

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

**I TE KŌTI MATUA O AOTEAROA  
TĀMAKI MAKĀURAU ROHE**

**CRI-2020-004-004405  
[2021] NZHC 250**

**THE QUEEN**

v

**SHAYNEE MANUEL**

Hearing: 23 February 2020

Appearances: Jacob Barry for the Crown  
Hannah Cheeseman for the Defendant

Judgment: 23 February 2021

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**SENTENCING REMARKS OF MOORE J**

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## **Introduction**

[1] Shaynee Manuel, at the age of 24, you appear before me to be sentenced on one charge of aggravated burglary.<sup>1</sup> On 1 December 2020 I gave you a sentence indication. I indicated that if you were to plead guilty, I would set the starting point at seven years' imprisonment. I said that discounts would likely be available for your youth, addiction, cultural background and rehabilitative potential. I said at that time that the extent of those discounts would depend on the sentencing material which was placed before me, but I confirmed there would be a reduction on account of your guilty plea of 25 per cent. I also said that the sentence would be reduced to take account of totality which was something I could not fix before knowing what the end sentence would otherwise be. Finally, I noted that a conviction would mean you would be given a second strike warning.<sup>2</sup> I said the indication would remain open for 10 working days.

[2] At callover the next day you accepted the indication. Before Fitzgerald J you entered a plea of guilty and a conviction was entered. The Judge gave you a second strike warning and remanded you to today for sentence. It was signalled at that time that the s 27 report, which was already on the file, would be relied on and that a psychological report had been directed by the Parole Board earlier in the year and was also likely to assume relevance at the sentencing. Through your lawyer, Ms Cheeseman, you advised that you wished to engage in a restorative justice conference.

## **Facts**

[3] The facts will be well known to you. I set them out when I gave you the sentencing indication. However, unless the Court gives permission to publish the contents of a sentencing indication, they are automatically suppressed. Furthermore, because sentencing is quintessentially a public function and must be conducted in open Court and may be reported, it is necessary for me in this forum to repeat the facts. And they are these.

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<sup>1</sup> Crimes Act 1961, s 232(1)(b). Maximum penalty: 14 years' imprisonment.

<sup>2</sup> After the conclusion of my sentencing remarks Ms Cheeseman advised me that the offending here predates that for which Ms Manuel received her initial first strike warning. As such, this is in fact Ms Manuel's second first strike warning.

[4] On 23 August 2019, you and your two co-defendants, Ms N<sup>3</sup> and an unknown male (who for convenience I shall call X) entered the complainants' Onehunga home in the early hours of the morning. Inside that house there were five people asleep in their beds; two in two separate bedrooms and a fifth in a bedroom alone. X picked up a knife from the kitchen drawers.

[5] You all went into the first bedroom where two of the complainants were in bed. X threatened and shouted at them. He hit one on the head multiple times with the handle of the knife. Then you, Ms N and X rifled through the bedroom drawers and wardrobes, filling a suitcase with the stolen items. X directed the two complainants to face the wall. He threatened to "smash" them and cut off their ears. You all left the room for a short time but then returned and stole more property. X repeated his threats. You and Ms N placed shirts over the complainants' heads and threatened them not to move.

[6] Then you all went into the next bedroom. Two other complainants were asleep in bed. You carried a television out of the room. The complainants woke up. X threatened to kill them if they moved. He struck both on the head three or four times. They were told to sit in the corner. Again, large quantities of property were taken from their room. Ms N took the knife from X and tapped one of the complainants on the head, demanding to know where the "phones, watches and gold" were. She tipped a bottle of milk over the complainants' heads before leaving the room.

[7] The fifth occupant of the house, having been woken up by the commotion, took the wise precaution of putting a table in front of his door to prevent any access to his room.

[8] The full quantum of loss has not been measured yet. But a considerable amount of property was taken. This included a laptop, a watch, headphones, phones, wallets and clothing. One complainant suffered a laceration to his right cheek which required medical attention. Another suffered pain and discomfort following the attack to his head.

