

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

**CRI-2008-041-001326**

**THE QUEEN**

v

**SHANNON ERIC WILSON  
RICKY JASON GIBBINS**

Hearing: 31 July 2009

Counsel: R J Collins for Crown  
M J Phelps for accused Wilson  
S J Jefferson for accused Gibbins

Sentence: 31 July 2009

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**SENTENCING NOTES OF DOBSON J**

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[1] You appear this morning, both of you, to be sentenced on three convictions for aggravated robbery, one each for attempted aggravated robbery, and in Mr Wilson's case, for theft of a motor vehicle valued in excess of \$1,000, conversion of a second motor vehicle and theft of registration plates.

[2] You were both found guilty after a trial in this Court. In Mr Gibbins' case, you simply denied involvement and put the Crown to the proof of the charges. In Mr Wilson's case, you gave evidence denying any involvement. The jury's verdicts are consistent with their accepting at least the essence of the version of events given in evidence by the two junior accomplices in these crimes, and it is therefore

appropriate for me to reflect on that version of events as the factual circumstances of the offences.

[3] The first group of convictions relates to the attempted robbery of the Chubb Security depot here in Napier. The images from the CCTV record of events cast this as a cowardly attack on two women, intended to gain you entry to the Chubb Security premises and what you hoped would produce a substantial sum of cash perceived to be stored there. You seized the two women employees in the early morning gloom, forcing them to help you get into the building with threats reinforced by a pistol and a hammer. If you have read the victim impact statements which I sincerely hope you both have, the ongoing trauma and fear suffered by the smaller of those two women could not surprise you. She was re-traumatised having to give evidence of the events, and your conduct has emotionally scarred her on a permanent basis.

[4] Perhaps a little surprising is the acknowledgement of ongoing harm caused also to the more robust of the two women. Her actions on that morning thwarted you getting into the premises as she was able to conceal the keys you would have needed to unlock the door. In relative terms she remained composed whilst giving her evidence, but underneath that she now discloses that she too has been scarred. She feels you robbed her of a strength of spirit and that she is now a weaker person.

[5] When you were not able to gain access to the Chubb building, your alternative was to rob these two women of their handbags and their contents. That was a very cheap trick: you gained virtually nothing of value but they lost personal items, in one case of considerable sentimental value.

[6] That attempted robbery was relatively well-planned over a period of time. The clear impression I gained from all the evidence is that you, Mr Wilson, were the prime mover in this planning, and indeed the execution, of the attempted robbery. For a period beforehand, you had your more junior associates watching the premises in the mornings to learn the routine of staff arrivals. You proposed that your co-offenders steal a vehicle to use during the robbery as well as the number plates from another vehicle to disguise the identity of the car to be used. And you planned the

disposal of the vehicle after the robbery by it being hidden at a rural park and burned. You also arranged for the vehicle to be hidden in a garage in a local apartment block between it being stolen and when it was used in the robbery. For your part in those arrangements, you are now also convicted of being parties to the taking of the motor vehicle and the number plates.

[7] The second aggravated robbery was committed at the Taradale branch of the Westpac Bank some two days after the attempted robbery at Chubb. Again, you procured your junior associates to steal a car, this time in broad daylight from a public carpark on Marine Parade. You, Mr Wilson, opted to be the getaway driver of that vehicle, leaving Mr Gibbins and Mr Halliday, one of the others, to enter the bank with their faces and heads covered, using your pistol that had been used in the first robbery to threaten all those in the bank and enforce the demands for money.

[8] Again, the victim impact statements make predictable but sad reading. The threatening intrusion into a bank, enforced by pointing a pistol at people, is always likely to emotionally scar, and it clearly has done on this occasion. Mr Gibbins, you were holding the pistol whilst Mr Halliday held open a bag for the tellers to load money into. You worked your way to the back of the banking chamber, making sure that any people in any of the rooms came out of them and lay on the floor, presumably so that they would not make contact with the Police to warn that the robbery was occurring.

[9] Once money had been loaded into the bag, you both ran out of the bank and down a nearby lane to the waiting getaway car, driven by you, Mr Wilson. The car was abandoned shortly thereafter at a rural location.

