

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

CRI 2009-092-2320

THE QUEEN

v

**KAVAE TEINA,
CHARLIE THOMAS
PAUL CASSIDY**

Hearing: 13 November 2009

Appearances: S Mandeno for the Crown
D Wallwork for Mr Teina
I Jayanandan (on instructions from S Tait) for Mr Thomas
C Cato for Mr Cassidy

Judgment: 13 November 2009

SENTENCE OF WOODHOUSE J

Solicitors / Counsel:

Ms S Mandeno, Meredith Connell, Office of the Crown Solicitor, Auckland
Ms D Wallwork, Barrister, Auckland
Mr S Tait, Barrister, Auckland
Ms I Jayanandan, Barrister, Auckland
Mr C Cato, Barrister, Auckland

[1] I am now going to explain my reasons for my sentence and the three of you may remain seated until I come to impose the sentence.

[2] As you all clearly recognise there is need for sentences – and reasonably lengthy sentences – of imprisonment. I have to explain the sentences not simply for your benefit – although most importantly for you – but also for the benefit of those who have suffered as a consequence of your serious crimes and for the community as a whole. What I am going to describe, you all know about but others don't and that is why I describe it.

[3] There were four aggravated robberies in South Auckland between 28 March and 15 May 2008. You, Mr Teina, took part in four of them; you, Mr Cassidy, took part in three and received property from the fourth; and Mr Thomas took part in two of these robberies.

[4] Mr Teina now appears for sentence having pleaded guilty to four charges of aggravated robbery. Mr Cassidy appears for sentence having pleaded guilty to three charges of aggravated robbery and one charge of receiving. Mr Thomas appears for sentence having pleaded guilty to two charges of aggravated robbery. The maximum penalty for a single offence of aggravated robbery is 14 years imprisonment. That, by itself, indicates the seriousness of this crime.

[5] I will describe the facts in outline.

Massey Road Seafoods, 28 March 2008

[6] The first aggravated robbery was an armed robbery at Massey Road Seafoods in Mangere on 28 March 2008.

[7] Mr Cassidy and Mr Teina took part in this aggravated robbery with two other, but much younger males, Moses Mahanga and Pauliasi Taufalele.

[8] At about 6:30 p.m. on 28 March 2008 the shop owner, closed his business by locking the front door and pulling down a roller door over the front of the shop. At about 8:40 p.m. the owner and four of his staff were in the back of the shop. Teina, Mahanga and Taufalele arrived in a stolen car. Teina entered through the back door of the shop with Mahanga and Taufalele. Teina was carrying a double barrelled shotgun. I just pause there to say that whether it was loaded or it was not loaded – and there was no suggestion that it was loaded on this occasion – does not in the overall offending make a great deal of difference. Taufalele was armed with a baseball bat. One of you yelled as you came through the door for everyone to lie on the floor. The owner and one or two others ran to the front of the shop followed by Teina and Taufalele. The other staff members lay on the floor at the back of the shop watched by Mahanga.

[9] Taufalele demanded the owner's wallet and then hit him with the baseball bat at least twice, breaking his arm. Teina pointed the gun directly at the owner and made further demands for money. Teina took the owner's belt bag containing several hundred dollars and his cellphone. Taufalele took a brief case with about \$4,000 and documents. The three then left in the stolen car. Less than 400 meters away they abandoned the car and got into a car driven by Cassidy. They went to the home of another person where they changed their clothes, asked the other person to burn the clothes they had been wearing, and to burn a bag taken to the store, and paid this other man \$100.

PSIS Bank, Manukau, 17 April 2008

[10] The second aggravated robbery was an armed robbery at the PSIS Bank in Manukau on 17 April 2008 – that is to say, only about three weeks later.

[11] This robbery was committed by Teina, Thomas and Mahanga. Cassidy received some of the property that was stolen.

[12] At about 9:20 a.m. on 17 April 2008 Teina and Mahanga entered the bank. Teina was again armed with a double barrelled sawn-off shotgun. Both were wearing full face balaclavas. Mahanga has apparently said that on this occasion and

the subsequent occasions the shotgun was loaded. But there is some question about that because of other statements.

[13] There were several customers in the bank. They were told to get on the ground. If I have not already said so, you were wearing full face balaclavas. Mahanga, carrying a bag, jumped over the counter, confronted the teller and opened drawers containing cash. Teina stayed on the other side of the counter pointing the gun directly at the teller. I pause there just to illustrate the nature of what was done, whether or not the gun was loaded. Think of it from the point of view of the people at whom the gun was pointing. Mahanga emptied about \$10,000 into the bag.

[14] The two then fled the bank on foot to a car driven by Thomas. All three went to a house in Manurewa. Cassidy arrived at this house soon after. The money was then divided up between the four, with Cassidy getting \$800 of the total.

