

**ORDER PROHIBITING PUBLICATION OF NAME(S), ADDRESS(ES),
OCCUPATION(S) OR IDENTIFYING PARTICULARS OF
WITNESS/VICTIM/CONNECTED PERSON(S) PURSUANT TO S 202
CRIMINAL PROCEDURE ACT 2011. SEE
<http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360349.html>**

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

**I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE**

**CRI-2019-085-1135
[2021] NZHC 578**

THE QUEEN

v

PAMELA SAILI KALEPO

Appearances: S C Carter and for Crown
I M Antunovic for Defendant

Sentencing: 19 March 2021

SENTENCING OF CLARK J

[1] Ms Kalepo you may remain seated until I sentence you. You appear for sentence today having been found guilty by a jury of one charge of kidnapping¹ and one charge of wounding with intent to cause grievous bodily harm.² The kidnapping charge and the wounding charge each carry a maximum penalty of 14 years' imprisonment.

[2] There is a third charge — a charge of assault, to which you pleaded guilty.³

¹ Crimes Act 1961, s 209; maximum penalty 14 years' imprisonment.

² Section 188(1), maximum penalty 14 years' imprisonment.

³ Section 196, maximum penalty one years' imprisonment.

[3] Through your counsel, you understand that a sentence of imprisonment is inevitable. The main issue for me today is the length of that sentence particularly in light of the sentence of your co-offender Mr Malua-Bentley.

[4] You are unfamiliar with the sentencing process so I will explain it to you. First I will describe the offending. I need to do that in open court. I will then fix a starting point for your sentence. Once a starting point is adopted I will consider your personal circumstances and assess whether the starting point needs to be adjusted — up, or down.

Background facts

[5] The offending began on the night of 13 March 2019. There was a plan to abduct the victim who apparently owed a debt to your husband, Mr Malua-Bentley. Four people were involved in the initial abduction. You were not involved at that stage. On the night she was abducted and was being driven around with a chain around her neck you were sent a text message saying they “got Red”. Red was the name by which the victim was known to you. You replied “Nice” and asked where to go.

[6] The victim was driven to an address in Wellington where she was subjected to threats and physical assaults by multiple others. You did not join the group until the victim was taken by Mr Malua-Bentley and others to the south coast. When you arrived you punched the victim in the face with your closed fist. You said in your interview you were mad at her because you believed she had burgled your home. You also said Mr Malua-Bentley had brought the victim to the beach so that you could confront her. That incident was the basis of the assault charge to which you pleaded guilty.

[7] Mr Malua-Bentley led the victim into the water by the chain around her neck. He held her under the water. She attempted to escape by slipping out of the chain and wading deeper. But she feared she would drown so she came back in towards shore. People threw rocks at her. Mr Malua-Bentley waded into the water and dragged her back to shore.

[8] She was taken to an area of large boulders. Her right hand was held down on one of the large rocks. You took a blade and started to cut the victim's middle finger. You were unsuccessful. Mr Malua-Bentley took the blade from you, knocked the victim unconscious with a blow to her head and cut her finger off at the knuckle where the finger joins the hand.

[9] As to whether you retrieved a knife from your husband's car, or whether he had it all along, the victim's memory was unclear. But you have instructed your counsel that you took the knife from the car and tried to cut the victim's hand but you were unsuccessful in your endeavours.

[10] The victim's evidence in relation to the degree of force you used was inconsistent. What is not in dispute is that you later told another of the co-offenders that you had tried to cut off the victim's finger. And for the purpose of sentencing today you have accepted your role in the severing of her finger.

[11] The victim was stripped of her clothes. You later handed these clothes to your cousin and they were eventually located at his house some months later.

[12] The victim was taken to a garage that had been converted into a sleepout and held at this address bleeding and dazed until the early hours of the next morning.

[13] She was ultimately held at two addresses in Wellington before she managed to escape around 5 am on 18 March 2019. During her captivity she was denied any medical assistance for her wounded hand which bled profusely. Her blood had in fact soaked through the carpet where she was detained, on the floor.

[14] On at least three occasions the victim was in your sole charge.