[10] This robbery does not appear to have been planned to the same extent as the attempted robbery at Chubb, but you had put other cars in place in anticipation of dumping the stolen car to cover your tracks after the bank had been robbed.

[11] Having divided up the money taken from the bank, none of the money each of you received was recovered. I cannot accept Mr Phelps' characterisation that this

was a spectacular failure. As Mr Collins points out, but for a single fingerprint of Mr Tipu, the trail would not eventually have led to you.

[12] Aggravated robbery is treated very seriously by New Zealand society. For that reason, the maximum penalty is 14 years' imprisonment. The Court of Appeal has provided guidance for sentencing in aggravated robberies in the case of *R v Mako* [2000] 2 NZLR 170 which counsel has referred me to. That judgment recognised a range of 11 features that might apply to require a starting point higher than the so-called 'norm' for aggravated robberies. Numerous of those aggravating features were present, at least to an extent, here. They include the degree of planning and preparation, the size of the team, use of disguises, the nature of the target premises and the potential for gain, the vulnerability of the victims, the presence of threats and intimidation, the absence of recovery of the proceeds, the associated offending such as vehicle conversion and the fact of multiple offending. *Mako* proposes a starting point for adult offenders in cases without any particular aggravating features of six years, or perhaps more. That is a benchmark that could apply to either of these robberies.

[13] First, however, I have to decide whether I will sentence you cumulatively so that you serve a sentence for one of these major convictions first, and then the sentence for the other, or concurrently so that I impose one sentence reflecting the seriousness of all of the convictions. The Crown has not urged on me one course or the other, although Mr Collins was inclined to approach his analysis on the basis I should sentence you cumulatively. In the case of cumulative sentences in any event, I am required to stand back and apply the "totality principle" to ensure that the combined sentences would not be out of proportion to the total criminality of the conduct involved. The final sentence ought not, by this means, to vary significantly, whether you are sentenced on a cumulative or a concurrent basis.

[14] On your behalf, Mr Wilson, Mr Phelps has urged that I sentence you concurrently, treating the Westpac robbery as the lead conviction. In your case, Mr Gibbins, Mr Jefferson concedes that the two separate incidents could call for cumulative sentences, subject of course to the totality principle being borne in mind.

[15] Because of the close connection in time, the fact that all the same people were involved throughout, and the relative similarity of all of the criminal conduct, I propose to sentence you on these convictions on a concurrent basis.

[16] As may have been explained to you, my sentencing is to be guided by the purposes in s 7 of the Sentencing Act 2002 (the Act), and the principles for dealing with offenders under s 8 of that Act. I have to decide on a sentence, mindful of the need to:

- hold you both accountable for the harm done to the victims and to the community;
- endeavour to promote in you a sense of responsibility for, and acknowledgement of, the harm you have both caused;
- reflect the interests of the victims of this offending; and
- denounce, on behalf of the community, the conduct in which you have both been involved.

[17] It is also intended to deter you and others from committing this type of offence. Ultimately I must be mindful of the realistic hopes for your rehabilitation and reintegration into the community.

[18] As to a starting point, the Crown urges a starting point for both offences together, bearing in mind totality, in the range of 10-12 years.

[19] For Mr Gibbins, Mr Jefferson concedes a starting point in the range of 10 years for the total of the offending may be warranted, prior to consideration of aggravating factors. For Mr Wilson, Mr Phelps has contended for a starting point of between six and seven years.

[20] The most direct comparison is that with your co-offender, Mr Halliday. Based only on his involvement in the Westpac robbery, the Court in his case adopted a starting point of six years. You have heard Mr Collins' submission this morning

that the Crown considers that was wrong because it misapplied which part of the starting point from *Mako* is relevant. I am inclined to agree that there is a shade above six years that would have been appropriate for Halliday, and in any event the involvement of both of you is, I am afraid, to be seen more seriously than Mr Halliday's.

[21] Mr Phelps' submissions drew my attention to three possible comparisons, all of which he suggests are more serious than the present. Two of those involved multiple robberies of banks in one case, and commercial premises in the other. They resulted in nine and 11 year terms of imprisonment, in both cases with non-parole periods, respectively of six and five years. The third of the cases which Mr Phelps mentioned again this morning is that of *R v Nairn* HC WN CRI 200-085-7140 24 July 2008 Gendall J. That involved robberies of different branches of the same international currency businesses in Auckland and Wellington, using the same approach, and using weapons and incomplete disguises on both occasions. Sentencing there on a concurrent basis, Gendall J imposed terms of imprisonment of nine years for the slightly more serious robbery, and seven years for the less serious of the two.

