

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

CRI-2008-086-000187

REGINA

v

EDWARD NORTON HAYES

Hearing: 11 December 2009

Counsel: K J Beaton for Crown
D J Taffs for Prisoner

Sentence: 11 December 2009

SENTENCE OF PANCKHURST J

Mr Hayes:

[1] You pleaded guilty in this court on 24 November 2009 to a charge of injuring with intent to cause grievous bodily harm contrary to s189(1) of the Crimes Act. The maximum penalty for that charge is 10 years' imprisonment.

[2] The facts of the case are that on Friday, 28 March 2008 you were at a party at a house in Westport. There were a number of young people there many of whom, like you, had been drinking to excess it appears. A group was in conversation when quite out of the blue you punched your victim who was standing beside you without warning. There were a couple of very effective blows. He was described as able to remain standing momentarily, for a second or two, before he collapsed to the ground unconscious. At that point you then repositioned yourself, took a grip on a fridge

that was nearby to maintain your balance, and then stomped him repeatedly to the area of the head. After that you fled the scene. Meanwhile he was unconscious on the floor and remained so while he was removed from the house and taken to hospital.

[3] You were located a little later that night in another house, concealing yourself in a wardrobe.

[4] The victim was a young man aged 19 years who, for reasons unknown to me, has declined to make a victim impact statement. I assume that he has sustained no lasting injuries, although Ms Beaton, Crown counsel this morning, has outlined the injuries which he sustained at the time. Effectively he suffered from serious concussion and injuries to the head, which one would expect from the actions I have already outlined.

[5] You are now 22 years of age. You were 20 at the date of these events. You have a poor record of criminal offending. It includes a number of offences of violence. There was an assault in mid-2005; a robbery in late 2006 and then another assault in December 2007. In relation to that offence you were sentenced to three months' imprisonment in January of last year. As a consequence of that you were still on release conditions when this offence was committed on 28 March. All of that is significant enough but, having been bailed in relation to this charge, you were then back in the community and in December of last year you committed two offences of assault on a female, your partner, and one offence of injuring with intent to injure, as I understand it, in relation to your partner's mother. That was in May of this year.

[6] You were sentenced in relation to those matters as recently as June of this year, despite the fact that they post-dated this offence. I am now informed that you were released from that nine month sentence on 22 September, so about two and a half months ago.

[7] The pre-sentence report describes in some detail your very difficult or unfortunate upbringing, an aspect which Mr Taffs has equally well painted this morning in his submissions on your behalf. I accept that you have not had an easy

road in life and no doubt the violence you have committed in recent years has a good deal to do with the example that was set, or rather wasn't set, during the formative years of your life. The other feature of the pre-sentence report is that you have a raging alcohol problem. You have been screened in relation to that and it is described as a severe issue. I note as well that there is reference to your being an amateur boxer, competitive, and indeed that you have achieved something in that regard - which makes the fact that you punched this young man in the way that you did the more reprehensible.

[8] The plea that has been advanced this morning by Mr Taffs effectively reflects some recent developments which have occurred since your release on 22 September. Your partner, Ms McDonald, who is also the mother of a child of which you are the father and which was born quite recently, has stuck by you. Indeed, you and she have moved from Westport where this offence occurred to Christchurch in an endeavour to make a fresh start. You have also attended and completed a course run by He Waka Tapu in relation to alcohol and drug consumption. And perhaps more significantly you have also embarked on a much more prolonged course designed to treat violence, alcohol and related issues. Your attendance in that, however, was curtailed when you eventually entered a plea to the present matter and were remanded in custody pending this sentencing.

[9] Mr Taffs relies not only on these positive developments in the last two or three months, but upon an argument that you should be regarded as still a young person. While your chronological age, he acknowledges, is 22 years he submits that in terms of maturity, on account of your upbringing, you are much younger than that. At the end of the day he makes a plea that a sentence of imprisonment, but to be served on home detention, is the appropriate course.

[10] The Crown on the other hand contend that your background is such, and this particular offence is of such a level of seriousness, that home detention is not appropriate. The aggravating features are that this was an attack which involved punches, and very effective punches to the head. Your victim was obviously vulnerable and he did sustain, albeit not lasting injuries, but injuries which were significant as serious unconsciousness always is. It seems to me that applying the

leading case of *R v Taueki* [2005] 3 NZLR 372 (CA) by analogy, I must adopt a starting-point for your sentencing of at least two and a half years, and I do so.

[11] The next issue is what reduction are you entitled to for your plea and whether allowance should be made for your asserted immaturity. I am doubtful whether you are eligible to be treated as a young offender, entitled to any significant allowance for immaturity. It seems to me that at your age and against your background the time has gone when you can be regarded as a particularly young offender. Nonetheless I make some allowance both for the plea and for the efforts you have made in recent times, and give such minimal recognition as can be allowed on account of your age, and reduce that starting-point by 20% or six months, which produces a sentence of two years' imprisonment.

[12] Despite Mr Taffs' plea on your behalf I do not consider this is an offence where I can impose home detention. I direct that the report from He Waka Tapu should be carried to your Department of Corrections file because it may be relevant to decisions which will need to be made about you. I also direct that the letter written by Ms McDonald be taken to that file.

[13] Your sentence is one of two years' imprisonment which will be accompanied by standard conditions, but the plea for home detention, Mr Hayes, I'm afraid is declined. You are to serve this sentence, and when you are released it is up to you to return to the path that you have embarked upon and achieve the turnaround that your counsel pleads you are intent on achieving and capable of. I hope you can achieve that.

Stand down.