

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

CRI-2009-416-004

THE QUEEN

v

DESI JURY

Hearing: 31 July 2009

Appearances: Mr C Walker for Crown
Mr T Snell for Accused

Sentence: 31 July 2009

SENTENCING REMARKS OF LANG J

Solicitors:
Crown Solicitor, Napier
Counsel:
Mr T Snell, Hastings

[1] Mr Jury, you appear for sentence having pleaded guilty during the course of your trial to nine charges. They are charges of assault with a weapon, assaulting a female, detaining a female without her consent, injuring with intent to injure, threatening to kill and attempting to pervert the course of justice.

Facts

[2] All of the charges arise in relation to your dealings with your partner. The first in time is Count 1, which is a charge of assaulting your partner with a weapon. This occurred during a period when you were living in Hastings between 2006 and June 2007. The allegation here is that you took a metal candelabra and struck her on the head with it. This caused her injury, which was observed some time later by a doctor. The force with which you used the candlestick was such that it bent.

[3] The remaining charges arise as a result of events after you moved back to Gisborne. The first of these is that on 4 April 2008 you assaulted your partner. This relates to an incident when you became angry with her and you slapped her and pulled her hair. This caused her anguish and two days later she went to the police and made a full statement outlining what you had done.

[4] You then persuaded her to prepare an affidavit in which she said that her allegations were completely false. She presented this to the Court and to the police and no further action was taken against you in relation to the incident that she described in her statement. In fact, she was charged by the police with making a false complaint as a result of the matters that she referred to in her affidavit. The events surrounding the affidavit have led to Count 3, which is the first charge of wilfully attempting to pervert the course of justice.

[5] The next charges follow an incident that occurred on 12 May 2008. On the previous day, which was a Sunday and Mother's Day, your family was having a barbecue at home. During the course of the day the police arrived and arrested you on an outstanding warrant. You spent the night at the police station and returned home the next day to discover that the family had eaten all the meat that had been purchased for the barbecue. This apparently enraged you and you began assaulting

your partner again. She tried to get away from you by running down the road but you pursued her. You were observed doing this by a neighbour who was driving down the road with her children in her car. You stopped the neighbour by walking out onto the road and gesturing for her to stop. You then demanded that you take you and your partner back to your house. In spite of her protests you dragged your partner into the rear of the car and made the neighbour drive you back home.

[6] This was a matter obviously of some consternation for the neighbour and her family. Her young children were observing all of this and they were clearly distressed by what they saw.

[7] This incident has given rise to Counts 4 and 5, which are charges of assaulting a female and detaining your partner without her consent.

[8] The next incident occurred on or about 15 June 2008, when yet another argument arose at your home. You took an electric fan and smashed it across your partner's shoulders. You did so with such force that the fan broke into several parts. The police later discovered these when they subsequently searched your address.

[9] The final two charges involving violence occurred on 17 June 2008. Again, an argument broke out at home. Your partner said that she was leaving you. You told her that she "wasn't going anywhere". You grabbed her, tied a T-shirt round her neck and began to strangle her. She thought that she was in serious trouble at that time.

[10] You then began punching her, principally in the area of her groin. The punches must have been of considerable force because significant bruising was noted in that area when your partner was examined by a doctor some days later. At some stage, whether through the fan or this episode on 17 June, you must also have inflicted considerable force on your partner's shoulders, because bruising was seen there also.

[11] After this attack, you got in the car and told your partner to get in as well. You then drove to the Sponge Bay Lookout. You ordered your partner to walk up

the steps to the top of the lookout. You then made her climb over a barrier and onto a piece of ground directly adjacent to a steep drop onto rocks. She said in a later statement that you then made movements as if to throw her over the side. She clearly believed that what you were doing at that point amounted to a threat to her life.

[12] You were originally charged with attempted murder in relation to this incident, but the Crown later sought and obtained leave to amend this charge to one of threatening to kill. I take this event to be the most serious of the charges that you face, because it occurred at the end of a long line of domestic incidents involving violence. They also, probably for the first time, brought your partner to the point where she believed, with some justification, that her life was in real danger.

