

**NOTE: PUBLICATION OF NAME(S) OR IDENTIFYING PARTICULARS
OF COMPLAINANT(S) PROHIBITED BY S 139 CRIMINAL JUSTICE ACT
1985**

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

CRI-2008-090-005728

THE QUEEN

v

DALSHAD NOURI MOUHAMMED

Charges: Threatening to kill x2
Assault with intent to injure x4
Male assaults female x3
Assault on a child x3
Wounding with reckless disregard x1

Plea: Not guilty

Appearances: P Singh for Crown
N Wintour for Prisoner

Sentenced: 2 December 2009
Threatening to kill - four years imprisonment;
Assault with intent to injure - two years six months imprisonment;
Male assaults female and assault on child – 18 months imprisonment;
Wounding with reckless disregard – three months' imprisonment.
Total: Four years imprisonment concurrent

SENTENCING NOTES OF VENNING J

Solicitors: Crown Solicitor, Auckland
Copy to: N Wintour, Auckland

[1] Dalshad Mouhammed you are for sentence in this Court following a jury trial that concluded on 8 October 2009. The jury found you guilty of four counts of assault with intent to injure, two charges of threatening to kill, three charges of male assaults female, three charges of assault on a child and one charge of wounding with reckless disregard.

[2] The offences of threatening to kill and wounding with reckless disregard carry maximum penalties of seven years' imprisonment. The offence of assault with intent to injure carries a maximum penalty of three years' imprisonment. The other offences carry maximum terms of two years' imprisonment.

[3] The jury found you not guilty of one further count of wounding with intent to injure and were unable to agree on five counts of sexual violation by unlawful sexual connection and I put those matters to one side.

[4] The complainants in this case were your partner A, your stepchildren and your own daughter.

[5] You and the principal complainant, your partner were both from Kurdistan. You met initially in a refugee camp. At the time you were married to another and your partner, the principal complainant, was also married with a family. Your families became friends. You and your family then came to New Zealand and were accepted as refugees. The principal complainant and her husband and children were accepted by Canada. You and she kept in contact and she came to New Zealand to visit you and your family. Her first marriage was an arranged married. Her husband was her cousin and he was much older than her. She fell in love with you and decided to come to New Zealand to live with you with her family. She left her husband in Canada and at risk to herself from her family, because of the shame she brought to them, she divorced him and came to New Zealand with her children to live with you in about 1999. It was a bad mistake on her part. From a relatively early stage of your relationship with her in New Zealand you were violent towards her. In 2000 you began to assault the complainant and her children, particularly her older child. The assaults continued on a regular basis. They continued even when

the complainant was pregnant with your child. Your violence extended to your own child when she was a young two or three year old. The first assault in which you were convicted on your partner occurred when you returned home angry after visiting your ex-wife. You blamed the complainant for the difficulties you were having with your former family. You attempted to choke her before hitting her repeatedly and kicking her when she fell to the ground. The first threatening to kill charge arose during an argument you had with her. You were holding a kitchen knife at the time. You held it in a threatening way, and told her that you would chop her and you did not care because you had killed before. It was a very real threat. During the course of the same incident you threw the knife at her. It missed her but hit and injured her daughter D. Those incidents support the convictions for assaulting your partner and wounding D with reckless disregard for her safety.

[6] Mr Mouhammed the evidence the Court heard establishes that you are a controlling, angry and violent man. You have issues with anger. If you experienced any difficulties with the children or your partner, or they stood up to you or did not go along with your wishes, then you reacted in a physically violent and abusive way. When your own child would not take her medicine as a two or three year old, you picked her up by her hair and swung her about. When J (her stepsister) sought to intervene you punched her to the head. On other occasions you assaulted J, in one instance punching her on the nose when she refused to acknowledge you as her father.

[7] The assaults on your partner including a serious assault by throwing a computer at her head and back. As a result of the injuries she suffered in that incident she had to go to the Accident and Emergency centre at the hospital for treatment and subsequently to her own doctor. She still suffers as a result of that incident. On another occasion you hit her with a wooden spoon and you assaulted her generally in a number of ways. The jury accepted that you had assaulted her on a number of occasions and the assaults were ongoing by convicting you on the representative counts of assault. As for the children, J in particular suffered at your hands. Again the jury convicted you on a number of representative counts of assault.

[8] The police were called to your home on more than one occasion. After one incident you were charged but the complainant was so frightened of you and came under so much pressure from your family that she was unable to pursue the matter through the Court at that time.

[9] The complainant was so frightened of you that she took the children back to Iraq to her family despite the difficulties in that country. You followed her there and through your position of authority that you and your family had, you took your youngest child from her and returned to New Zealand with her. The complainant was forced to return to New Zealand to see her child. She took steps to have the child uplifted or taken from your care and obtained orders from Court. When you were served with the Court orders, you threatened to kill the complainant. The threats were very real and serious. You told her you knew where she lived and what car she drove.

