

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

CRI-2008-018-000531

REGINA

v

BOBBY CHRISTOPHER BARNETT-WALDRON

Hearing: 11 December 2009
Counsel: K J Beaton for Crown
R G Glover for Prisoner
Sentence: 11 December 2009

SENTENCE OF PANCKHURST J

Mr Barnett-Waldron:

[1] On 19 November you entered a plea of guilty to causing grievous bodily harm with intent to cause grievous bodily harm and also to a charge of arson. Two counts remain in the indictment which was filed in your case and in relation to those you are hereby discharged.

[2] The facts of the case are that your victim was a 74 year old pensioner. He lived alone in a house in Dobson. You too were a resident of that town and you knew him. You entered his home at about 8.00 pm on Monday, 5 May 2008. Mr Lawrence was already in his night attire. He was watching television. You then attacked him. The best evidence as to the extent and nature of that attack is to be found in the injuries which he sustained. I will turn to those shortly.

[3] He was rendered unconscious, or near to unconscious, and was certainly left incapacitated on the floor in a pool of blood. It appears very likely that you stole a small amount of cash from him. And then tissue and other paper was placed on an element of his electric stove and some in the oven itself. An element at least was turned on. Paradoxically that action, which forms the basis of the arson charge, may have actually saved Mr Lawrence's life because an alarm was activated. Neighbours, to their credit, came to the rescue and he was dragged from the house so that medical attention could be obtained.

[4] He was taken by ambulance to Greymouth Hospital and soon flown to Wellington on account of the extreme seriousness of his injuries. Those injuries comprised complex fractures to his nose, cheek-bones, jaw, both orbits of his eyes with the fractures extending to the base of the skull and the front of the head. As a consequence of these head injuries and fractures he had extradural and subarachnoid haemorrhages - bleeding to the brain. Three of his vertebrae were fractured. He had fractures to ribs on both sides. His liver had sustained a laceration. There was bleeding to the right adrenal gland. The medical people who treated him concluded that there had been of the order of 15 blunt force wounds inflicted to his head and to an ear which was particularly damaged as well. Teeth were knocked out and, finally, there was extensive bruising to the head area, the lower back and the right arm.

[5] Dr Sage, a very experienced pathologist who reviewed this list of injuries, formed the view that the skull fractures were so significant that they probably limited the build-up of inter-cranial pressure within the skull, which would have been occasioned by swelling of the brain so that in an odd way those fractures might also have contributed to the fact that Mr Lawrence did not die.

[6] You fled the scene and a short while later visited the home of a friend. Your clothes were still splattered with blood and you made an admission at that point that you had beaten up an old guy and taken some money.

[7] The long term consequences for Mr Lawrence have been profound. Previously he lived in his own home. He managed his own affairs. He was a gardener who grew and gifted vegetables to his neighbours. He had a number of

outside interests and obviously a place in the community. Now he is at a dementia unit at Greymouth Hospital. He requires full-time care and he is mentally incapable. It has been necessary for a manager to be appointed to manage his personal affairs, his finances and the like. In short, his independence has gone. Somewhere in the papers that I have read the word “catastrophic” is used and that impresses me as an accurate description of the effect of his injuries. His quality of life has been taken.

[8] A neighbour and another woman, Mrs Wallace, who travelled from Blenheim, read victim impact statements. They provided an insight into the life of this man and underlined the tragedy that has befallen him.

[9] You are a young person. You were born in January 1991. You were aged 17 at the time you committed this crime and you are only 18 years of age now. I accept you had an unsettled upbringing. You left school early aged only 15 years, but for all that you are obviously bright and you write very well. I have read a letter from your mother who has lived in Christchurch in recent times and it is apparent that you had limited support and guidance after you left school and while you continued living in Dobson. But that said, you had work as a moss picker and you were functioning, seemingly, without undue resort to alcohol or drugs which are so often associated with this sort of offending.

[10] You now have some convictions, but these accrued in a period only days prior to this crime being committed. On 13 April you were involved in a police chase between Kaikoura and Greymouth, and arising out of that you faced a raft of charges including theft, driving matters and possession of a weapon. And so you were waiting to be dealt with on those offences when this crime was committed on 5 May. Your only other conviction was committed two days later, an offence of wilful damage.

[11] As Mr Glover has stressed on your behalf, and this is a point made in the pre-sentence report, you may be 18 but you are considered a very young 18. You have had to grow up in a hurry in the last months since you have been in prison. In that report there was also an attempt to deny full responsibility for the offending. You asserted there was an accomplice and that you played only a minor role. But that

cannot be reconciled with what you have finally said in a letter which you have written to the Court, and indeed in a letter which you have written to the Dobson community and which counsel read at the outset of this sentencing.

