

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

CRI 2009-463-44

BETWEEN SARGE MOKO TAWHARA
 Appellant

AND NEW ZEALAND POLICE
 Respondent

Hearing: 30 June 2009

Counsel: R Vigor-Brown for Appellant
 M Wright for Respondent

Judgment: 30 June 2009

(ORAL) JUDGMENT OF HEATH J

Solicitor:
Crown Solicitor, Rotorua
Counsel:
R Vigor-Brown, Rotorua

The appeal

[1] Mr Tawhara appeals against a sentence imposed in the District Court at Rotorua on 10 June 2009. The effective term of imprisonment imposed upon him was eight months.

[2] On the lead charge of male assaults female, a term of imprisonment of seven months was imposed. A period of one month's imprisonment was imposed on a charge of threatening behaviour, to run concurrently with the sentence on the male assaults female charge. On a third charge of possessing an offensive weapon, a sentence of one month's imprisonment was imposed, cumulative on the seven months previously ordered.

Background

[3] The offending arose out of the relationship between Mr Tawhara and his *de facto* partner, one of the complainants. The other complainant was Mr Tuwhara's step-mother.

[4] It appears that there has been in place a protection order in relation to the step-mother of the appellant, but it is unclear whether that order is now spent or whether an order in favour of the *de facto* partner exists.

[5] The charge of male assaults female was serious. On the summary of facts, Mr Tawhara kicked and punched the complainant. When she fell to the ground he began to punch and kick her to the body, arms, chest and head area approximately 12 times. Although Mr Vigor-Brown, on behalf of Mr Tawhara, has disputed that aspect of the summary, no attempt has been made to request a disputed fact hearing on that issue.

[6] The step-mother then lay herself over the complainant to protect her from further assault. Mr Tawhara left the premises.

[7] A few days later Mr Tawhara returned to the step-mother's address and began to argue with her about custody of his children. He uttered threatening words: "I'll show you what a real hiding is". The step-mother panicked, retreated inside her home and telephoned the Police.

[8] The third charge arose out of an incident that occurred about 1am on Saturday 7 March 2009, some four months after the earlier incidents. Mr Tawhara arrived at his step-mother's address holding a tomahawk in his hand. No attempt was made to use the tomahawk or to threaten his step-mother with it. Mr Tawhara has offered an explanation that he had it in his possession as protection against gang violence that had been occurring in Murupara over the weeks leading up to that time.

[9] Mr Tawhara had the benefit of a positive pre-sentence report. The recommendation was a sentence of community work and supervision with special conditions, requiring Mr Tawhara to attend a suitable domestic violence programme and not to reside with his *de facto* partner. It is clear that Mr Tawhara had taken some steps to address his offending, particularly offending of a violent nature.

[10] Mr Vigor-Brown has made available to me a letter dated 29 June 2009 from the Alcohol and Drug Counselling Services in Rotorua confirming that Mr Tawhara was a registered client of the Agency until the day on which he was sentenced. He was attending a programme focussed on anger management. A letter dated 3 December 2008 confirms that Mr Tawhara acknowledged difficulty responding appropriately to stress and was attempting to resolve those issues.

Sentencing in the District Court

[11] Rightly, Judge Tompkins considered the pre-sentence report recommendation as unrealistic. The Judge considered that sentences of imprisonment were necessary because "the position has been reached where the sequence of offending requires the imposition of a term of imprisonment". In that regard, the Judge referred also to convictions on charges of male assaults female in 2003 and 2005 and a conviction relating to assault on a child in April 2008.

[12] No express consideration was given to the possibility of imposition of a sentence of home detention. Mr Vigor-Brown frankly accepts that he omitted to request a Home Detention Appendix for sentencing, instead relying on the favourable recommendation made by the probation officer in the pre-sentence report. He now submits that the Judge ought to have considered home detention as a sentencing option, but does not really criticise the Judge for failing to do so given that no request had previously been made for a home detention Appendix.

Analysis

[13] The type of offending that has occurred is such that ordinarily a term of imprisonment would be required to respond to it. But that does not necessarily rule out the possibility that home detention might be a sufficient response once the suitability of a proposed address has been considered.

[14] In light of Mr Tawhara's efforts to address anger management problems specifically, it may have been possible to craft a sentence involving home or community detention, in conjunction with something such as intensive supervision. For that reason, I consider that it will be necessary to obtain further information before the Court can determine whether the sentence imposed by the Judge was appropriate.

[15] I require a home detention Appendix to be prepared in respect of 6 Tawa Street, Murupara or such other address as shall be notified to the Court by Mr Vigor-Brown by 5pm tomorrow. That report shall be made available to the Court in time for the appeal to be reconsidered on 24 July 2009.

[16] It would be helpful if counsel could file and serve, on or before 22 July 2009, any additional information from Family Focus in relation to the steps taken by Mr Tawhara to address domestic violence issues and information as to the current status of any protection orders in relation to either the *de facto* partner or Mr Tawhara's step-mother. In addition, information should be made available in that memorandum to advise the Court of the situation of the homes of the *de facto* partner and the step-mother, in relation to any nominated address for home detention purposes.

Outcome

[17] Because I will not be sitting in Rotorua at that time, I adjourn the hearing to be conducted by video link at 9am on 24 July 2009. Counsel will be in Rotorua while I will be in Auckland.

[18] Mr Tawhara will remain in custody meantime. The fact that a home detention Appendix has been requested ought not to be seen as a sign that he will not remain in custody.

[19] In saying that, I acknowledge that I may also need to address whether the sentence actually imposed was within the bounds available to the Judge, even if imprisonment were appropriate.

P R Heath J