ORDER SUPPRESSING THE VICTIM'S NAME AND ANY MATTER THAT MAY LEAD TO HIS IDENTIFICATION.

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CRI-2008-004-023774

THE QUEEN

v

ANDREA SNOWDON

Hearing: 28 April 2009

Appearances: B Finn for the Crown
P Tomlinson for the Accused

Judgment: 28 April 2009

SENTENCING NOTES OF ANDREWS J

Solicitors/Counsel:
Crown Solicitor, PO Box 2213, Auckland 1140
P Tomlinson, PO Box 194, Auckland 1010

Charges

[1] Ms Snowdon, you appear for sentencing today having pleaded guilty to one charge of unlawful detention with intention to confine – that is the charge of kidnapping, one charge of blackmail, one charge of aggravated robbery of a motor vehicle, a charge of taking a document, and a charge of using a document.

[2] On the charges of kidnapping, blackmail and aggravated robbery, the maximum penalty is imprisonment for 14 years. On the charges of taking a document and using a document the maximum penalty that may be imposed is imprisonment for 7 years.

Relevant facts

[3] I set out the facts briefly. On 17 October 2007, the victim, whom it is not necessary for me to name in these sentencing remarks, made an arrangement to come to your house. You were aware that the man was expecting a young female person to be there.

[4] The victim arrived at about 9:00 pm. It is alleged that he was met by two associates of yours. You were at the house.

[5] It is alleged that the victim was taken into a bedroom, then attacked by your associates. You accept that you yelled abuse at the victim. It is alleged that the victim was bound with electrical cord, and that duct tape was applied over his mouth and eyes. You had obtained that duct tape. And it is alleged that the victim was subjected to a continued assault over several hours, threatened with a pistol and further violence. Demands were made for money to be paid. The Crown does not maintain that you witnessed any violence to the victim, but you concede that you were aware of the violence done to him. I accept that you were not aware of the level or the extent of that violence.

[6] A recording was made of the victim admitting to be a paedophile and promising to give your associate his car worth approximately $100,000 and $5,000

cash. The victim also signed a document that you had prepared. The victim's wallet was taken and he was made to provide the PIN numbers. He was also forced to sign a cheque for $2,500 which you cashed the next day. His credit card was taken, and an attempt was made to use it to withdraw money.

[7] The victim was held at the address for some seven to eight hours before being driven into Auckland and he was released. It is alleged that your associates drove off in his car.

[8] Over the next week, you and your associates used the victim's credit card to purchase goods and withdraw cash.

[9] When you were first spoken to, you denied all knowledge of the offending, but you did admit to cashing the cheque for $2,500. I note that your associates have been charged, and have entered pleas of not guilty. They have not yet been tried.

Victim statements

[10] I have received an emotional harm report prepared with the victim. After being released after the event of 17 October 2007, the victim went to a hospital. He told hospital staff that he had been assaulted. The police had photographs of his injuries. He recalled physical and emotional pain. He told his wife that he had been assaulted but did not disclose the background until a little later. By then he and his wife, he said, were cowering at home and he decided to inform the police. On police advice they moved out of their home.

[11] There were documents in the car, as a result of which the victim had to tell his employer about the offending. He believes this has adversely affected his employment. The victim has been in fear of retribution since this incident. He and his wife decided to sell their home because they felt insecure in it. They remain in fear of being traced. They have not bought a house for that reason and they have taken other steps to ensure they are not traced.

[12] Additionally, the victim says he is not able to work as effectively at work and his work has suffered as a result. He has also suffered problems with his health as a result of the incident.

[13] The victim regards you as having been under the control of one of your associates. He said in his statement that he feels that you might have some decency towards him because of statements you have made since the incident. He recognised that your role was verbal, that is spoken, rather than physical.

[14] I note that you have written a letter to the victim which has been submitted through your counsel, Mr Tomlinson. You write that you are truly sorry for the pain and suffering caused to him, that you regret what happened and know you have to do whatever it takes to make things right.

Pre-sentence report

[15] I turn now to consider the pre-sentence report from the probation officer. You are 29 years old. One of your alleged co-offenders, Mr Williams, is your partner. You have two children, aged four and nine years. You grew up in Upper Hutt and you describe your childhood as "awesome". You were close to your parents and sisters, although your mother died some eight years ago. You are supported by your father's cousin, Ms Witana, whom you call your aunt. Mr Tomlinson has told me today that you returned to Upper Hutt to the support of your family after being released after your arrest on these charges.

