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

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

**CRI-2018-090-5804
[2020] NZHC 1169**

THE QUEEN

v

A

Hearing: 29 May 2020

Appearances: H D L Steele and A R Kempster for the Crown
S Thode for the Defendant

Sentencing: 29 May 2020

SENTENCING BY PALMER J

Counsel/Solicitors:
Meredith Connell, Auckland
Thode Utting & Co, Auckland

Introduction

[1] On 22 November 2018, Ms A, aged 43, drove over the complainant. She has pleaded guilty to wounding with intent to cause grievous bodily harm. The offence carries a maximum sentence of 14 years' imprisonment. I sentence her today.

Approach to sentencing

[2] Sentencing is conducted for the purposes, and according to the principles, set out in ss 7 and 8 of the Sentencing Act 2002 (the Act). In this case, I have particular regard to the purposes of holding Ms A accountable for the harm done to the complainant and community; promoting in her a sense of responsibility for, and acknowledgement of, that harm; providing for the interests of the complainant; denouncing Ms A's conduct; deterring similar future offending; protecting the community from her; and assisting in her rehabilitation and reintegration.

[3] In terms of principles I take into account, in particular: the gravity of the offending and the degree of Ms A's culpability; the desirability of consistency of sentences for similar offending; the information I have about the effect of the offending on the complainant; Ms A's personal background; and I impose the least restrictive outcome that is appropriate in the circumstances.

What happened?

[4] Around 6.15 am on 22 November 2018, Ms A was driving her car in the public car park at the Ranui Domain, in Ranui, West Auckland. The complainant was walking in the car park. Ms A drove the car at him, causing him to fall to the ground. She drove the car over him, inflicting life-threatening injuries.

[5] When speaking to the Police she accepted she hit him with the car but said he was already on the ground when she did so. On 30 November 2018, she was charged with wounding with intent to cause grievous bodily harm. She has offered to engage in restorative justice but that has not been accepted to date. On 19 February 2020, she pleaded guilty, after she was re-arrested for breaching bail and two and a half weeks before the trial was scheduled to commence on 9 March 2020.

[6] The complainant suffered a fractured pelvis, broken neck, severe head injury and bleeding of the brain. He is now a tetraplegic with life-threatening effects on his lungs, bowel and bladder functioning. He is attending this sentencing by teleconference today with his carer. In his victim impact statement, which was read today by his mother, he says he cannot move or feel any part of his body below his shoulders. He spent a year and a half in hospital, including four months in intensive care and is now in a hospital wing of a rest home. Any infection remains life-threatening, which must have been a concern this year. He cannot cuddle his parents, kids or grandkids or even scratch his nose and is at constant risk of bed sores. He can move his head from side to side a small bit. He is dependent on others for every part of his day and night. It is hard for him to watch the toll his situation takes on his family. He wishes he could touch somebody or feel them touch him.

[7] His son, sister and mother have also provided victim impact statements, which his mother read out today:

- (a) His son says his father's life, and his family's life, has been changed forever and feels like a bad nightmare he never wakes from. He is still numb. He says that seeing the pain and anguish on his father's face, and the energy drained from his body because of the horrific injuries sustained, is something that will haunt him forever. His son has had extreme anxiety and panic attacks. He is sickened, sad, anxious and extremely upset.
- (b) His sister cannot fully express in words the horror she and her family have lived with due to her brother's injuries. She was hysterical when she first heard. She says he looked like mincemeat when she first saw him and that the doctors said there was a high likelihood he would not make it. He no longer has any privacy, very little dignity and no such thing as personal space. She says she spent months not knowing if he would live or die and even now a severe cold could turn into pneumonia and kill him. She has spent many hours in counselling and is on medication.

- (c) His mother says that her life will never be the same again. She was on a cruise to celebrate 46 years of marriage when it happened and could not get home for four days. She had to go part-time at work and is no longer in permanent employment, a premature end to her career. She says no mother wants to see their son as she sees him, totally dependent on others for every single aspect of living. She says that living with this is the most challenging emotional, cognitive and spiritual experience she has ever faced, which is saying something.