[22] Relating the circumstances of the offending to the guidelines in *Mako* and the outcomes in these other cases, I consider the starting point for a full part in the Westpac robbery, treating that as the lead offence, is in a range between seven and a half and eight years. I fix that in relation to the *Mako* guidelines, having regard to the fact that there was evidence that the gun was loaded. An uplift is warranted to take account of the other serious attempted aggravated robbery and robberies, bringing the conviction on a totality basis, for your part in both, Mr Gibbins, to not less than nine years' imprisonment. That is less than the Crown and your counsel suggests. I assure you I have had regard to all the communications from you and your family, and they are reflected in that.

[23] I have reflected very carefully on the differences between the part that the two of you played in the actual Westpac robbery. Superficially, Mr Gibbins, your role is far more important than yours, Mr Wilson. Mr Gibbins did the deed in the sense of going into the bank, forcing staff and customers to comply with his

demands by brandishing a pistol at them. In comparison, Mr Wilson, your part sounds relatively minor as the getaway driver who stayed in the car. I am conscious of the differences in some sentencings resulting from the relative importance of the part played by each offender in the actual carrying out of an aggravated robbery. There are two Court of Appeal examples in the cases of *R v McCausland* CA210/06 5 December 2006 and *R v Longstaff* [2008] NZCA 223. Both of these cases approved quite wide discrepancies in the sentences given to co-offenders depending on the part they actually played in carrying out the aggravated robbery. On the other hand, as Mr Collins has pointed out this morning, *Mako* at paragraph [64] says the part played is not critical if you are a designer.

[24] In your case, Mr Wilson, I am not prepared to see the distinction such as was appropriate in *McCausland* and *Longstaff*. I consider it seriously understates your involvement in the Westpac robbery to describe you as just the getaway driver. To the extent there was planning, you were involved in it, and you supplied the pistol that I sense you encouraged Mr Gibbins to use.

[25] A further factor is that there is not a lot between the relative seriousness of the two robberies, and some weight should be given to your pivotal role in the whole Chubb affair.

[26] Balancing all these factors, I consider the appropriate reflection of your involvement is to set the same starting point and indeed the same uplift as I have just determined for Mr Gibbins.

[27] In the event that I am wrong in that, and should draw a distinction in terms of your relative involvement in the Westpac robbery, then I consider I would be well warranted in making up the difference by a greater uplift to reflect the importance of your role in the Chubb robbery. So, either way I get to the same nine years.

[28] In terms of the principles in s 8 of the Act, I have reflected on the history of each of you, not just in terms of your criminal record, but the sketch of your difficult upbringings and the other personal circumstances reflected in the Probation reports. Mr Wilson, your counsel now urges on me that you are remorseful. I have to temper

that submission with the observation I made of you in your evidence, on oath, denying any involvement in these crimes. Having carefully considered all the matters advanced on your behalves, I am not prepared to recognise any mitigating factors that would warrant a reduction from the otherwise appropriate sentence for your offending. Mr Gibbins, you in particular are lucky to have such solid support and I consider that you are not beyond rehabilitation. The positive points made about your qualities as a father and a good family member unfortunately cannot bring down the sentence, given the seriousness of your offending.

[29] As to the aggravating circumstances, Mr Gibbins, your previous criminal record is somewhat worse than Mr Wilson's. I am troubled by two earlier convictions for aggravated robbery that occurred in, as best I can tell, October 1996 and June 1997. They demonstrate a propensity to use weapons to intimidate and threaten in the course of robbing premises, and additional condemnation is appropriate for your reverting to this serious form of criminal conduct. As against that, there is a lapse of 10 years between the second of those earlier aggravated robberies and the activities on which you are now being sentenced. In the end, given the passage of time and the length of the starting point I have already imposed, and because I do not feel able to make any allowance in your favour for your personal circumstances, I am satisfied that an uplift is not required to take account of those earlier convictions.