[15] The hospital records document her injuries:

- (a) Her right index finger was severed as I have said, at the joint with the hand. By the time she was hospitalised it had become infected and further tissue had to be cut away.

- (b) The middle finger of her right hand was lacerated at the base. The wound was infected. Doctors considered amputation but the infection was checked.
- (c) She had swelling and bruising around her eyes and a haematoma beneath her right eye. She suffered blurred vision in her left eye as a result of her injuries.
- (d) She had ligature marks on the front of her neck; a cut on the hairline above her eye and swelling to the back of her head.

Starting point

[16] In fixing a starting point for your sentence, I propose to deal with the three charges together. There are three features that aggravate your offending.

- (a) Yours was a premeditated and planned assault on the victim, in retribution for her alleged theft.
- (b) The victim was particularly vulnerable: she was captive when her finger was severed; and it was severed in the presence of a group.
- (c) The fact she was detained without medical treatment for several days, heightened her vulnerability and aggravated your offending.

[17] There were also features that mitigated your offending. You helped the victim. She said you found clothing, you wrapped her hand in cloth and you gave her food and drink. The victim's evidence at trial was that you helped her to shower and helped her change her clothes. She said you were the only one who cared for her.

[18] The Crown accepts that Mr Malua-Bentley was the driving force behind the offending but you were a knowing and willing participant.

[19] The Crown suggests a starting point of eight and a half years' imprisonment. Your counsel says that is too high.

[20] There are key distinctions between your offending and Mr Malua-Bentley's.

[21] You were not part of the initial abduction. You were not in the car when the victim was taken and driven around with a chain around her neck. In terms of what happened on the rocks the victim's evidence at trial was that when you tried to cut her finger you made it look as though you were doing what Mr Malua-Bentley asked you to do but there was no pain coming from it. While that evidence was inconsistent with what she first told the Police in her first interview I propose to sentence you on the basis of her evidence at trial. The victim explained that she had been thinking about it properly since the beginning of the trial.

[22] Taking into account that:

- (a) Mr Malua-Bentley actually severed the finger;
- (b) that he master-minded the kidnapping; and
- (c) ensured the victim was kept captive; and
- (d) that the victim's evidence was that you were not there the whole time she was captive; and
- (e) that during the kidnapping you were the only one to offer practical assistance to her —

I assess your culpability as being significantly less than Mr Malua-Bentley's. Where the Judge adopted a starting point of 11 years for Mr Malua-Bentley I adopt a starting point of five and a half years' imprisonment for your offending. I don't intend to discuss the cases I regard as comparable. But they are referenced in in my sentencing notes:⁴

⁴ *R v Martin* [2013] NZHC 2675; *R v S* [2016] NZHC 1457; *The Solicitor-General v Nahu* CA 309/98, 28 October 1998; *R v Wharton* CA 374/02, 27 March 2003.

Personal circumstances

[23] I turn now to consider whether there are any factors personal to you that justify a departure from the starting point.

[24] I have before me the report from the Department of Corrections and the report prepared under s 27 of the Sentencing Act prepared by Ms Tamasese. As well, I have 10 character references and copies of the two letters of apology you wrote to the victim.

[25] Ms Kalepo, in a few months you will be 39 years old. You and Mr Malua-Bentley have three children. You have been raised within your immediate and extended Samoan family in Auckland, in an environment that is strongly faith-based. Your upbringing was characterised by aroha, care and protection. You experienced the tragic loss of your oldest sibling in a fatal house fire and have carried that experience and loss with you.

[26] Your romantic relationship with Mr Malua-Bentley began in Samoa in 2007 and continued in New Zealand. By all accounts it seems that, although Mr Malua-Bentley is some years younger than you, he was the dominant party within the marriage and you submitted to him. I take from the s 27 report that for many Samoan marriages it is for the woman to prove her love to the husband and that these behavioural protocols are very strong. You tolerated Mr Malua-Bentley's affairs for example. And it was *he* who introduced *you* to methamphetamine. You were under the influence of methamphetamine on the night the victim's finger was severed.