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<sup>3</sup> Ms N's name has been redacted given that her criminal liability is yet to be determined.

[9] You were on bail at the time.

### **Sentencing approach**

[10] I imagine that Ms Cheeseman has explained to you how the sentencing process operates. Of course, this is not the first time you have appeared in Court to be sentenced. You will understand the process because as recently as July last year you were sentenced in the District Court at Manukau to a term of imprisonment of three years and two months for aggravated robbery after a jury trial and a raft of other dishonesty charges to which you pleaded guilty.

[11] From that you will know that sentencing is governed by our Sentencing Act 2002 (“the Act”) and, in particular, the principles and purposes set out at ss 7 and 8 of that Act. It involves a three-step process. The first step involves setting a starting point for the offending itself. The second step is to adjust that starting point, either up or down, by reference to any available aggravating or mitigating circumstances personal to you. The final step is to stand back and look at the sentence as a whole to double check whether it needs to be adjusted for what is called totality.

[12] Another important aspect of sentencing is that you need to be held accountable for the harm inflicted on your victims, to denounce the criminal conduct and to deter you and likeminded others from similar offending. On the other hand, I am required to take into account your rehabilitation prospects and impose the least restrictive outcome which is possible, while maintaining consistency with other sentences for similar offending.

### **The starting point**

[13] As I have already mentioned, in my sentencing indication I set the starting point at seven years. I found the aggravating factors were multiple. These included that you were with two others and thereby gained strength by numbers. You entered a home occupied by five people at night while they were asleep. You, with your co-defendants, subjected them to serious threats of violence, intimidation and some actual violence. While I accept the injuries suffered were not grave, I anticipated that the emotional and social effect on the victims would be considerable. I have now read

two victim impact reports and my assumptions were correct. Both victims have been deeply affected. Additionally, both have suffered serious financial loss from the property stolen and not recovered. They will be out of pocket because it would be futile to order you to pay reparation given your present circumstances.

[14] Also relevant is that although you were not armed, X was. He had a knife. And while I accept he armed himself only once he was inside the house, that cannot mitigate the fact that he carried a weapon and you must have known that. However, as I noted at the sentencing indication, I accept this feature does suggest that there was limited planning or premeditation. This was not sophisticated offending.

[15] I also accept that there is a compelling basis on which to differentiate your role and participation from that of your co-offenders.<sup>4</sup> You were not armed and you took little or no active part in the actual violence or threats. That said, your limited role does not entirely reduce your culpability for participating in what was a violent home invasion.<sup>5</sup> After considering various decisions of this Court and the Court of Appeal, I considered the appropriate starting point was seven years' imprisonment.<sup>6</sup>

### **Personal mitigating and aggravating factors**

#### *Uplift for previous offending*

[16] I will apply an uplift of six months' imprisonment to take into account the fact your offending occurred while you were on bail for similar offending. This brings the sentence up to seven and a half years. The Crown does not propose an uplift for your criminal history and I am satisfied that is the correct approach because your previous offending is largely minor.

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<sup>4</sup> See *R v Hay* [2015] NZCA 329; *Anderson v R* [2019] NZCA 294.

<sup>5</sup> *R v Mako* [2000] 2 NZLR 170 (CA) at [64]. See also *Royal v R* [2009] NZCA 65 at [23]: “the character of this enterprise, involving an invasion of a private home late at night, carried with it the inherent prospect of violence, possibly involving weapons. The risk that violence might ensue once the targeted home had been invaded must be taken to have been voluntarily assumed by the appellant.”

<sup>6</sup> *R v Mako*, above n 5; *Tiori v R* [2011] NZCA 355; *Archbold v R* [2015] NZCA 493; *A v R* [2018] NZCA 61 at [30]; *R v Vaafai* [2019] NZHC 2686; *Poi v R* [2020] NZCA 312.

*Social and cultural factors and addiction*

[17] As I did before the sentencing indication, I have re-read the s 27 cultural report and I have read the psychological report which was prepared for the Parole Board in December last year. And, of course, there is also the pre-sentence report. I will discuss that later.