[10] The offences you have been convicted of and your offending are serious. The domestic violence directed against your partner and the children in your care was ongoing and extended over a long period of time. Your relationship with the complainant and the children in your care was marked by violence and threats. As I have said you are a controlling man, who when the complainant or the children would not do what you wanted, you resorted to violence and forced them to do so.

[11] The pre-sentence report is not at all positive. You show no remorse. You continue to deny your guilt. You blame the complainant for the position that you are now in. I accept that as a father you will miss contact with the children, particularly your younger daughter. But it is of real concern to the Court you have no perception or understanding of the extent of your offending or your problem with violence. The probation officer notes you have limited insight into your offending and you are considered at high risk of re-offending.

[12] In sentencing you I must have regard to the purposes and principles of the Sentencing Act. In your case in particular the following are relevant:

- to hold you accountable for the harm that you have done to the victims and the community by these incidents of domestic violence;
- to denounce your conduct, namely violence against members of your family;
- to deter you and others from offending in this way;
- to take into account the gravity of the offending, including your culpability;
- to take into account the seriousness of the offending, which is marked by the sentences that Parliament has fixed for the offending; and
- to promote in you responsibility for and acknowledgement of the harm you have caused.

The harm your offending has caused should be apparent to you but I fear it is not.

[13] The victim impact report confirms the complainant still suffers as a result of the assaults you delivered to her. It also confirms apart from the physical effect of the assaults she and the children suffer emotionally still as a result of your actions and the way you treated them.

[14] There are a number of aggravating features of the offending in your case. They include:

- the use of the weapon during the assaults;
- that the threat to kill was accompanied by the threat of a knife;
- the fact that there were four victims; and importantly,
- the abuse of trust by you.

[15] You were in position of protector to your partner and children. They had no other connections in New Zealand and nowhere else to go. They were entirely dependent on you. Instead of protecting them as a husband or father should, you physically and emotionally abused them.

[16] In sentencing you I have considered the cases referred to by counsel: *R v Ruru* CA165/04 30 August 2004; *R v Webster* HC AK CRI-2007-092-013782 18 February 2009 Courtney J; *R v Brown* [2009] NZCA 288; *R v Chiyabi* [2008] NZCA 10; and *R v Taueki* [2005] 3 NZLR 372 (CA).

[17] The Crown submit that an end sentence of between four and four and a half years is required to reflect your offending in this case.

[18] Mr Wintour acknowledges that the Court authorities direct that for offending of this nature, a sentence in the range of three to four years would be open. He submits for the lower term.

[19] The sentence I impose must reflect the totality of your offending. I take as a start point for the offending for the assaults with intent to injure, the male assaults female and assault on a child three years as appropriate. To that for the wounding with intent to injure, which I accept was not as serious as some such offences can be, a further three months is required. For the threatening to kill, which I consider to be real and serious, a further 15 months is required. That leads to a start point of four years six months. Having regard to the totality principle I reduce that to a term of four years three months for a start.

[20] I then turn to consider your personal aggravating and mitigating factors. There are no personal aggravating factors. You do not have previous convictions in New Zealand. On the other hand the personal mitigating factors are frankly limited as well.

[21] Mr Wintour has put before the Court references on your behalf. They do not assist your position Mr Mouhammed. The letter from your neighbours that suggests they regard you as good loving father and husband is simply unreal and completely

contrary to the evidence that this Court heard and the jury accepted. The letter from your ex-wife seeks to blame the complainant for what has happened. The letter from your sister is to the same effect. You and your family need to realise that the reason you are where you are now is not the fault of anyone other than you. You are the one who has dished out these assaults on your partner and on young children, no-one else.

[22] However Mr Wintour has advanced in his submissions on your behalf that it must have been difficult for you to have to come to a different culture and society, given the background of the trauma and difficulties that you faced in your home country and your background and the refugee camps. He has also suggested that it is possible you have post-traumatic stress associated with your previous life. But there is no evidence before the Court of that. However, I do acknowledge that your life, like the life of the complainant, has been difficult in that you have had a significant dislocation in your life. You have experienced difficulties in fitting into a completely different, liberal western society. None of this excuses what you have done Mr Mouhammed. But it is a factor that the court can take into account on your behalf when fixing the ultimate and final sentence.

[23] Would you please stand. Mr Mouhammed for the offending in this case you are sentenced to imprisonment for four years. The sentence is constructed in the following way bearing in mind s 85(4) of the Sentencing Act. On the threat to kill charges four years; on the assault with intent to injure two years six months; on the male assaults female and assault on child 18 months; and on the wounding with reckless disregard three months. The sentences are concurrent. The effective sentence is four years. Stand down.

Venning J