[8] It is clear the complainant here has been strong and resolute in his slow medical recovery. And his family has been hugely supportive of him. I know that whatever I say today will not change the tragic circumstances he and his family now endure. But perhaps today might bring some sense of closure for them, to allow them to get on with their lives.

Starting point

[9] Ms A, in sentencing you, I first set a starting point to reflect the seriousness of the offending. There is a guideline judgment by the Court of Appeal about sentences for grievous bodily harm, *R v Taueki*.¹ The Court there identified a number of factors about the seriousness of this form of offending, and established three overlapping bands of starting points for imprisonment based on those factors:

- (a) band one is three to six years' imprisonment, for violence at the lower end of the spectrum;
- (b) band two is five to 10 years, for offending featuring two or three aggravating features;
- (c) band three is nine to 14 years, for offending with three or more aggravating features, where the combination is particularly grave.

¹ *R v Taueki* [2005] 3 NZLR 372 (CA).

Submissions

[10] Mr Steele, for the Crown, submits there are three aggravating factors present here: extreme violence, in knocking the complainant to the ground and then driving over him; serious injury, which is obvious; and use of a potentially lethal weapon, a car. Mr Steele refers to other similar cases and submits the offending falls into band two.² He submits the starting point should be seven years' imprisonment.

[11] Mrs Thode, for you Ms A, accepts there was serious injury and use of a weapon as she must but does not accept the violence was extreme, compared with similar cases.³ She submits it was not prolonged and gratuitous and did not involve repeated assaults with the car. She submits the offending falls into band two and I should adopt a starting point between five years six months and six years' imprisonment.

Decision on starting point

[12] Setting the starting point is how we ensure there is consistency with other similar cases. Unfortunately, there are some:

- (a) I consider the offending here is worse than that in *R v Clarke*, where the offender reversed his car and then drove into the complainant who had engaged in provocative actions, causing serious but not life-threatening injuries.⁴ The Court there set a starting point of five years and three months' imprisonment. Here, the injuries are worse and there is no evidence of provocation.
- (b) In *R v Goyen*, the offender inflicted serious life-threatening injuries on a complainant who slapped the front panel of the car at a petrol forecourt.⁵ He drove into the pedestrian, and then reversed, manoeuvred around a post and eventually drove over his legs. The Court of Appeal considered the three aggravating factors referred to by Mr Steele were present, the offending was in the lower end of band two

² *R v Clarke* HC Auckland CRI-2010-90-1184, 7 April 2011; *R v Wallis* [2014] NZHC 2479.

³ *R v Clarke*, above n 2.

⁴ *R v Clarke*, above n 2.

⁵ *R v Goyen* [2006] NZCA 72.

and upheld a six-year starting point as “clearly within the range available”.⁶ I accept the offending here, knocking the complainant to the ground and then running over him, is comparable to that offending and also has the element of extreme violence that the Court of Appeal upheld as existing in *Goyen*. However, the injuries inflicted here were worse.

- (c) In *R v Heremaia*, Mr Heremaia was involved in a fight with a complainant who punched him in the face.⁷ Mr Heremaia got into his car, drove it onto the footpath, hit the complainant, knocked him to the ground, drove over him twice more, trapping him under the car, reversed over him again, causing life-threatening injuries. There was another complainant too, who was hanging from the window and fell off. The Court adopted a starting point of six years and six months’ imprisonment. I consider the offending in *Heremaia* was worse than that here, due to the repeated and sustained use of the car on several occasions and there being two complainants.
- (d) In *R v Wallis*, after using her car to block the complainant from leaving her place, Ms Wallis drove her car at him, pursued him in the car while he was on foot, drove up onto the footpath, hit him with the car in a shopping park, reversed when he fell off and accelerated at full speed, knocking him over, and then ran over the top of him, trapping him under the left front wheel.⁸ She attempted to drive over him and assisting passers-by again. The complainant suffered extremely serious injuries. I consider the offending in *Wallis* was worse than the offending here, given the repeated and sustained use of the car as a weapon by Ms Wallis.

