

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

**CRI 2007-092-2556
CRI 2009-044-5106
CRI 2008-004-19546**

THE QUEEN

v

LAVA SVELIO

Hearing: 17 November 2009

Counsel: K Glubb for Crown
L Cordwell for Mr Savelio

Sentence imposed: Wounding with intent to do grievous bodily harm
10 years imprisonment
Attempted murder
10 years imprisonment
Threatening to do grievous bodily harm
5 years imprisonment
Injuring with intent to injure
3 years imprisonment
Effective sentence: 23 years imprisonment
Minimum period of imprisonment: 10 years
(see paras [48] and [49])

Judgment: 17 November 2009

SENTENCING NOTES OF HEATH J

Solicitor:

Crown Solicitor, PO Box 2213, Auckland

Counsel:

L Cordwell, PO Box 210, Shortland Street, Auckland

Introduction

[1] Lava Savelio, you appear for sentence having pleaded guilty to offences involving serious violence that occurred on three discrete occasions between 29 December 2006 and 19 July 2008.

[2] You are currently aged 29 years. The offending was sufficiently serious for specialist reports to be obtained, so that the Court could consider whether the indefinite sentence of preventive detention ought to be imposed.

[3] After outlining the submissions I have heard today, I shall go through each of the offences separately in order to determine the starting point that would have been taken on each particular occasion were you being sentenced separately. I shall then consider what finite sentence would be justified, having regard to the totality of the offending and personal aggravating factors as well as mitigating ones. Having done that I will discuss whether a lengthy finite sentence or one of preventive detention is required, to mark your offending and to provide for the interests of the community generally.

[4] Before embarking on those inquiries, I mention one point to which Mr Cordwell, on your behalf, has referred. One of the factors raised in his submissions was the possibility of imposing an extended supervision order. Such an order is not available and, even if it were, it is unlikely to be of any assistance in a case where you are likely to be deported on serving the sentence you are required to serve in prison.

Submissions

[5] Mr Glubb, for the Crown, has submitted that a sentence of preventive detention should be imposed. In support of that submission, reference has been made to the frequency and intensity of your violent offending and the risk you pose to members of the public if released at the end of any finite sentence.

[6] If preventive detention were imposed, Mr Glubb submits that a minimum period of imprisonment of between 10 and 12 years should also be ordered.

[7] Alternatively, the Crown contends that a finite sentence in the range of 18 to 20 years is appropriate, with a minimum period of imprisonment of between one-half and two-thirds of that sentence. On the latter issue, I cannot, as a matter of law, impose a minimum period of imprisonment in excess of 10 years were a finite sentence to be imposed.

[8] Mr Glubb submitted that a sentence of preventive detention was best suited to provide an incentive to you to reform. He submitted that a finite sentence might be regarded as “crushing” in its effect.

[9] Mr Cordwell has described you as a shadow of your former self. He suggests that that has occurred since an assault in February 2009 where you were severely beaten in prison. He submits to me that preventive detention is not justified.

[10] Mr Cordwell reminds me that you have no prior qualifying offences. He also submits that you are now demonstrating a desire to participate in rehabilitative programmes. I am asked to view your violent tendencies in light of those recent intentions to rehabilitate, said to have come about following the head injury suffered in February 2009.

[11] If a finite sentence were imposed, Mr Cordwell submits it should be limited to about 15 years imprisonment, after taking account of mitigating factors.

29 December 2006 offending

[12] I deal first with the offending that took place on Friday 29 December 2006. At about 1am, two people went to a Countdown food store to buy some alcohol. When they exited from the store they were approached by you and a small group of males. You asked [one of them] if he was a security guard. He replied that he was not.

[13] In an unprovoked attack, you punched him in the right side of the face, knocking him to the ground, causing soreness and reddening. His associate was then punched hard in the back and head by you and as he fell to his knees you kicked him in the neck. As a result, he was taken to hospital. He lost the use of his legs, becoming paralysed as a result of your actions. He will never walk again.

