

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

CRI 2009-476-000025

JONATHON RAMON DOUGLAS FLEMING
Appellant

v

POLICE
Respondent

Hearing: 16 December 2009

Counsel: S A Saunderson-Warner and L Herbke for Appellant
T M Gresson for Respondent

Judgment: 16 December 2009

JUDGMENT OF FOGARTY J

[1] The appellant was sentenced in the District Court at Timaru by Judge Neave to 26 months imprisonment following his conviction on charges of: burglary, ill treatment of animals, for which he received 12 months imprisonment; two careless driving charges, making a false statement, conspiracy to defeat the course of justice, four months imprisonment; and threatening to do grievous bodily harm, assault with intent to injure and trespass, ten months imprisonment cumulative.

[2] The appeal centres on the last of those.

[3] The appellant, whilst on bail, and whilst travelling in breach of his curfew, was seen on Stafford Street, the main street of Timaru, by a passing police patrol. He realised he had been spotted and ran off to the home address of someone he knew. He pushed past this person to get into his flat. When asked to leave he refused and punched him in the head with a closed fist for his pains. He did this on two other occasions. He threatened him that if he went to the police he would come back and cut his head off, and that he knew where he lived, and he ran off.

[4] The Judge's reasoning which lead to the sentence in that regard is set out in paragraph [46]:

[46] Whilst it is not a purely a mathematical exercise, it also needs to be remembered, that the lead offence here is the assault with intent to injure, which carries with it a maximum of three years imprisonment. However, it was also a home invasion committed by somebody with a significant history for violence. It seems to me a starting point of nine months imprisonment is appropriate for that, with accumulative effect of three months for your record plus a further six months for the aggravating features of offending whilst on bail and in breach of curfew. That brings me up to 15 months, and again, you get full credit for you (sic) plea of guilty, which is a sentence of 10 months and that is cumulative on 1875. That is a total, I think, of 26 months imprisonment, which takes you outside home detention but in any event, similarly for the reasons that were expressed in respect of Mr John, they apply with equal, if not, greater force to you, and home detention would not have been considered even had you been eligible.

[5] Ms Saunderson-Warner nearly persuaded me that adding six months on for the aggravated features of offending whilst on bail and breach of curfew was too great and disproportionate to the starting point of nine months imprisonment for the offending.

[6] I had lost sight of the full details of the offending, including threats to the person assaulted to ensure he did not go to the police. That dimension of the offending is relevant to the fact that he was on bail at the time and out in breach of curfew. Indeed, the whole incident arose because he feared being apprehended by the police in breach of curfew. That, it seems to me, enables one to stand back and look at the whole sentence of 15 months, prior to the full credit for the plea of guilty, in respect of this incident.

[7] It is a severe sentence. But it seems to me it is within the discretion of a sentencing Judge to impose.

[8] For that reason I do not think it is manifestly excessive and the appeal is dismissed.

Solicitors:

Aspinall Joel, Dunedin, for Appellant

Crown Solicitor, Timaru, for Respondent