

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

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

**CRI-2021-090-001068  
[2022] NZHC 1320**

**THE QUEEN**

v

**DONGLAN WU**

Hearing: 7 June 2022

Counsel: RMA McCoubrey and P Clifford for Crown  
G J Newell for Defendant

Judgment: 7 June 2022

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**SENTENCING REMARKS OF DOWNS J**

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Solicitors/Counsel:  
Crown Solicitor, Auckland.  
G J Newell, Auckland.

## **Introduction**

[1] Donglan Wu, you are for sentence on one charge of wounding with intent to cause really serious bodily harm. The maximum penalty for this crime is 14 years' imprisonment. Obviously, the offence is serious. It typically results in a substantial sentence of imprisonment.

## **Facts**

[2] You and your former husband separated December 2020. You left the family home March 2021. Shortly thereafter, the victim, Ms C, moved into the home as Mr Wu's new partner.

[3] At some unspecified time, you threatened Mr Wu, saying you would make him suffer and he would regret it. You had, in or about February 2020, threatened to kill your son and commit suicide. You said you wanted to make headlines.

[4] In the early hours of 17 March 2021, you went to the home. You arrived at 3.10 am. Unsurprisingly, everyone was asleep. You moved two gas bottles from outside, entered the home, and placed them by Ms C's bed.<sup>1</sup> You opened the nozzle on each bottle, then left the room.

[5] Ms C got up to use the bathroom. You attacked her with a knife. Its blade was approximately 12 centimetres long. You cut her left forearm causing a five-centimetre injury. You cut her head—the laceration went to the bone. At some point, you plunged the knife into Ms C's neck. This caused a severe, gaping wound of approximately eight centimetres.

[6] Others came to Ms C's aid. Police were swiftly called immediately. You declined to comment. You were charged the same day.

[7] Ms C lost a lot of blood. Her injuries required surgery. She has permanent scars on her arm and neck. She could not work for a month and has undergone

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<sup>1</sup> The summary of facts does not say the gas bottles were outside, but this seems the only sensible conclusion.

extensive rehabilitation. Ms C remains traumatised by what you did. Unsurprisingly, she lives in fear and anxiety.

## **Starting point**

### *Aggravating factors*

[8] Everyone agrees several things make your offending more serious. You invaded a home; used a weapon; and inflicted serious injury.<sup>2</sup> It is also common ground your offending involved extreme violence.<sup>3</sup>

[9] The prosecution says your offending is also more serious because it was premeditated. Through your lawyer, you acknowledge “an element of premeditation” only. You rely on what you told a psychologist. You said you went to the home as you could not sleep, intending to take your son to school later that morning. You said you became extremely angry only when you saw the victim’s car parked in the driveway.

[10] Your offending involved more than an element of premeditation. What you said to the psychologist was not on oath. Moreover, it is one thing to provide an expert with background in relation to an offence; it is another to give an account of the offending through that person in apparent gloss of the agreed facts.<sup>4</sup>

[11] On this aspect, the facts speak for themselves. You had previously threatened very serious bodily harm. It cannot be a coincidence that on this occasion, you went to the home in the dead of night; moved gas bottles to the bedroom; and then, with a knife, inflicted very serious bodily harm.

[12] The prosecution says the starting point for your offending should be 10 or 11 years’ imprisonment. You say the starting point should be not more than nine years’ imprisonment. I have been given many cases.<sup>5</sup> Some are broadly similar to what you

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<sup>2</sup> *R v Taueki* [2005] 3 NZLR 372, (2005) 21 CRNZ 769 (CA) from [31].

<sup>3</sup> At [31](a).

<sup>4</sup> Or as it is sometimes known, testimony by proxy.

<sup>5</sup> *R v Jury* [2014] NZHC 687; *King v R* [2015] NZCA 436; *Muliipu v R* [2013] NZCA 257; *Solicitor-General v Hutchison* [2018] NZCA 162; *Kauwhata v R* [2010] NZCA 451; *R v Emery* [2012] NZHC 391; *R v W* [2016] NZHC 1076

did, some less so. Your offending is at the very top of band two, or early into band three, of a decision that binds me.<sup>6</sup>

[13] A 10-year starting point is required. A higher starting point would be required if this case involved a male offender attacking a former partner. That because of the dangers and dynamics inherent to that situation. On any view though, yours is serious offending.

