IN THE HIGH COURT OF NEW ZEALAND
ROTORUA REGISTRY

CRI 2008-063-4316

THE QUEEN

v

ADRIAN MANAWANUI RIKIHANA

Hearing: 30 November 2009

Counsel: S Walsh for Crown
H S Edward for Mr Rikihana

Sentence imposed: Causing grievous bodily harm with intent to do so (x1)
12 years 6 months imprisonment
5 years minimum sentence of imprisonment imposed

Judgment: 30 November 2009

SENTENCING NOTES OF HEATH J

Solicitors:
Crown Solicitor, Rotorua
Harry S Edward, Rotorua

Introduction

[1] Adrian Manawanui Rikihana, you appear for sentence today having been found guilty by a jury on one charge of causing grievous bodily harm with intent to do so. The jury found you not guilty on a charge of attempted murder, arising out of the same facts.

[2] The maximum penalty for the offence for which you were found guilty is 14 years imprisonment. You denied both charges at trial. In your discussions with the probation officer in relation to the pre-sentence report, you continue to deny responsibility for your actions.

[3] At the start of today's hearing you asked to be dealt with in accordance with tangata whenua principles. I explained to you that I do not have the power to conduct a hearing on that basis. My role is to sentence you, in accordance with New Zealand law, on the basis of the verdict returned by the jury.

Facts

[4] The offence arose out of other events that occurred on the evening of 12 September 2008 and the early hours of 13 September 2008, at Murupara.

[5] On 12 September 2008, you, your partner (the victim Ms Emery) and her daughter (who is known as Spud) were at home together at Murupara. You went to bed at about 8.30pm. You had work the next morning at 3.30am.

[6] Ms Emery then went out partying, taking your vehicle, without your knowledge. Whilst at a party on Tawa Street, Ms Emery confronted a man called Bryce Brass, who has affiliations to the Tribesman gang. Ms Emery is affiliated to the Mongrel Mob.

[7] At about 2am on 13 September 2008, a neighbour saw an unidentified male drive away in your vehicle. At about 2.30am Ms Emery, then intoxicated, realised the car had been taken and began to walk home.

[8] Unfortunately, Ms Emery again encountered Mr Brass not far from your home. The resulting fight was more serious than the earlier confrontation. Ms Emery was punched and kicked with work boots, while on the ground. According to eye witnesses, this resulted in a physical cut above her eye, but no other apparent injuries.

[9] At about 3.30am, Ms Emery finally made it back to your home. You, no doubt, angry about your car being stolen, physically assaulted Ms Emery. Two implements were used; a lump of wood and an axe handle. In addition, there were a number of kicks and punches. Both of the implements were found bloodstained in the house. As a result of that assault, Ms Emery was left unconscious on the kitchen floor, surrounded by a large amount of her blood.

[10] After the incident, you obviously became concerned about her condition. You tended to her. You called an ambulance and went to Rotorua Hospital together with young Spud.

[11] Ms Emery suffered extensive bruising, numerous facial lacerations and fractures, a fractured left leg and, most seriously, major brain trauma. When she was examined at Rotorua Hospital, she was in a serious condition. She was in a coma and scored only 6 on the Glasgow scale.

[12] It is clear that the injuries to her brain were caused by your actions because, as Dr Jauffert deposed, there was no evidence of an extra-dural haemorrhage to the brain prior to the time at which she became unconscious in your home. Had the brain injury been suffered during the fight with Mr Brass, not far from your home, the medical evidence was that she would have lapsed into a coma immediately at that time.

[13] In summarising the facts, I have deliberately not referred to Spud's own evidence. You will recall that I discharged you on the assault on a child charge because I considered that the verdict of guilty based on her unconfirmed evidence would be unsafe. Similarly, the jury must have discounted Spud's evidence when acquitting you on the attempted murder charge.

[14] The guilty verdict on the charge of causing grievous bodily harm is consistent with the ample objective evidence at the scene. The physical evidence demonstrates what had occurred. Taken together with the uncontradicted medical evidence of Dr Jauffert about the cause of Ms Emery's injuries, the jury were satisfied that you caused grievous bodily harm to Ms Emery, with intent to do so.