[16] You told the probation officer that you are in "an ongoing relationship with a future" with Mr Williams. Ms Witana's view of that is that you are "loyal to a fault with a blind loyalty" and that Mr Williams is controlling of you.

[17] You have previously worked as a personal assistant at Housing New Zealand and you have been studying Commercial Law and Business Communication through the Open Polytechnic. The probation officer said that you do not accept that your involvement with Mr Williams contributed to your offending, although you did say

that you felt "let down and betrayed" by him. Despite that, you did not see his influence as negative.

[18] You do have previous convictions but I accept that they are not relevant for the purposes of sentencing today. I do not take them into account.

[19] You are assessed as being at a low risk of re-offending although the probation officer expressed the view that your risk may be increased if your relationship with Mr Williams continues. It was considered that you may benefit from a Tikanga Mäori Programme.

Explain process

[20] I turn now to the sentencing process. First, I talk to you about the general law relating to sentencing and I will talk to you about the principles and purposes of sentencing as they are set out in the law that I have to apply. Then I have to decide what sentence is appropriate, taking those principles and purposes into account. To do that, I go through a two-step process. The first step is to establish what we refer to as the starting point. The starting point is what would be the sentence imposed if you were convicted on the most serious of the charges to which you pleaded guilty after a trial in Court.

[21] In your case, the charges of kidnapping, blackmail and aggravated robbery all carry the same maximum sentence and they may be regarded as being of equivalent seriousness**.** Given that, I intend to accept the submission made by Mr Finn in his written submissions for the Crown that I should adopt the approach taken in the sentences of *R v Rangitaawa*[1] and *R v Hill & Ors*[2], where it was accepted that the offending was all carried out in one transaction, and for the same purpose, and therefore to look for a level of sentence that overall reflects the gravity of your offending, and to impose that sentence in respect of each of those three charges. Essentially, that means that I look at what happened on the day. For the moment I

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1 *R v Rangitaawa* HC CHCH CRI 2004-009-14066 11 August 2005, Cooper J

2 *R v Hill & Ors* HC ROT CRI 2005-063-3096 27 October 2006, Asher J

disregard the fact that it is divided into three charges. I look at it as one series of events.

[22] The second step is to take that starting point and decide what is the appropriate sentence for you and for your offending**.** I do this by considering whether there is anything about your offending that makes it more serious – those are aggravating factors – and whether there is anything that makes it less serious – those are mitigating factors. I also consider matters that relate to you personally, because they may also lead me to adjust your final sentence, either up or down.

[23] So in sentencing you I have to take into account what the law has set out as the purposes of sentencing. In particular, I have to hold you accountable – that is to make you responsible for what you have done. I have to consider deterrence and protection of the community. I also have to denounce your offending. That means to tell you in the plainest of terms that your offending is not acceptable in New Zealand society. At the same time, the purpose of sentencing is to help you with getting back into the community as a useful member of it.

[24] There are also general principles of sentencing that I must consider. In your case I consider the gravity of your offending, including your own culpability, the seriousness of your offending in comparison with other types of offences, and the general desirability of keeping sentencing levels consistent across comparable offending.

[25] I must also take into account any information that I am provided with about the effect of the offending on the victim.

[26] I am directed to impose the least restrictive outcome that is appropriate in the circumstances. In our Sentencing Act it is provided that it is desirable to keep offenders in the community as far as that is practicable with regard to the safety of the community. However, the Court can impose a sentence of imprisonment in order to achieve the purposes of sentencing that are relevant in your case.

Starting point

[27] I come therefore to the starting point. In considering what is an appropriate starting point, I have looked at sentences imposed in other cases where the circumstances of the offending has some comparability with yours. Of course it is very seldom the case that any two sets of offending are the same. I have first considered sentences imposed in cases where there has been a kidnapping intended to extort money from the victim or was motivated by vigilantism or revenge. I am going to refer to four sentences.

[28] The first one you have already heard referred to. It is the case of *R v Rangitaawa and Ors*. Mr Rangitaawa pleaded guilty to two counts of blackmail and one of kidnapping. He had two co-offenders, Mr Te Rure and Mr Tuatau. The victim was said to have owed another person some money. Mr Rangitaawa organised a group of people to assemble outside the victim's business, and he went into the office, detained the victim and a friend for three hours. The victim was forced to write and sign an acknowledgement that he owed money, that he would give his car for security, and he wrote a cheque for $5000. He was threatened with violence. There was a severe impact on the victim. In that case, the principal offender, Mr Rangitaawa, had a starting point of four and a half years imprisonment. Mr Tuatau had a starting point of four years, and for Mr Te Rure the starting point was three years nine months.