[12] In the first letter you accept responsibility for this crime and you acknowledge that you were clutching at straws over the months that have gone by until you finally entered the plea a few weeks ago, because you could not accept the horrific nature of what you had done. I note that letter also refers to the fact that you intend to make the best of the inevitable prison sentence and to take all the opportunities that might arise to you in that environment. I hope that you do.

[13] Those two letters are well-written and it may be that they will have value in the future and for that reason I direct that they be placed on your personal file with the Department of Corrections so that they are available to those who have to make decisions about you in the future.

[14] Mr Glover described this crime as puzzling and troubling. He said there was nothing in your past history which suggested you were capable of acting as you did on this occasion. And he used the word that you are something of an “enigma”, all observations with which I agree.

[15] In your defence he has really advanced, it seemed to me, four main propositions. The first is that you have finally reached a point of genuine remorse. Secondly, he has pleaded that I should treat you as a youth and treat your immaturity as a relevant and important consideration in fixing the sentence. He points out you had virtually no previous convictions and certainly none of any relevance, convictions for violence. And lastly, Mr Glover argued that you should get full recognition for your plea of guilty given that under our system pleas of guilty before trial are always to be recognised, warranting some reduction from the sentence which would otherwise have been imposed.

[16] I accept the first three propositions. I have a little more difficulty with the fourth one. You were originally charged with attempted murder and frankly I think there can be little quarrel with that charge. But equally, the present offence of

causing grievous bodily harm with that intent is in itself so serious that the Crown, rightly in my view, accepted your plea to that charge in the end resort.

[17] While Mr Glover said that you were prepared to plead guilty to a charge other than attempted murder a good time ago, I am doubtful that that is the case. You finally did so after an extended discussion before me in the High Court at Christchurch on 16 November; at least you entered the plea a day or two later. But it seems to me the real reason for the delay in the plea is something which you have written about in your letter to me. What you said was that you were clutching at straws because you could not bring yourself to accept responsibility for a crime of this magnitude. So I regard it as a late plea, one entered only a few weeks ago, but nonetheless as a plea which is to be recognised in the course of this sentencing exercise.

[18] The Crown pointed to the obvious aggravating features of your offence. This was extreme violence. It was premeditated to the extent that you went to Mr Lawrence's home and deliberately entered it. His most serious injuries were inflicted on the most vulnerable part of the body, his head. It was accompanied both by an act of arson and also, it seems, by the taking of some money. It involved home invasion and lastly, but certainly not least, it was a crime committed against an elderly man who was vulnerable on that account.

[19] Mr Glover almost argued that the arson could be seen as a mitigating factor, because it was your way of signalling the act for which you had just been responsible. I am afraid I am doubtful as to that interpretation. I see it as an aggravating feature of the offence that you endeavoured to cover matters up by setting fire to the room. Nonetheless, perversely it did have a happy consequence because Mrs Rees, a neighbour, came to the rescue and Mr Lawrence was dragged from the home.

[20] In sentencing for very serious offences such as this our method is to begin with a starting-point for sentencing purposes. I have been referred to a large number of previous cases involving the crime of causing grievous bodily harm where the victim has been left effectively a vegetable, as in this case. I have considered those

cases. The maximum penalty for this offence is 14 years and I have concluded that in your case the appropriate starting-point is 11 years' imprisonment. You are entitled to recognition both on account of your plea and on account of your youthfulness; and some allowance for what I think is belated remorse. The plea, I think, warrants recognition at a level of about 15% and the other factors a lesser amount, but the overall reduction I allow is 25%. With some rounding you are sentenced to eight years' imprisonment in relation to the lead offence. You are also sentenced to three years' imprisonment in relation to the arson, but that is a concurrent sentence which will not increase the eight year term.

[21] The Crown has also sought the imposition of a minimum period of imprisonment. A minimum term is imposed in order to, in this case, reflect the seriousness of the crime and what it means is that you cannot be considered for parole until that term has expired. At that point you will not necessarily be released. You may then be considered by the Parole Board who will have to determine whether you represent a risk to the community. Mr Glover opposed the imposition of such a term. He said that it would be too crushing for somebody of your age. I accept that your youthfulness should be brought to account in this context as well, but I am afraid I consider that a minimum term is required. I fix the minimum term in your case at five years' imprisonment.

You may stand down.