[18] The cultural report was prepared following the trial at which you were convicted of aggravated robbery. I do not regard it as appropriate in this forum to trawl through or to repeat the detail of that lengthy report. Aspects of it are intensely personal. All I can say is that what you have experienced over most of the 24 years of your extremely difficult life makes it all but inevitable that you find yourself where you are today. Both your parents have been to prison and were in prison when you were quite young. Your father was sentenced to imprisonment for supplying methamphetamine when you were about 10. Your mother was in and out of jail. Through those parental influences you were introduced to gang life and gang members. When you were just eight or nine, you were the victim of extreme violence which you have, until very recently, kept to yourself.

[19] You gave birth to your first child when you were just 13. Unsurprisingly, that child was taken from you and placed in care. She is now nine. You want to re-connect with her. Whether that will happen is uncertain.

[20] Drugs were very much part of your life. You started your life of substance abuse with glue and butane before graduating to cannabis and then, quite quickly after that, to methamphetamine. You did methamphetamine with your parents and you estimate you have been using the drug for 11 years.

[21] Unsurprisingly your relationships have been dysfunctional and you have been the subject of chronic abuse and violence.

[22] The psychological report, prepared by the Department of Corrections and dated 22 December 2020, provides some independent support. It records that you accept responsibility for your offending which you said was committed in order to fund your methamphetamine addiction. The report records that the present offending appears to

reflect your naivety and willingness to connect with someone you hardly knew to fund your addiction. Unsurprisingly, you were assessed as presenting a moderate to a high risk of future offending and that engagement in high intensity substance abuse and prevention interventions should be prioritised once you are sentenced. I must be satisfied that there is a causal connection between your offending and issues of social deprivation and addiction. Where there is such a link, a discrete discount may be warranted. However, a finding of addiction must be based on “persuasive evidence as opposed to mere self-reporting”.<sup>7</sup> Although I accept that there is some element of self-reporting engaged here, your tragic and troubled background and your pattern of offending is such that I am left with no doubt that the combination of your upbringing and chronic drug abuse which started even before you reached your teens, made what happened to you an inevitability. It is causative. And the law requires me to give you a reduction on that account.

[23] Mr Barry, for the Crown, responsibly accepts that an adjustment of this sort is appropriate observing that the Crown would not oppose an allowance of the order of 15 per cent which is what Ms Cheeseman also suggests.

#### *Remorse*

[24] Remorse is also a factor relevant to the sentencing exercise. If I am satisfied that the various expressions of remorse I have already mentioned are genuine and sincere, rather than belated, cynical comments designed to persuade a Judge to impose a lesser sentence, then I am entitled to take that into account too.

[25] I have already discussed some aspects of this topic contained in the psychological report and the s 27 report. I am satisfied that your expressions of remorse are sincere because they do not stand alone. They are not just words but they are supported by actions.

[26] I have also had the opportunity to read the letter which Ms Cheeseman provided to me this morning. Again, it is redolent with expressions of remorse and those expressions of remorse do not seem to me to be self-serving.

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<sup>7</sup> *Zhang v R* [2019] 3 NZLR 648 at [148].

[27] I regard it also as relevant to this discussion that you initiated a request to engage in restorative justice. That is an aspect which operates in your favour and adds to this theme that, perhaps at last, you are seeing why you have to change. Apparently, a restorative justice conference took place on 10 February 2021 when you apologised to one of your victims for invading their privacy and causing the harm which followed. It is not entirely clear from the restorative justice report how therapeutic the experience was for the victim but the fact that you had the courage to front up and say sorry must count for something.

[28] The pre-sentence report repeats aspects found in other reports. While assessing you as posing a medium risk of harm to others, it also records your expressions of remorse and recognises the need for you to address the factors behind your offending, particularly your substance abuse and dependence. Against that, Mr Barry submits there is little evidence of genuine remorse and a separate discount should not be allowed.

