in August 2007 a number of aggravated robberies were committed on commercial premises in the Waikato and Wellington. Mr Pira has pleaded guilty to two of those robberies. The proceeds in goods and cash totalled \$53,391. While you, of course, only shared in some of the proceeds, you did not get all of them, you are technically liable for the receipt of all of the money.

Starting Point

[7] Against that brief background I must fix the starting point for your sentence. The starting point is the term of imprisonment which is appropriate for the offending itself before I take into account any good factors, such as your plea of guilty, or any aggravating factors.

[8] There are relevant aggravating factors relating to the offending. First and foremost, as Mr Douch submits, this was intense criminal activity carried out over a short period of time. You were, as I have noted, only a subordinate and a receiver. But you are aware of the value of the goods stolen.

[9] Second, there is the effect of those robberies, and more importantly the loss of the funds, on the victims. All the proprietors of the targeted premises were new immigrants. They were hard working, industrious people seeking to start a new life in a land that promised safety and security. For some of them that ideal has been shattered. All of the victim impact reports refer to the long-term emotional, financial and in some cases physical hardship they have suffered. Again, while you are not directly responsible for the robberies, you must accept some culpability for the financial loss all have suffered.

[10] Against those two serious aggravating factors are these. First, as I have said, you were 20 years of age. You are impressionable; you are easily led. You had a subordinate or secondary role. You were not the mastermind of any of the offending. You participated with others in receipt of the proceeds. Second, as Mr Robb properly submits, you did not in any way drive the primary offending (that

is, the aggravated robberies) for a commercial purpose. I am satisfied that the initiator was, as I have said, Mr Pira.

[11] Both counsel accept that there are no tariff or guideline decisions in this area for sentencing. All sentences are very much dependent on the facts and circumstances. Mr Douch submits that the appropriate starting point should be in the range of three-and-a-half to four years; Mr Robb submits that a lower starting point is appropriate, between two and three years.

[12] I agree with Mr Douch. The starting point necessary to denounce your offending, to deter you, and to render you accountable is three-and-a-half years imprisonment on each of the charges. Immediately, though, Mr Sutton, I confirm that the end sentence will be one which treats all of the sentences as concurrent; that is, they run side by side. They were not be added to each other. That approach reflects the appropriate punishment for the totality of your offending.

Personal Circumstances

[13] Against that starting point I must make allowances for your personal circumstances. First and foremost there are your pleas of guilty. They are a responsible acknowledgement of your crimes. They show that you are contrite and remorseful. You have not attempted to hide your involvement.

[14] Your personal circumstances are unfortunate. At an early age you were diagnosed as suffering from Attention Deficit Disorder. Your mother has done her best to assist you through your life. She is standing by you today. The probation officer reports that you have made attempts to find work, sometimes successful. You have accumulated some minor criminal convictions, although there is one of burglary. All of this is consistent with a young man, Mr Sutton, who is easily led by more sophisticated associates. You know that if you are not to go back to prison again you will have to assert yourself more strongly.

[15] In my judgment you are entitled to a substantial credit for your pleas of guilty which also reflects the relative hardship of spending time in custody on remand; that

is, not as a sentenced prisoner. In the circumstances I sentence you to a term of imprisonment on each charge of two years and four months. On my calculation you should be immediately eligible to apply for release on parole. You have served roughly two-thirds of that sentence.

[16] In making those observations I trust that when considering your application the Parole Board imposes special conditions similar to the type recommended very positively by Mr Judd. In particular, I trust that the Parole Board makes it a condition of your release that you return to Wanganui to live with your mother; and provides for you to attend programmes such as for anger management and proper parenting skills and allows for an assessment of your other needs and requirements.

[17] By consent I make an order discharging Mr Sutton under s 347 Crimes Act 1961 on the balance of the charges in the indictment.

[18] There is one other issue. The Crown seeks an order under s 199 Summary Proceedings Act for reparation. The sum of \$5,870 was found in your possession on arrest. I am satisfied that it should be treated as the proceeds of stolen goods or cash stolen. Mr Douch has provided a most helpful table dividing that sum proportionately between the victims of the six aggravated robberies.

[19] On 21 April when he appeared Mr Pira advised that he did not oppose an order for reparation in these terms. Mr Robb likewise advises today that he consents. Accordingly I order that the sum of \$5,870 located in your possession on arrest be forfeited to the Crown and divided according to the table provided in paragraph 13 of Mr Douch's submissions.

[20] There you are. You have now been sentenced, Mr Sutton. The future rests in your hands. You are fortunate to have the support of a loving mother and a partner. It is up to you. If you choose to take advantage of the opportunities available to you to improve your life skills then I am confident that you will not come back before a Court on charges of this type again. If you do not, you know that you will spend a long time in prison.

Rhys Harrison J