IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

CRI-2009-485-46

CLAMMAL KARANGAROA
Appellant

v

NEW ZEALAND POLICE
Respondent

Hearing: 23 June 2009

Appearances: M Overton for the appellant
M Snape for the respondent

Judgment: 26 June 2009

JUDGMENT OF CLIFFORD J

Introduction

[1] Ms Karangaroa is an inmate at Arohata Women's Prison. She is eighteen years old. Ms Karangaroa pleaded guilty to a charge of assaulting a fellow inmate with intent to injure. On 31 March 2009 she was sentenced by Judge Kelly in the District Court at Wellington to 15 months' imprisonment. Ms Karangaroa now appeals that sentence as being manifestly excessive.

Background

[2] On 23 February 2007 Ms Karangaroa (then aged 15) was sentenced to three years' imprisonment for burglary with a weapon and wounding with intent to cause grievous bodily harm committed in October 2006. She is currently serving that sentence.

[3] As recorded in the summary of facts to which Ms Karangaroa pleaded guilty, and by the Judge at sentence, on 12 September 2008 Ms Karangaroa approached the complainant Ms Beach, the fellow inmate, in an aggressive manner. Ms Karangaroa wanted to know why Ms Beach had informed on her to a corrections officer about an incident involving some cigarettes. Ms Karangaroa then kicked over the complainant's cup of tea and walked off. A short time later she returned to the cell where the complainant was sitting on the ground. Ms Karangaroa grabbed the complainant's head with one hand and, using a closed fist, punched her with the other hand three times.

[4] As a result of this incident, the complainant required three stitches to the bridge of her nose. She also received three fractured teeth, and required dental treatment to remove two of them.

[5] In sentencing Ms Karangaroa, the Judge took account of the pre-sentence report that had been prepared. She adopted the correct approach to sentencing, in terms of setting a starting point reflecting the nature and seriousness of Ms Karangaroa's offending and her culpability, and then addressing aggravating or mitigating matters personal to Ms Karangaroa. She adopted a starting point of 20 months imprisonment for Ms Karangaroa's offending. She then considered an uplift of six months appropriate to respond to the personal aggravating factor that the offence had been committed while Ms Karangaroa was in prison for previous convictions for violence. The Judge then discounted the sentence to take account of Ms Karangaroa's early guilty plea and her age, and arrived at the term of 15 months' imprisonment now appealed against. Finally, she determined that that sentence should be served cumulatively.

[6] Ms Karangaroa says her sentence is manifestly excessive because:

a) the starting point adopted by the Judge was too high;

b) the uplift adopted for the personal aggravating features was also too great;

c) the Judge erred in her consideration of the mitigating factors; and

d) the sentence should not have been imposed cumulatively.

[7] In all of those matters Ms Overton, who represented Ms Karangaroa in this appeal, pointed to Ms Karangaroa's young age, and the impact of a long term of imprisonment on a young woman who entered prison just before her sixteenth birthday and, in effect, received a sentence of four years and three months' imprisonment.

Discussion

[8] There is no tariff case by reference to which the Judge's starting point can be directly assessed. The Court of Appeal's decision in *R v Taueki* [2005] 3 NZLR 372 can provide a guide for sentencing Judges, in terms of identifying factors that may be relevant to assessing the criminality of offending of this nature. It is, however, difficult to apply the sentencing levels identified in *Taueki* to sentences for charges of assault with intent to injure, which have a maximum term of three years' imprisonment.

[9] Here the starting point adopted by the Judge, 20 months, was just above the mid-point of the available sentencing range. In terms of the criminality of the offending, the following features can be identified:

a) This was an attack to the head.

b) Whilst not involving the use of a weapon, or violence over an extended period of time, at least a moderate degree of violence was involved, as reflected by the injuries suffered by the complainant.

c) There was, further, a degree of premeditation as Ms Karangaroa first confronted the complainant in her cell when she kicked over her cup of tea and walked off, before returning a short time later to assault the complainant.

d) The complainant, being an inmate in prison, would have been limited in her ability to get away from or avoid Ms Karangaroa. There is, therefore, an element of vulnerability.

[10] With reference to those factors, I do not think the 20 month starting point can be said to be outside the range available to the Judge.

[11] The six month uplift to that starting point applied by the Judge was seen by her as appropriate to respond to the factors that Ms Karangaroa had a recent previous conviction for serious violence, so recent that she was still in prison serving her sentence for that offending. Furthermore, beyond the use of violence, there is a feature of this offending that is disturbingly similar to Ms Karangaroa's earlier offending. The earlier offending, based on the pre-sentence report that Ms Overton made available to me, would appear to have been the result of Ms Karangaroa's victim having made an obscene gesture to her, as a result of which Ms Karangaroa began thinking about giving her victim "a hiding". Here Ms Karangaroa was again apparently offended by the complainant's behaviour and, as reported in the pre-sentence report, decided to "give her a crack". Whilst I accept that the six month uplift may have been at the upper end of the available range, again I do not think it was outside the available range.

[12] In all of this, the important thing to assess at the end of the day is the reasonableness of the end sentence arrived at by the Judge. The Judge at one point said she considered a discount of nine months to be appropriate, given Ms Karangaroa's early guilty plea and her youth. She then determined an end sentence

of 15 months. As will be apparent, the discount actually given from the uplifted starting point of two years and two months was 11 months.

[13] Mr Snape, for the Police, accepted that it was the end sentence the Judge imposed that she actually had in mind, and that is the basis upon which I will consider this appeal. The discount allowed is, therefore, just over 40%. In my view, that cannot be challenged as being an insufficient response to the factors of Ms Karangaroa's early guilty plea and youth. Given her previous offending, Ms Karangaroa could not expect too great a discount for her youth.

[14] I therefore conclude that the sentence imposed by the Judge is not manifestly excessive.

[15] The final element of Ms Karangaroa's appeal was that the Judge was wrong to impose the sentence on a cumulative basis. Before me, Ms Overton did not pursue that element of this appeal with great vigour. I do not think that the criticism can be sustained. This was clearly a separate incident of offending for which a cumulative sentence was required.

[16] Throughout the appeal, Ms Overton emphasised to me Ms Karangaroa's relative youth and, as indicated at the outset of this judgment, the impact on her – given that youth – of an effective sentence of four years and three months' imprisonment. I acknowledge that a sentence of that term is a significant sentence, particularly when assessed by reference to the part of her life Ms Karangaroa will have spent in prison when she is released. That does not, by itself, mean however that the sentence imposed by the Judge for this offending was manifestly excessive. As I have set out above, I do not think that is the case.

[17] This appeal is accordingly dismissed.

"Clifford J"

Solicitors: M Overton, Barrister, Wellington for the appellant (movertonlaw@xtra.co.nz)
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