[14] As a result of that offending you were charged with and pleaded guilty to one count of wounding with intent to cause grievous bodily harm. The maximum penalty for that offence is 14 years imprisonment.

[15] This was a thuggish attack. There is no rational explanation for what occurred. You inflicted injuries of a type that left your victim paralysed for life. Unsurprisingly, the victim impact statement makes for depressing reading.

[16] Offending involving the intentional infliction of grievous bodily harm must be marked with a stern community response. The primary sentencing goals must be deterrence, denunciation and accountability. The aggravating factors inherent in this offending was the gratuitous violence involved, the serious injury suffered and attacking the victim's head and neck causing paralysis.

[17] The number of aggravating factors involved requires, in my view, a starting point for sentence on this charge alone of 10 years imprisonment. I leave to one side an assessment of aggravating factors person to you and mitigating factors, to which I shall return.

24 February 2007 offending

[18] At about 1.30am on Saturday 24 February 2007, a husband and wife were at home asleep at their Mangere address. You drove a car to the victim's home.

[19] You got out of the car, armed with a .22 calibre rifle. You approached his house and called to him. You saw the victim through the window and yelled that you were going to kill him. You raised the rifle when the distance between you was only two to three metres.

[20] The victim dropped to the floor. You fired four shots through the window and into the house. A subsequent scene examination showed that the shots were fired between knee and head height for a standing adult.

[21] Subsequently, you approached another victim in his car and pushed the barrel of the rifle through the driver's window and into his mouth. You said, "I want to shoot you" a number of times. You then fled the scene.

[22] The offending of 24 February 2007 involved two separate crimes: attempted murder and threatening to do grievous bodily harm. You have pleaded guilty to each. The maximum penalty for attempted murder is 14 years imprisonment, while 7 years imprisonment is the maximum penalty for threatening to do grievous bodily harm.

[23] These offences were gang related, arising out of an increase in tensions in the months preceding the event. You went to a house with a loaded rifle, fired shots into the house and made it clear by your own words that you were shooting to kill.

[24] The threat to do grievous bodily harm is made more serious by your action in putting a loaded rifle into a victim's mouth.

[25] The use of a loaded firearm, both in shooting to kill and in threatening by placing the gun in a victim's mouth, are sufficiently serious to justify a starting point for sentence overall of 12 years imprisonment for that particular incident.

[26] I make that assessment based on the totality of what occurred on that occasion. The victims remain scared. Deterrence, denunciation, accountability and protection of the community are the primary sentencing goals.

19 July 2008 offending

[27] On 19 July 2008, you were housed in Lower B Block at the East Division of Paremoro Prison. This area has a long landing containing all cells. During the day, inmates are free to leave their cells and walk on the landing. There is a locked

grill, leading to a cross passage. In that passage is the telephone that inmates can use.

[28] On the morning of 19 August 2008, you became aggressive towards the victims, two Corrections officers, about a phone call you were requesting to make. You and an associate rushed through the grill into the office where one of the victim's was working. You had armed yourself with home-made weapons. You had a number of pieces of plastic which had been sharpened at one end and fashioned a handle at the other. They were concealed between your knuckles.

[29] You demanded to make a telephone call you had requested. When one of the victim's declined your request, you attacked him punching him three or four times to the face and head area. After he attempted to push you away you punched him again on other occasions to the right eye.

[30] Another prison guard entered the office to try to pull you away from the other officer. You continued to assault the first of them. On one occasion you were in possession of the weapons and, while separated from your associate, you yelled at the second of the officers "Give me the key or I will kill you". That was said on several occasions.

[31] As a result of that assault one of the victims was taken to North Shore Hospital. He received treatment for a fractured cheek bone, numerous abrasions and contusions to the head, a chipped tooth, several small puncture wounds to his neck and ligament damage to his right knee. The other prison officer received much less serious injuries.

[32] In relation to those events you were charged and pleaded guilty to one count of injuring with intent to injure. The maximum penalty for that offence is 5 years imprisonment.