[30] Accordingly, the appropriate sentence I intend imposing is one of nine years' imprisonment for your convictions for the aggravated robbery of the Westpac bank. I will detail the lesser sentences to be imposed on the other convictions at the conclusion of these sentencing remarks.

[31] The next issue I have to consider is the Crown application for the imposition of a minimum non-parole period of imprisonment. Provision for such orders is made in s 86 of the Act. The approach to this section has been commented on by the Court of Appeal in *R v Brown* [2002] 3 NZLR 670:

[35] To sum up, when a minimum non-parole period is in issue the sentencing Judge is involved in a two-stage process. First, the nominal or maximum length of the sentence is fixed. That is done, as hitherto, by reference to all relevant sentencing considerations, largely now incorporated



in the sentencing principles set out in ss 7, 8 and 9 of the Sentencing Act. Secondly, as a separate exercise, the Judge must consider whether the offending itself is sufficiently serious so that for the offender to serve only the ordinary minimum period of one-third of the length of the sentence would not be enough to punish, deter and denounce the offending. If that is so the Judge may fix a minimum non-parole period at a level (not more than two-thirds of the nominal length of the sentence or ten years) which does sufficiently punish, deter and denounce the offending.

[32] I have concluded the first stage of this process in arriving at the lead sentence for each of you. Coming next to consider whether your offending is sufficiently serious so that if you were to serve only one third of the nine years, assuming parole after the minimum period, would that be long enough to punish, deter and denounce offending of this seriousness? I am satisfied that such a deficiency in the punishment would arise, and it is therefore appropriate to fix a minimum non-parole period. I take some guidance from the non-parole periods imposed in the three cases that Mr Phelps has drawn my attention to. In *Nairn*, a nine year sentence was subject to a five year minimum. In the case of *R v McKay* HC AK CRI 2005-004-020816 18 June 2008 Courtney J, the nine year sentence was subject to a six year minimum and in *R v Maxwell & ors* HC AK CRI 2009-090-2929 2 June 2009 Heath J, sentences of 11 years were imposed, again with a minimum non-parole period of five years.

[33] In terms of relative seriousness of your overall offending and these comparables, I impose, in the case of each of you, a minimum term of five years' imprisonment.

[34] A final consideration in relation to you, Mr Wilson, is whether these present sentences imposed today can be served concurrently with the sentence of four years imposed in July 2008 by this Court for drugs and Arms Act convictions. Section 83(1) of the Act gives the Court the same discretion as I have had to consider in deciding whether the present convictions should be the subject of concurrent or cumulative sentences. However, I have come to the opposite conclusion in relation to the sentence for the previous convictions on which you were sentenced a year ago. They are distinct in terms of their nature and the circumstances of the offending and I have not had regard to the sentence imposed on those convictions in setting the period of imprisonment appropriate on the current convictions. I am therefore

satisfied that the convictions imposed today should be cumulative on the sentence you are already serving. That means that the five year minimum term I am imposing today will commence when you complete the sentence you are presently serving.

[35] To summarise in the case of each of you, I now impose sentences of nine years for your convictions on the aggravated robbery of the Westpac Bank. I also sentence each of you to seven years for your convictions for aggravated robbery of the Chubb employees, and one year's imprisonment for your attempted aggravated robbery of the Chubb premises. Mr Wilson, you are sentenced to six months' imprisonment for each of the convictions of theft of a motor vehicle and conversion of a motor vehicle, and three months' imprisonment for the theft of the registration plates. All of those sentences are to be served concurrently. Both of you are subject to a minimum non-parole period of five years' imprisonment. In the case of Mr Wilson, these sentences are to be served cumulatively upon the sentence already being served.

[36] You may stand down.

**Dobson J**

Solicitors:  
Crown Solicitor, Napier for Crown

**Addendum:** In the course of my sentencing, I wrongly treated Mr Gibbins as if he was also being sentenced on the theft of a motor vehicle, conversion, and theft of registration plates when, in fact, those convictions related only to Mr Wilson. I have therefore removed the references to Mr Gibbins in relation to those convictions. That error had no relevance to the sentencing considerations on the other convictions for which Mr Gibbins is sentenced, and nor did it have any bearing on the considerations affecting Mr Wilson's sentences.

**Dobson J**