### **Mitigating factors**

[14] Several things make your offending less serious. I address these now.

[15] You were charged with this offence 17 March 2021. The Crown later added an attempted murder charge. On 23 March this year, you pleaded guilty to the original offence. The Crown withdrew the attempted murder charge. Everyone says I should deduct 25 percent for this feature. This overlooks the rules articulated by our highest court, the Supreme Court, in this area:

- (a) Your offending is a hair's breadth from attempted murder. You gained a benefit by the plea arrangement.<sup>7</sup>
- (b) Aside from the understandable concern about your mental health, there could be no defence to this charge.
- (c) It took a year for you to plead guilty to the original offence.

[16] I deduct 20 percent.<sup>8</sup> This recognises that you encountered difficulties with legal representation and that your mental health needed to be explored. Still, this is generous given what I have explained.

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<sup>6</sup> *R v Taueki* [2005] 3 NZLR 372, (2005) 21 CRNZ 769 (CA) from [34].

<sup>7</sup> *Hessell v R* [2010] NZSC 135, [2011] 1 NZLR 607 at [62].

<sup>8</sup> At [60]–[65].

[17] You are 51. You are a first offender. The experts consider you are unlikely to offend again. So, there is good prospect of your rehabilitation. I accept your lawyer's submission I should deduct 15 percent for this mix.

[18] You described your background to the same psychologist I mentioned earlier. You have suffered from failed relationships, including that with your former husband. You described humiliation in relation to his extra-marital behaviour. The psychologist says your failed relationships explain your offending. He refers to the "impact of abandonment". You say you should receive a discount of between 10 and 15 percent for this dimension.

[19] I have read all the psychological and psychiatric material about you. I have also read your pre-sentence report. You have no prior history of a diagnosed mental illness. No one says you suffer a significant or serious mental illness. There is probably something in the abandonment proposition, but this does not make your offending much less serious. I allow five percent for this.

[20] Your lawyer contends I should make an allowance for what he says was your former husband's abuse of you during the relationship. I do not have enough, or the correct information, to make that conclusion; you could, for example, have filed sworn evidence. More importantly, you grievously wounded Ms C, *not* your former husband; when she posed you no danger whatsoever. A deduction would, therefore, be an invitation to others to take out their anger on a wholly innocent victim. In other words, a deduction would be contrary to law.

[21] Your lawyer also says other personal circumstances warrant some discount, for example, that you were living out of your car. I decline to make any allowance beyond the five percent I have. You are described as a presenting with "a tendency to [self] pity", and as being "a poor historian". Caution is warranted. In any event, nothing in this category makes your offending appreciably less serious.

[22] You offered to meet the victim and pay \$10,000 for the harm you caused her. I am told you have written a letter to her. You say you should receive a 10 percent discount for this and remorse. This is somewhat too high. I discount the starting point

by five percent for your offers and that remorse which you have shown. This figure is consistent with the law in this area.

[23] I summarise. Your offending requires a starting point of 10 years' imprisonment as it is very serious. It is made less serious by the things I have explained. These discounts total 45 percent. This would produce a sentence of five and a half years' imprisonment.

[24] No one has asked me to discount your sentence because of your difficulties with English and the cultural impediments that may arise while you are in prison. I give you a small discount for this mix: I deduct three months. I make no greater allowance because you have been in New Zealand since 2009. The seriousness of your offending is also relevant here too.

#### **Minimum period?**

[25] The nature and seriousness of your offending support the imposition of a minimum period of imprisonment, but other aspects of the case do not. I do not impose a minimum period.

#### **Protection order**

[26] The victim seeks a protection order in relation to you. I make one. In so doing, I take a broad view of what constitutes a family relationship.

#### **Result**

[27] Ms Wu, for wounding Ms C with intent to cause her really serious bodily harm, I sentence you to a term of imprisonment of five years and three months. I also make a protection order in relation to the victim.

[28] Stand down please.

**Postscript**

[29] I was told after sentencing the attempted murder charge had not been dismissed. I understood that charge had already been withdrawn. I invite the parties to file a joint memorandum so this issue can be resolved if need be.

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**Downs J**