[33] In my view, you are fortunate to have been charged with that crime rather than something much more serious. This was an unprovoked and cowardly assault

on a public official, a Corrections officer. It was carried out coldly, with a weapon you had crafted or obtained in prison.

[34] The effect on the primary victim has been major. As well as serious physical injuries, he continues to suffer psychologically. He is incapable of returning to duty and, indeed, may never do so.

[35] This offending is close to the worst of its type. If sentenced alone, it would attract a starting point of at least 4 years imprisonment.

Totality

[36] If I were to accumulate those sentences they would reach some 26 years imprisonment.

[37] To that, aggravating factors relating to you personally and a credit for the entry of guilty pleas should be given.

[38] While you have 16 previous convictions and are currently serving a sentence of 3 years 9 months on drugs charges, there have been no prior offences involving serious violence. I would provide an uplift of 2 years for that prior offending. While not of the same character, those convictions demonstrate prior bad character.

[39] From that final starting point of 28 years, I would deduct a credit of 3 years for the guilty pleas, leaving a starting point of 25 years imprisonment. No separate credit should be given for remorse, even if I were satisfied that remorse was present.

[40] If a finite sentence were imposed, what is the appropriate duration? There is no doubt that cumulative sentences must be imposed. The offending was discrete in time, place and circumstances.

[41] A totality assessment is necessarily broad. I take a sterner approach than has the Crown. In my view, an appropriate sentence to reflect the seriousness of the three distinct episodes of gratuitous and serious violence is 23 years imprisonment.

To serve a term less than 10 years imprisonment would not meet the sentencing goals of denunciation, deterrence and accountability. Therefore, if that sentence were imposed the maximum minimum period of imprisonment would be 10 years imprisonment.

Should preventive detention be imposed?

[42] Preventive detention is designed to protect the community from offenders who pose significant and continuing risks to the safety of its members. To impose that sentence, in this case, I must be satisfied that you are likely to commit a qualifying offence if you were released at the expiry of a finite sentence.

[43] You have no pattern of prior serious violence. However, your offending since December caused significant harm to members of the community, apparently without any glimmer of expressed remorse until recently when you suffered a head injury yourself. All of your victims are either physically or psychologically harmed for life.

[44] Predictive assessments from the psychiatric and psychological reports are not easy to make. My initial view was that you were likely to be manipulating the situation to obtain the best possible result for yourself. However, having seen you in the dock and having listened to Mr Cordwell, I can now see that the assault perpetrated against you and the injuries you suffer may well have finally led to some empathy for the victims of your own offending.

[45] By a fine margin I have concluded that an indefinite sentence is not appropriate. A lengthy finite sentence with a minimum period of 10 years imprisonment should provide an adequate incentive for you, if you have the desire to embark on rehabilitative programmes and to demonstrate that you can go for that length of time without exacting serious violence on anyone. If you cannot demonstrate that, the sentence is long enough to keep you away from the dangers you pose to the community until you are in your 50s.

[46] The choice is your's. Give up violence and earn a chance at relatively early freedom or continue with it and be in prison for a very long time.

[47] On any view, you could not expect to be in prison for less than 10 years for offending of the type I have described. If anything such as the prison incident occurs again, it is almost inevitable that you will be sentenced to preventive detention then.

Sentence imposed

[48] Mr Savalio please stand.

- a) On the charge of wounding with intent to do grievous bodily harm, you are sentenced to 10 years imprisonment.
- b) On the attempted murder charge, you are sentenced to 10 years imprisonment.
- c) On the charge of threatening to do grievous bodily harm, you are sentenced to 5 years imprisonment.
- d) On the injuring with intent to injure charge, you are sentenced to 3 years imprisonment.

The attempted murder and threatening to do grievous bodily harm sentences are to be served concurrently as between themselves. The attempted murder, wounding with intent to do grievous bodily harm and injuring with intent to injure sentences shall be cumulative.

[49] The effective end sentence imposed is 23 years imprisonment. I impose a minimum period of imprisonment of 10 years.

[50] Mr Savelio, stand down.