[13] In summarising these events, I have been required to construct them from written statements that your partner made to the police. She made these on 6 April 2008 and 24 August 2008. During her evidence at trial she recanted completely and said that you had done nothing at all to harm at any stage. She then decamped mid-way through the trial so that the trial was unable to proceed further.

[14] The events did not, however, stop there. You were remanded in custody. During a period between June and October 2008, you contacted your partner regularly by telephone. You did so from the prison. During these conversations you made repeated efforts to encourage your partner to undertake various activities designed to ensure that you were acquitted on these charges. These included the preparation of an affidavit in a similar manner to the activity that you had persuaded her to engage in in April 2008. It also comprised telling her how she should conduct herself if and when she had to give evidence at any depositions hearing. That is obviously a serious matter, and one that I consider needs to be dealt with separately to the other charges.

Sentencing Act 2002

[15] In sentencing you, I need to bear in mind the principles and purposes of sentencing as set out in the Sentencing Act 2002. When it comes to offending as

serious as this, the real issues are ones of deterrence and denunciation. The courts simply cannot stand by and allow offending such as this to go effectively unpunished. Society requires domestic violence of this type to be met with a stern sentence.

[16] At the same time I need to impose a sentence that is broadly consistent with those imposed in similar cases. I say “broadly” consistent because the circumstances of no two cases are ever exactly the same.

[17] I am also required to have regard to the interests of your victims. It is difficult to do that directly in your case because the principal victim is your partner and she obviously remains steadfastly loyal to you. That fact is demonstrated by the evidence that she gave at trial and by the fact that she disappeared mid-way through the trial. The tragedy of this is that unless you and she take steps to address this situation, I have absolutely no doubt that you are going to be back facing similar charges in the future.

[18] Perhaps the one victim to whom I can pay regard is your partner’s mother. She was interviewed for the purposes of a very helpful pre-sentence report. She obviously has very deep concerns about her daughter’s welfare at your hands. She must obviously have fears for her daughter’s safety in the event that you both do not address your current issues.

Starting point

[19] In sentencing you, I take the most serious charge to be that of threatening to kill. I say that for the reasons that I have already given. I propose to fix a starting point on that charge that encompasses your culpability in relation to all charges other than Count 9, which relates to the attempt to pervert the course of justice between June and October 2008. I will then fix a starting point on that final charge and will have regard to issues of totality in adopting that. I will then consider whether aggravating factors personal to you mean an uplift is required. Finally, I will consider whether there are any mitigating factors that operate to reduce the end starting point that I have selected.

[20] It is never easy to fix a starting point in cases involving domestic violence because the circumstances of cases vary so widely. Your counsel has provided me with a number of decisions in which courts have imposed sentences of around two to three years imprisonment on charges involving domestic violence. One of the problems here is that the violence occurred over a relatively lengthy period. The individual instances were not, of themselves, particularly serious, but certainly the incident involving the candlestick was. The final incident involving the trip to the lookout at Sponge Bay was also very serious because of the threat that it posed to your partner's life.

[21] When I take all of those matters into account, I consider that an end starting point of three years imprisonment is warranted on the violence charges and on the charge of attempting to pervert the course of justice in relation to the incident that occurred on 4 April 2008.

[22] Your counsel has also helpfully referred me to a number of authorities in which penalties have been imposed on offenders who have sought to influence the outcome of Court proceedings. These show that between nine months and two to two and a half years imprisonment have been the starting points or end sentences adopted for those charges.

[23] This offending was serious because it continued over a lengthy period. It involved numerous conversations in which you sought to persuade your partner to pervert the course of justice. It also occurred from within the confines of prison, a fact that I am sure will not be lost on the parole authorities. All of those facts mean that, in my view, a sentence of two to two and a half years imprisonment could easily be justified on that charge alone.

[24] Having regard to the interests of totality, however, I propose to select a starting point on that charge of one and a half years imprisonment. This means that that sentence would be cumulative upon the three year starting point that I have selected in relation to the violence charges. This means that the end starting point in relation to all charges is effectively a sentence of four and a half years imprisonment.

Aggravating factors

[25] I now need to consider whether to increase that starting point to have regard to aggravating factors personal to you.

[26] The most obvious of these is your previous convictions. You now have a very lengthy list of previous convictions for all types of offending. Included in these is a previous conviction for attempting to pervert the course of justice. You also have convictions for assaulting females and demanding with menaces.