Crown submissions

[15] Mr Walsh, for the Crown, emphasises the seriousness of the offending. He highlights the following aggravating circumstances: the seriousness of the offending as demonstrated by the injuries suffered by the victim, the use of weapons (a piece of wood and the axe handle), the abuse of trust in relation to the victim and her vulnerability, having regard to the intoxicated state she was already in. Mr Walsh submits there are no mitigating factors relating to the offence.

[16] The Crown contends that the starting point for sentence ought to be in the vicinity of 11 or 12 years imprisonment with an uplift to reflect previous convictions for violence. Excluding the current offences, since 2003 you have been convicted of 10 offences falling into that category.

[17] While submitting there are no mitigating factors personal to you, the Crown does accept that you intervened after the incident, called an ambulance, tended to the victim and went with her to the hospital in a distressed state. While you caused the serious injury, those subsequent acts probably saved the victim's life.

[18] Mr Walsh submits that a minimum term of imprisonment of at least 50% of the end sentence should be imposed. He submits that the goals of denunciation, deterrence and accountability assume the most prominence.

Prisoner's submissions

[19] Mr Edward, on your behalf, does not dispute much of the factual material put forward by Mr Walsh but he does submit that the victim's conduct ought to be taken into account as mitigating the offending.

[20] While acknowledging, responsibly, that her act of getting into a drunken state, engaging in fights on the street and losing your vehicle did not deserve the sort of retribution you meted out, Mr Edward submits that your offending could be regarded as an excessive response to actions that put your employment in jeopardy. Some credit, he submits, ought also to be given for your actions in calling the ambulance, once you realised the severity of the injuries you had inflicted.

[21] Mr Edward contends that no minimum sentence is necessary.

Analysis

[22] Mr Rikihana, for offending of this type the primary sentencing goals must be denunciation, deterrence and accountability. This sort of offending cannot be condoned.

[23] The fact that it occurred in a domestic setting does not diminish its gravity. The attack was unwarranted and an extreme response to your legitimate anger over the prospects of losing employment. In saying that, I acknowledge that of the many witnesses from Murupara from whom I heard at trial, you were, in September 2008, the only one with employment, so I do understand how vital employment was to you. It is simply that the community cannot tolerate a response such as your's to that type of conduct.

[24] It is clear from your violent offending in recent years that you need to control your anger and complete programmes that you have not completed to date. If you do not, you will be very likely to serve the full term of your sentence I will be imposing.

[25] I regard the major aggravating factors as the extreme violence used, the use of weapons, attacking the head and the serious injuries inflicted. That puts your conduct near the most serious of its type for which the 14 year maximum is available. There was a degree of provocation but so low as to be negligible in the circumstances of this vicious and prolonged beating.

[26] I take a starting point for sentence of 12 years imprisonment. I add one year to reflect your prior offending and the fact that I understand you were on parole when the offending occurred. That makes the total starting point of 13 years, from which I allow a credit of six months to take account of your subsequent actions that undoubtedly saved the victim's life.

[27] There are no other mitigating factors, so that leaves an end sentence as one of 12 years 6 months imprisonment.

[28] The next question is whether a minimum term of imprisonment is required. In light of your failure to acknowledge responsibility for your acts and your inability to complete rehabilitation programmes earlier, I consider a minimum sentence is required to protect the public from your violence and to adequately denounce your offending. However, I do not consider more than 40% ought to be imposed, so I impose a minimum sentence of imprisonment of five years.

Result

[29] Mr Rikihana please stand. You are sentenced to a term of imprisonment of 12 years 6 months. I order that you serve a minimum sentence of imprisonment of five years. Those sentences are imposed on the charge on which you were convicted, causing grievous bodily harm with intent to do so.

[30] Mr Rikihana, if I can please urge you to undergo and complete anger management and alcohol related rehabilitation while in prison. If you wish to have any prospect of an early release, you will need to do that.

[31] Please bear in mind that the remarks I am making today will be available to the Parole Board. As I have said to you, I do understand your concern in relation to employment you were losing from the victim's actions. You do, in fact, have the ability to do something with your life, if you can put the anger behind you. Please try to do something about that in jail.

[32] Stand down please.

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P R Heath J