[29] In the sentence in *R v Moffatt*[3], the offender had pleaded guilty to charges of kidnapping, robbery, and assault with intend to injure. There the victim and Mr Moffatt were members of a gang and the victim was trying to leave the gang. The offender was coercing a "leaving fee" from the victim.

[30] The victim was forced from a car, kicked and punched, driven around and money was stolen from him. He was severely injured. There, the Court of Appeal upheld a starting point of six years imprisonment.

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3 *R v Moffatt* CA 193/01 29 October 2001

[31] In *R v MacKenzie & MacKenzie*[4], the offender believed the victim was in a sexual relationship with his sister. He accused the victim of the relationship and then detained the victim for some three hours. The victim was beaten, money was withdrawn from his bank account, and he was eventually released. The starting point adopted there was two years and six months imprisonment.

[32] The next one I refer to is *R v Hill & Ors* - again, I mentioned that earlier. The victim had been a friend of some of the offenders and it was believed that the victim had done one of the offenders wrong. They went to the victim's home, pulled him from bed, punched him, told him to come with them. They drove to one of the offender's houses. The victim was beaten, kicked and threatened. The victim was bound with duct tape and placed in a car boot. There were severe injuries. The starting point imposed for the four offenders ranged from seven and a half years imprisonment to two and a half years imprisonment.

[33] I have also considered starting points adopted for charges of blackmail. Because the circumstances of this offending can vary widely, I refer only to two cases. The first is *R v Wilkie*[5], where the offender visited the house of a victim's friend and made a complaint about the quality of building work the victim had carried out. Money was demanded. There was a threat made that if the money was not paid, the victim would be killed. That threat was repeated many times. The starting point adopted there was three years imprisonment.

[34] Finally, I refer to the sentence imposed in *R v Takao*[6], perhaps to be seen as being at the lower end of these cases that I have referred you to. Ms Takao had been in a relationship with the victim who had lent her money and expected sexual favours in return. She telephoned the victim saying she had been sent a letter demanding money in return for what she said was a taped compromising conversation between herself and the victim. She asked the victim to pay. The victim was not adversely affected by this but the starting point adopted for Ms Takao was nonetheless nine months imprisonment.

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4 *R v MacKenzie & MacKenzie* HC AK CRI 2006-057-0114 20 March 2007, Keane J
5 *R v Wilkie* HC WN CRI-2004-078-506 17 December 2004, MacKenzie J
6 *R v Takao* HC ROT CRI 2004-087-2227 29 April 2005, Keane J

Submissions

[35] I come now to the submissions made by Mr Finn on behalf of the Crown and Mr Tomlinson on your behalf.

Crown

[36] Mr Finn submitted that you were aware that an arrangement had been made for the victim to come to your house, that he was expecting a young female to be there, and that you knew that something was going to happen to him there. Mr Finn also notes that you accept that you yelled abuse at the victim, but he accepts that you did not witness any violence. You have, however, conceded that you were aware of the violence, although not of the extent and level of that violence.

[37] Mr Finn submitted that you were broadly aware of the arrangement and that you could foresee, at least to some extent, what would occur. As Mr Finn put it, you essentially allowed it to happen. He submitted that you cannot have been under too many illusions about what was happening. As aggravating features, Mr Finn pointed to the duration of the victim's detention, the serious violence that was inflicted on him, accepting that you did not inflict any yourself, the fact that you provided the duct tape that was used in the course of the detention, the serious impact on the victim, and the totality of your offending. Mr Finn acknowledged that your more limited role in the offending is a mitigating feature, which he said was taken into account in his suggested starting point of five years imprisonment. Mr Finn submitted that that recognised your role as a party to the offending.

[38] The Crown also acknowledged that a discount was appropriate for your guilty plea but submitted that the appropriate discount should be 25% because your guilty plea came at the time of the depositions hearing in the District Court. The Crown in the end suggested an end sentence in the range of about three years six months to three years nine months imprisonment.