⁶ At [59].

⁷ *R v Heremaia* [2012] NZHC 3361.

⁸ *R v Wallis* [2014] NZHC 2479.

[13] Accordingly, I consider the seriousness of the offending here is marginally worse than *Goyen* and less than that in *Heremaia*. I adopt a starting point of six years and two months' imprisonment.

Adjustments

[14] Now I consider what adjustments to make the starting point. Ms A, you have criminal convictions dating back to 1994 including four convictions for violent offending between 2009 and 2010, so 10 or 11 years ago. You have only been imprisoned once, for two charges of breaching conditions.

[15] I have been provided with a report under s 27 of the Act, from Ms Shelley Turner, a cultural report writer, and Dr John Jacques, a forensic psychiatrist. I have found them both helpful in understanding your circumstances. I note the following advice from the reports:

- (a) There was family violence in your upbringing. Your father was abusive. You were raped at a young age by a family friend. Your parents separated, which led to you living with your ex-boyfriend's family. Your mother died when you were 18 and Ms Turner considers you never dealt properly with her death.
- (b) You have three daughters, two of whom are here today, one of whom died shortly after being born. Another daughter was eventually taken in by Child Youth and Family Services (as it was). Ms Turner says you became a methamphetamine user after the death of your child. You told Ms Turner you were injecting Ritalin at the time of the offending.
- (c) Ms Turner says you lived a transient life, were homeless and moved from place to place. Both reports say you have extensive history of substance abuse. Ms Turner says you were a long-term drug user and methamphetamine addict, which led to irrational behaviour and relationship dysfunction.

- (d) Dr Jacques refers to borderline personality disorder, an enduring pattern of emotional and relationship difficulties and a distorted sense of identity. He and Ms Turner both suggest your early history of abuse and trauma, relationship instability and addiction and substance abuse, are key drivers of, or contributing factors to, your offending. Ms Turner concludes the significant disadvantage you have suffered in your life has had a causative impact on your offending. Dr Jacques says that programmes to address substance abuse would assist you in reducing your risk of reoffending. I agree and recommend that to the Department of Corrections, and to you. He also advises that, when you are eventually released, your accommodation, ongoing monitoring, emotional support and support to maintain abstinence from drugs should be planned. I agree with that too and recommend it to you and to Corrections.
- (e) Ms Turner suggests you are remorseful about what you have done and are motivated to rehabilitate yourself, to come to terms with your addiction issues and deal with your grief. You told her you cannot imagine living the way the complainant is. You told Dr Jacques you hit the complainant by accident, did not see him, did know he was there. You said the same to the report writer from the Department of Corrections, who assesses you as at moderate risk of reoffending in general and as at higher risk to those with whom you are in a relationship.

[16] You have also written me a letter saying that you are profusely apologetic for breaking the law and towards the complainant and his family. You say you were in the wrong and fully acknowledge the pain, hurt, anger and suffering inflicted on the complainant and his family and friends. You say you take full responsibility for your role, there is no excuse for your behaviour and you do not blame the complainant if he hates you. You say you are now a born-again Christian and you hope that in time the complainant and his family, and your own family, will forgive you. It is a fulsome apology and I will ask the Registry to provide it to the complainant if he wishes to have a copy.

Submissions on adjustments

[17] Mr Steele submits there should be an uplift of one year to your sentence because your most recent offending is a continuation and escalation of a previous pattern of behaviour. You have twice previously assaulted others using a car as a weapon. On 1 August 2019, Brewer J held that these offences would be admissible as propensity evidence at your trial:⁹

- (a) On 10 December 2009, you drove to your ex-partner's home, followed him in your car and eventually accelerated and hit him in the legs, also injuring his right hand. You told Police this was an accident. You were convicted of assault with a weapon.
- (b) On 7 January 2010, you went to the address of another ex-partner, drove into the back of his car twice and swerved towards his new partner before driving away. You were convicted of two charges of assault.