Clendon Post Shop, 6 May 2008.

[15] The third robbery was at the Post Shop in Clendon on 6 May 2008. Cassidy, Teina, Thomas and Mahanga, committed this aggravated robbery.

[16] At about 9:10 a.m. on 6 May the shop was open and operating, with a reasonable number of customers in the shop. Thomas, Teina and Mahanga arrived in a stolen car driven by Thomas. Teina and Mahanga got out of the car while Thomas remained in it with the engine running. Teina and Mahanga were wearing full face balaclavas, as on the previous occasions. Teina was again carrying the same sawn-off double barrelled shotgun and Mahanga was carrying a bag. They went in and yelled at everyone to get down on the ground and went up to the counter. Teina pointed the gun at the tellers and other customers. Mahanga went behind the counter and told the tellers to open the cash drawers and get down on the floor. Mahanga then took cash from the drawers and loaded it into the bag.

[17] The two then fled and got into the car where Thomas was waiting. They drove about a kilometre to where Cassidy was waiting in another car. It is the same arrangement as at the Massey Road Seafoods. The stolen car was abandoned and all

four went in Cassidy's car to Thomas' home and divided up the money. About \$1,200 was stolen.

58 Regent Street, Papatoetoe, 15 May 2008

[18] The fourth aggravated robbery was a home invasion at about 8:00 p.m. at Regent Street in Papatoetoe. The house was occupied by a Cambodian couple, who settled in New Zealand in 2002, and their two children aged 1 year and 3 years. This robbery was committed by Cassidy, Teina, Mahanga and Taufalele.

[19] Teina, Mahanga and Taufalele arrived at Regent Street in a stolen car provided by Cassidy. Cassidy drove there in another car and pointed out the address. Cassidy explained, or had explained, that there was a safe in the master bedroom and that Teina and Mahanga, who were to go into the house, should kick the door down. Taufalele remained in the stolen car and Cassidy drove in his car to another location that had been arranged to wait for the others.

[20] Teina and Mahanga were heavily disguised and Teina was carrying the same double barrelled sawn-off shotgun. The door was kicked in. The parents and their children were herded into a room and money was demanded. A search for money was unsuccessful. Teina, you threatened to shoot the children if the parents did not hand money over – you threatened to shoot the children. Approximately \$100 in cash was then handed over together with credit cards and other property.

[21] The two then ran from the house and left in the car driven by Taufalele.

[22] Those are the facts in simple outline.

Victim impact statements

[23] I have received and read victim impact statements from three of the victims at Massey Road Seafoods, one of the victims at the PSIS Bank, being an employee, two employees of the Clendon Post Shop, and the couple at Regent Street.

[24] As would be expected, there has been significant emotional harm for all of them, and others who have not provided victim impact statements I am certain. All of them were put through experiences which were very frightening and in some cases quite terrifying. There have been other harmful consequences. I will note some of this later. All of it is taken into account in fixing the sentences as I am required to do by law.

The offences

[25] I now come to the starting point that has been discussed.

[26] In deciding what sentence should be imposed on each of you I firstly have to fix what is called a starting point. This is the length of imprisonment based on all of the circumstances of the most serious of the offences with an increase for the other offences. There will be an increase for the other offences because the sentences I will impose for each offence will be concurrent; that is to say, one sentence will not be added to another. Personal circumstances of each of you which might increase or decrease the sentence will be assessed after this.

[27] Before I get into the detail of this I should say that there does not really seem to be a great deal of difference between what the Crown submits should be the starting point and the relevant considerations and what your respective counsel have submitted. But I will come to aspects of that in a moment. All of you recognise that there have to be reasonably lengthy periods of imprisonment.

[28] There are the following aggravating features. I am referring here to all of the robberies unless noted:

- a) There was pre-meditation, with planning and preparation. All four premises were carefully targeted with the clear intention of getting substantial sums of cash.

- b) There were four offenders in three of the robberies and three in the other. And that is to be compared with somebody committing an aggravated robbery by himself.
- c) Disguises were worn in all the robberies. That is not only part of preparation it is also very frightening for the people affected.
- d) A shotgun was used in all the robberies and a baseball bat in one. I mentioned the possibility that the shotgun was loaded on some occasions but I am not taking that into account on the basis that it was definitely loaded.
- e) On all occasions risks were increased by the types of premises targeted and the number of people at the premises.
- f) Regent Street was a home invasion. It was done at night, and it was carried out with threats with a gun to children. That is a consequence of what all of you involved in that offence and the co-offenders planned.
- g) The shotgun was also used to threaten in the other robberies.
- h) There was actual violence, with serious injury, at Massey Road. All of you involved in that have to take responsibility for that consequence.
- i) The property stolen has been described. None of it has been recovered and I note that there is no prospect of reparation from any of you.
- j) Stolen cars were used, damaged and abandoned.
- k) As I have already mentioned, a number of members of the public have suffered emotional or psychological harm or both and this may continue for some of them for a long time. The lives of the family at