[29] While there is some force in that submission if it was confined to the pre-sentence report, it must be recognised that your expressions of remorse are not isolated to that document and are backed up by some other evidence such as your engagement in restorative justice. For those reasons I am satisfied that your remorse goes beyond you just saying you are sorry and thus I am satisfied you deserve a discrete discount of 10 percent.

#### *Rehabilitation prospects*

[30] It is imperative that you receive some intensive and focussed rehabilitation. Everyone says that. Everyone, including the prison authorities, recognise this. And, it seems at last, so do you, possibly for the first time ever. Time will tell whether any interventions of this sort will work for you in the longer term, but I do note Ms Cheeseman's advice that you have been assessed as suitable for the Odyssey House programme and that a bed was made available for you. That necessarily means that Odyssey House, who are recognised experts in assessing these things, believe you have the potential for change too. It is hoped that that placement will remain open as a possible parole option when you next appear before the Parole Board.

[31] A 10 per cent discount for your positive prospects for effecting change in your life through undertaking targeted interventions is appropriate.

#### *Youth*

[32] Both the Crown and your counsel agree that a discount of 10 per cent is available on account of your age. And I agree.

#### *Guilty plea*

[33] Finally, of course, there is the 25 per cent discount which I signalled at the sentencing indication.

#### *Totality*

[34] And so, provisionally, when the starting point is adjusted upwards and then the various discounts applied, this comes to a sentence of two years and three months' imprisonment. And that brings me to the last step and that requires me to stand back and determine whether the sentence you are presently serving, to add this sentence cumulatively would lead to a result which is unduly harsh.

[35] As noted, you are presently serving a sentence of three years and two months' imprisonment. If I was to add a further two years and three months' imprisonment on top of that, that would bring your combined end sentence to something a little under six years. That, in my view, would be wrong on a totality basis and the sentence should be reduced by 12 months. Both the Crown and you agree that an adjustment of that order is appropriate too.

[36] I am not minded to impose a minimum term of imprisonment.

#### **Conclusion**

[37] And so, in terms of calculation, the position is this. The starting point of seven years' imprisonment will be uplifted by six months to reflect the fact that this offending was committed while you were on bail.

[38] However, from that, I give the following discounts: 25 per cent for the guilty plea, 15 per cent for cultural and social factors, as well as addiction, 10 per cent for remorse, 10 per cent for your rehabilitation prospects and 10 per cent for your youth. That comes to a total of 70 per cent. It brings the provisional sentence to one of two years and three months which, as I noted earlier, must be reduced by 12 months on account of totality.

[39] This means that your end sentence is one of 15 months' imprisonment which will be added onto the sentence you are already serving.

### **Sentence**

[40] Ms Manuel would you please stand for me to formally deliver sentence.

[41] Ms Manuel, I sentence you to 15 months' imprisonment.

[42] Before you are taken away, I want to say something to you and I want you to remember this. The sentence I have imposed is a lenient one given the seriousness of what you were implicated in. There have been a lot of different people who, by different routes and through different engagements with you, believe you have it in you to change and that there is hope for you in the future. It seems that this is the first time. You have been thrown a lifeline. Grab hold of it. Take every opportunity which is offered to you to improve yourself. Get into those programmes. Work hard to self-improve yourself because you have it in you to do that.

[43] These sentencing remarks of mine will be typed up. They will go to the Crown and anyone else who is interested. They will also go to the Parole Board because it is important they know what I have said and how the sentence I have imposed is structured when they are considering whether or not it is safe to release you. The Parole Board are experts in that field and they will have access to reports to help them make that decision when the time is right.

[44] If you do not live up to those expectations which I and others have put in you, the lifeline you have been thrown won't come your way again.

[45] Make the most of this one-off opportunity. You are young. You have the ability to turn your life around. Prove to everyone that you can.

[46] Stand down.

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**Moore J**

*Solicitors:*

Crown Solicitor, Auckland

Ms Cheeseman, Auckland