Defence

[39] On your behalf, Mr Tomlinson acknowledged that this was serious offending. He submitted that your starting point should take into account that you did not plan the attack, that your offending was less that that of your alleged co-offenders, and that you did not witness any serious violence. He accepted on your behalf that the offending had a severe impact on the victim. He submitted that you did not know what was going to happen to the victim and you did not know about the violence. He submitted that your most active direct involvement in the incident was in preparing a document that the victim signed. Further, he submitted that you were totally under Mr Williams' control.

[40] Mr Tomlinson also referred to your letter addressed to the victim in which, as he submitted, you expressed genuine heartfelt remorse. He submitted there is little else that you can offer to the victim.

[41] Mr Tomlinson acknowledged that a starting point of six years imprisonment would be appropriate for the principal offender in relation to this incident but that a much lower starting point is appropriate for you, given that you were not the instigator and not involved in the violence. He further submitted that you are entitled to a discount for your guilty plea to the full extent that can be allowed, particularly because you, alone, out of yourself and the two alleged co-offenders, have been prepared to acknowledge your responsibility. He also submitted that further discounts should be applied to take your personal circumstances into account, particularly in relation to your children.

[42] Finally, I have read the letters that have been put before me from your father, from your sister, and from friends, and they speak well of you. You are fortunate in the support that you have.

[43] Ms Snowdon, as I said earlier, the law requires me to look at aggravating and mitigating features of your offending. This was a planned, prolonged and violent detention. It is serious offending. On the alleged facts that I set out at the start of

this sentencing, I would adopt a starting point of around six years imprisonment for the principal offenders. However, I accept that you were not the instigator of the offending. You were aware of the plan, but you were not involved in creating it. You did not participate in the actual violence done to the victim, and you were not in the room when it occurred, but you were aware of it.

[44] Your involvement can perhaps be compared with that of Mr Te Rure's in *Rangitaawa*, one of the sentences I referred to earlier. He was present at the incident, and the Judge considered that his being there would contribute to the offence. However, the Judge there accepted that there was nothing to suggest that Mr Te Rure was involved to any extent beyond being present.

[45] While you did not witness the violence, you did have an involvement in the offending. You went out and got the duct tape and you prepared the document. Mr Te Rure's starting point was approximately one-sixth less than that adopted for the principal offender. I consider that a greater reduction is required in your case to take into account of your lesser culpability. I have concluded that the appropriate starting point is three and a half years imprisonment.

Personal factors

[46] I turn now to consider matters relating to you personally. I accept that you have expressed remorse, as set out in the letter provided by Mr Tomlinson. You are entitled to some reduction for that and I also take your personal circumstances into account. I allow a discount of six months for those factors.

[47] Finally, I take your guilty plea into account. You are entitled to a discount for that. The Court of Appeal has said that the discount can range from 10% to one-third, depending on when the plea is entered, (see *R v Walker*[7]). Of course, the earlier the plea is entered, the greater the discount. You entered a guilty plea at the time of the depositions hearing. I appreciate what Mr Tomlinson said about the

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7 *R v Walker* [2009] NZCA 56 (6 March 2009)

circumstances of your guilty plea but I do not consider the discount can be any greater than 25%, that is one-quarter, and I allow that discount.

[48] That leads me to a sentence of two years and three months imprisonment on each of the kidnapping, blackmail and aggravated robbery charges. I say again that I am regarding them as a single charge.

[49] Your sentence is required to reflect the totality of your offending. That requires me to take the charges of taking and using the victim's credit card into account in your overall sentence. Although each will require a separate sentence, it is appropriate that all sentences are served concurrently. However, to take account of the totality of your offending, the sentence on the major offences must be increased by three months.

Sentence

[50] Now Ms Snowdon would you please stand. Ms Snowdon, on each of the charges of kidnapping, blackmail and aggravated robbery of a motor vehicle, you are sentenced to two years and 6 months imprisonment. On each of the charges of taking a document and using a document, you are sentenced to three months imprisonment. All sentences are to be served concurrently. That means that your effective sentence is two years and six months imprisonment.

[51] I record that Mr Tomlinson made strong submissions in favour of a sentence of home detention. As I have imposed a sentence of more than two years imprisonment, that issue does not arise. However, I record that I accept that a sentence of home detention is not appropriate in your case in any event and that a sentence of imprisonment is required.

[52] I make orders for suppression of the victim's name and any matter that may lead to his identification.

[53] Would you please stand down.

Andrews J