Regent Street have been badly affected in other ways. This has occurred because of terrifying threats of violence to them in the country they came to in search of a better life. The owner of the seafood shop, in addition to the emotional harm to him, and to his staff, including his daughter, had the physical injury and significant financial loss from disruption of his business. In mentioning the Cambodian family and the fish shop owner specifically as I have just done, I am not in any way intending to diminish the serious impact on the other people affected by your criminal acts.

[29] Against this background the starting point is to be fixed on the basis set out in the Sentencing Act and in a Court of Appeal case called *Mako*¹.

[30] I also note that one of your co-offenders, Mahanga, who was involved in all four robberies, received a sentence based on a starting point of 10 years for the Regent Street home invasion, increased to 12 years for the other offences. It is the starting point for the offences themselves that is most relevant, not the end sentence that he got. The end sentence can be quite different for all sorts of reasons. In his case he was young and, as I understand it, had no previous convictions.

[31] The most serious offence – or what is called the lead offence – for you, Mr Teina, and for you, Mr Cassidy, is the Regent Street home invasion.

[32] It has been submitted for Mr Teina, that the starting point, with an increase for the other offences, should be 12 years imprisonment. That was a submission by Ms Wallwork on behalf of Mr Teina.

[33] Mr Cato, for Mr Cassidy, agreed in broad terms. But Mr Cato noted that your involvement, Mr Cassidy, in the PSIS robbery was as a receiver only.

[34] Ms Mandeno for the Crown submitted that the starting point, covering all offences, should be 12 years. I just make clear here that I am dealing at the moment

¹ *R v Mako* [2000] 2 NZLR 170 (CA)

with the sentences for you Mr Teina and for you Mr Cassidy. I will come to you Mr Thomas.

[35] These submissions recognise that, except for the factor noted by Mr Cato, there is no basis for drawing distinctions based on the different roles each person played or specific acts of one person compared with another.

[36] I will fix the starting point of 12 years. I must say that a starting point of 12 years could be higher – it could be considerably higher. The maximum penalty – as I have said – for a single offence is 14 years imprisonment. But I am not going to fix a starting point higher than what the Crown submits, and your counsel agree with, and which is the same as the starting point for your co-offender Mahanga.

[37] I do agree with Mr Cato that some distinction needs to be drawn between the starting point for Mr Teina, who is being sentenced for four armed robberies, and Mr Cassidy, who is being sentenced for three armed or aggravated robberies and for receiving part of the proceeds of the other robbery. But in all of the circumstances the distinction cannot be particularly significant. The starting point for Mr Cassidy, based on the totality of all of the offending, should be 11 years and 6 months. For Mr Teina, it is 12 years imprisonment.

[38] In your case, Mr Thomas, the Crown has submitted the starting point for both offences should be 10 years imprisonment. Mr Tait in written submissions, and Ms Jayanandan on your behalf today, submitted on your behalf it should be 8 years.

[39] Based on that Court of Appeal case that I mentioned of *Mako*, the starting point for the PSIS robbery or the Post Shop robbery should be 8 years. The uplift for the second offence could easily be 2 years, but again there needs to be some parity with the others who were involved in two additional crimes. The starting point, for the totality of your offending, will therefore be 9 years.

Personal factors

[40] I now come to personal factors. The starting points need to be increased or decreased having regard to factors personal to each of you. For this purpose I have had regard to what has been said in the pre-sentence reports as well as the submissions on your behalf. Regrettably, there is very little in any of your cases which would justify a decrease in the sentence, other than your guilty pleas. I will come to the guilty pleas at the end.

Cassidy – personal

[41] Mr Cassidy, you were 30 years old at the time of this offending. You were a mature man.

[42] You have an extensive list of previous offences, commencing with a burglary when you were 18. You have received five – as I counted it – separate sentences of imprisonment since 1999, for numerous offences. There is a substantial number of burglaries and similar offences.

[43] I recognise that there is no aggravated robbery, but there must be an increase for this. This is not to punish you twice but because the number and nature of your previous convictions and the sentences you have received in the past are part of the information relevant to determining the length of the prison sentence you must now receive for the present offences.