[27] It seems apparent that you were suborned by Mr Malua-Bentley. The victim's own evidence at trial was to similar effect. She said you were "pretty much forced" to help him. You listened to what he said and from the victim's perspective you made out you were trying to cut her finger off to show him you were trying.

[28] You were trying to win your husband back. He asked you to come to Wellington where he was now living and seeing other women and you thought you could show support for him and that he would return emotionally to the marriage. While these insights explain your offending, you have not suggested they excuse it.

The Corrections report writer observed that you had not sought to deflect responsibility for your behaviour onto Mr Malua-Bentley. That is to your credit.

[29] The character references from your cousins, your second cousins, friends who go back to intermediate and high school, your brother and Reverend Utumapu have as a common theme that you have always been a hardworking and devoted family member. The Saili they know without drugs, and without bad company is “kind-hearted, hardworking, respectful and full of love” for her parents, extended family and her three sons. A further reference from Mammoth Challenge talks of the leadership you showed during the five-week challenge last year and your support and consideration of others. You were able to motivate and uplift others who were ready to give up. They describe you as honourable.

[30] On behalf of the Kalepo family your brother has apologised for the events that occurred and for the ordeal the victim has experienced.

[31] Two material facts emerge from the reports: the first is that you have in your family a strong support base, committed to your wellbeing and the wellbeing of your children who are their grandchildren and nephews. Secondly, you have been open with others about your offending. You have faced up to it and you are remorseful.

[32] While you did not plead guilty I accept that since the trial and your conviction you have gained an insight into the enormity of that night and the days that followed. The Corrections report writer had the impression you were overwhelmed in realising the gravity of what you had done.

[33] Your letters of apology are not letters to the Court but letters to the victim herself. You wrote to her that what you did to her still haunts you and that she did not deserve the pain and suffering you all put her through. You wanted to give her the letter in person and sat on it for that purpose but ultimately have been unable to. In one of the letters you said you had been in a really dark place at the time but you also emphasised to her that it was no excuse. You said you were “so so sorry” and that it broke your heart thinking about it. The letters reflect your strong Christian faith.

[34] In sentencing, and if a court is satisfied an apology is genuine, the court must take that into account. I accept your remorse is real. It is expressed in ways that emphasise the victim rather than you. For example, you expressed to the Corrections report writer that the victim did not deserve to suffer; that there was no need. You have shown insight into your offending and sorrow for your victim. On the basis of your acceptance of responsibility and your contrition, I reduce the starting point by 10 per cent.

[35] I wish to add that the discount for remorse is not a de facto discount for a late guilty plea. An offender can plead guilty and not be remorseful. A guilty plea may sometimes simply reflect the calculation of advantage in obtaining the reduction in sentence that almost invariably follows a guilty plea. Remorse may be additional to a plea of guilt. In your case, the fact you did not plead guilty does not disqualify you from a reduction in sentence for your genuine remorse.

[36] You have no previous convictions. That in itself is deserving of credit, something the Crown acknowledges. But it also signals to me the truth in the observations by those who have prepared the reports and written the character references. The offending was completely out of character. Where an offender has been a responsible and contributing member of the community, the Court is able to take that into account as a mitigating factor. A further reduction of 10 per cent is warranted.

[37] Linked to that last point is your risk of re-offending which is assessed as low. And your prospects of rehabilitation are very real. That is something I can take into account in your favour. As the Corrections report writer observed, your insights and acceptance of responsibility make you eligible for intervention, and candidacy for the Department's Kowhiritanga programme which seeks to promote insight, and develop strategies and skills to avoid reoffending.

[38] Your rehabilitative potential is valuable — for the wider community, for you personally and for your family and your young sons to whom you need to return. It merits an additional discount from the starting point in the order of 15 per cent.

[39] The discounts from the starting point total 23 months.⁵ That brings me to an end sentence of 43 months that is, 3 years and 7 months imprisonment._

Sentence

[40] Ms Kalepo please stand. On the charges of kidnapping and wounding with intent, I sentence you to three years and seven months' imprisonment. That sentence is to be served concurrently with a sentence of three months' imprisonment for assault.

Karen Clark J

⁵ *Moses v R* [2020] NZCA 296.