[27] It is instructive, in my view, to read the sentencing notes of the Judge who sentenced you on 9 October 2007 on a charge of demanding with menaces. That was a charge that did not arise in a domestic context. Rather, it related to standover tactics that you had been employing to gain access to property.

[28] The Judge said:

Your history goes back over many years to 1993. Pages and pages of offending, final warnings, community based sentences, corrective training and jail and jail. Unless there is some permanent change in your attitude to the community in which you live and realisation that this behaviour cannot continue, you will continue to get longer and longer jail terms.

[29] That is a prophetic statement, Mr Jury, because quite clearly you have not learnt at all from the sentences that have been imposed upon you. I think that you have now received something like 28 previous sentences of imprisonment. In my view, an uplift must be applied to recognise that factor. The Judge who sentenced you in 2007 was right. If you keep coming before the courts, your jail terms will get longer and longer. That is not to punish you again for your previous offending. What it serves to recognise is that your current offending is made that much more serious by the fact that you have had absolutely no regard to sentences that the courts have imposed upon you in the past. There comes a time when the protection of the community becomes an important factor, Mr Jury.

[30] It would be entirely appropriate to provide an uplift of one to two years imprisonment in your case. After reflecting on matters, I do not propose to go that far. I am prepared to give some credence to your statements that you have had time

to reflect in prison and that you do wish to mend your ways. Most people would say that that cannot be taken at face value but I am prepared to give some recognition to it.

[31] I therefore propose to increase the starting point that I have selected by a total of six months to reflect that fact.

Mitigating factors

[32] I now need to consider whether that starting point should be reduced to reflect mitigating factors. In reality, the only mitigating factor is the fact that you pleaded guilty, albeit mid-way through the trial. Counsel for the Crown submits that this cannot be given any recognition but I do not accept this. Had you not pleaded guilty, the fact is that a new trial would have been required. This would have involved inevitable cost and inconvenience to the police and the State. Even coming as late as it did, I consider that your guilty pleas deserve some recognition.

[33] I propose to give you a discount of six months, or around ten per cent, to reflect that fact. This is the same discount that would normally be given to a person who pleads guilty on the day of their trial.

Sentence

[34] On the lead charge of threatening to kill, you are sentenced to three years imprisonment.

[35] On Count 1, the charge of assault with a weapon, you are charged to two years imprisonment.

[36] On Count 2, which is assaulting a female, you are sentenced to one year imprisonment.

[37] On Count 3, which is attempting to pervert the course of justice, you are sentenced to two years imprisonment.

[38] On Count 4, which is assaulting a female, you are sentenced to one year imprisonment.

[39] On Count 5, which is the kidnapping charge, you are sentenced to one year six months imprisonment.

[40] On Count 6, which is the charge of assault using the fan as a weapon, you are sentenced to two years imprisonment.

[41] On Count 7, which is the charge of injuring with intent to injure, you are sentenced to two years imprisonment.

[42] All of those sentences will be served concurrently with each other.

[43] On Count 9, the charge of wilfully attempting to pervert the course of justice, you are sentenced to one and a half years imprisonment. That sentence is cumulative on the sentence of three years imprisonment that I have imposed on the charge of threatening to kill.

[44] The effective sentence that I have therefore imposed is one of four and a half years imprisonment.

Minimum term

[45] Having imposed that sentence, Mr Jury, I have given careful thought to the issue of whether I should impose a minimum term of imprisonment. The Court can impose such an order if it is satisfied that that is necessary to denounce the conduct in which you have been involved, to deter others from offending in a like way and to protect the community.

[46] In doing so, I would need to come to the conclusion that these purposes would not be met if you were eligible for parole after serving one-third of your sentence as would normally be the case. You easily fit the criteria, Mr Jury, for a minimum term of imprisonment.

[47] In the end, I have elected not to do that for two reasons. First, the Crown has not asked that I do that. Secondly, I consider that your pleas of guilty warrant some recognition because you have at least accepted responsibility for your acts. In addition, I have no doubt that the parole authorities will have regard to the fact that a serious part of your offending occurred whilst you were in prison confines.

[48] Stand down.

Lang J