[44] Against this you have expressed strong commitment to your partner and your children and a wish to stop offending. I have received a letter you have written and read it this morning. In broad terms Mr Cassidy – and as already recognised by your counsel – your actions do not bear out what you say or the wishes that you express. As Mr Cato has said, it is in your hands. In the end you have to do what is needed and you must take responsibility for your actions. I do not ignore the positive matters but they do not outweigh the negative. In giving you as much credit as I can against your bad record I would increase the sentence by 6 months.

[45] You are then entitled to a credit for the guilty pleas. Your counsel and the Crown agree, based on a recent Court of Appeal decision – a different decision – that the credit is 25%. That means that the end sentence is reduced from 12 years to 9 years.

Teina – personal

[46] Mr Teina, you were 25 years old when you committed these crimes.

[47] You too have a long list of previous convictions. This includes a number of burglaries, theft and similar offences. There have been three separate occasions when prison sentences were imposed. There was a conviction for aggravated robbery in the Youth Court in 1998.

[48] Taking account of the relevant factors in the pre-sentence report, your sentence, I consider, should be increased by 4 months having regard to the personal factors and giving you as much credit as I can. And I do take account of what has been said about your problems with alcohol. They cannot possibly excuse your offending, and you need to deal with that problem.

[49] You are entitled to the maximum credit of 33% for guilty pleas on two of the charges because those guilty pleas were made at the earliest reasonable opportunity. Those are charges that were brought against you a considerable time after the other two charges. The pleas on the other two charges, by themselves, would get a credit of 20% based on that Court of Appeal decision. I consider it appropriate to give you an overall credit of around 27%. That is essentially the midpoint. That means the 12 years and 4 months is reduced to 9 years.

Thomas – personal

[50] Mr Thomas, you were 36 years old I understand when you committed these offences. You also have a long list of previous offences, going back to 1986. Many of these are not relevant to the present offending, but some are. In particular, in July

2003 you received a sentence of 4 years 6 months for wounding with intent. You are considered to be at high risk of re-offending.

[51] Taking account of this and the matters referred to in the pre-sentence report and submissions, and the letter I have received from you today, and the efforts you are apparently taking, your sentence should be increased by 6 months, to 9 years 6 months, and again subject to a reduction for your guilty pleas.

[52] Your guilty pleas were entered on 2 September 2009. This involved the same delay as Mr Teina on two of the charges against him. I allowed a reduction of 20% for those, based on that Court of Appeal decision. Ms Jayanandan submitted on your behalf, in effect, that your decision to plead guilty was based a new Police disclosure in that if the information had been disclosed earlier you would have pleaded guilty earlier. I do not consider that the information referred to has any material bearing on the amount of the credit for the guilty plea. You could have pleaded guilty a lot earlier. You knew what you had done.

[53] A credit of 20% means that your sentence is 7 years and 7 months.

Minimum period of imprisonment

[54] The final thing I have to discuss is a minimum period of imprisonment.

[55] The Crown has submitted that a minimum period of imprisonment should be imposed as part of the sentence. This may be done if I am satisfied that the minimum period of one-third of the sentence that would apply before parole can be considered would be insufficient to meet a number of important purposes of sentencing. These are:

- a) To hold you accountable for the harm done to your victims and to the community as a whole.
- b) To denounce your criminal conduct.

- c) To deter each of you and others from committing crimes like this.
- d) And to protect the community.

[56] Your respective counsel submit that a minimum period of imprisonment is not justified. As part of that they submit that the matter should be left to the Parole Board with an expectation that you would not in any event be released possibly until you have served half of the term.

[57] Having regard to all of the matters that I have discussed or referred to up to this point, and including the relevant provisions of the Sentencing Act, I consider there should be a minimum period of imprisonment for each of you of one-half of the total sentence.

Formal sentence

[58] Would you now all please stand.

Mr Cassidy

[59] Mr Cassidy, for the aggravated robbery at Regent Street you are sentenced to 9 years imprisonment with a minimum term of 4 ½ years.

[60] For the two other offences of aggravated robbery, you are sentenced to imprisonment for 8 years, with a minimum period of imprisonment of 4 years.

[61] For the receiving offence you are sentenced to imprisonment for 1 year.

[62] All of those sentences are to be served concurrently. The total is 9 years.

Mr Teina

[63] Mr Teina, For the aggravated robbery at Regent Street – the home invasion – you are sentenced to imprisonment also for 9 years, with a minimum period of imprisonment of 4 ½ years.

[64] For the three other offences of aggravated robbery, you are sentenced to imprisonment for 8 years, with a minimum period of imprisonment of 4 years.

Mr Thomas

[65] Mr Thomas, for the two offences of aggravated robbery, you are sentenced to imprisonment for 7 years and 7 months for each, with a minimum period of imprisonment for each of 3 years and 9 months. The total is 7 years and 7 months.

[66] Stand down.

Peter Woodhouse J