[18] Mr Steele submits you have demonstrated little remorse and continued to deny responsibility until recently but he suggests your recent letter does not acknowledge the intent that makes your actions criminal. He does accept your mental illness may have played some role in your offending but submits any discount should be modest. He submits any discount for being on EM bail is negated by you breaching your bail twice, failing to appear at a bail breach hearing, removing your electronically monitored bracelet, absconding and being charged with further offences when you were arrested. Mr Steele submits, given the strength of the Crown case, any discount for a guilty plea should not exceed 15 per cent.

[19] Mrs Thode submits any uplifts for previous offending should be no more than three months. She submits there should be discounts for your personal background and circumstances, in particular your addiction, inability to exercise rational thought and mental health which is causative of the offending. She submits you sought to engage in a restorative justice conference and have taken steps towards rehabilitation, including being bailed at the Grace Foundation and engaging with the methadone and

⁹ *R v A* [2019] NZHC 1855.

other programmes where you appear to have made significant progress with your addiction before moving to a less desirable environment and falling back into old habits. She submits your time on EM bail should be taken into account as a discount. And she submits you should have a discount of 15 to 20 per cent for pleading guilty, resulting in an end sentence of three to three and a half years' imprisonment.

Decision on adjustments

[20] There have been 10 years between your previous violent offending and this offending. But the pattern of you using a car as a weapon is hard to escape and what happened here was a direct and alarming escalation of what you had previously been convicted for. As s 9(1)(j) of the Act provides, and the Court of Appeal has made clear, an uplift for previous similar offending is justified on the basis of deterrence and, in some cases, protection of the public, because it indicates a tendency to commit the particular type of offence for which the offender is convicted.¹⁰ I consider there should be an uplift to your sentence for this of eight months.

[21] You denied your responsibility for the offending to Corrections and Dr Jacques. You spoke with Ms Turner sometime after that and you expressed remorse to her. You have written a fulsome letter of apology that I have received today. I accept that today, facing sentencing, you are remorseful. But I am left uncertain about whether you are really prepared to do the hard work to change your lifestyle and escape your unhealthy patterns of behaviour when you are not in custody. Your absconding from EM bail in January, failing to stop for police and being found with a needle for drug use, suggests you still have a long way to go with your rehabilitation. Time will tell. And, as Mrs Thode says, you will have to live with this for the rest of your life.

[22] I do discount your sentence for your mental health difficulties, the early trauma in your life and your addiction issues, which have combined to mean that you have not had much of a chance to live a healthy life as well as the rehabilitative steps you started to take. I discount your sentence for all these factors by 13 months. Given

¹⁰ *Beckham v R* [2012] NZCA 290, citing *R v Casey* [1931] NZLR 594 (CA) at 597 and *R v Ward* [1976] 1 NZLR 588 (CA) at 591.

your breaches of EM bail, one of which was egregious, I do not consider you should receive an additional discount for the time you did on EM bail.

[23] You are entitled to a discount to your sentence for your guilty plea. It did not occur particularly early, two and a half weeks before trial. I discount your sentence by nine months, or around 13 per cent for this.

[24] I am satisfied that the resulting sentence appropriately reflects the overall gravity of your offending.

Name suppression

[25] The complainant has name suppression under s 202(1)(b) of the Criminal Procedure Act 2011. At the complainant's request, Mr Steele, for the Crown, requests permanent suppression of the complainant's name and the nature of his relationship with Ms A, because of his fragile health. I have seen a letter from the complainant's family strongly supporting that, which is completely understandable. I am satisfied that publication of the identity of the complainant, and his relationship with Ms A is likely to cause him and his family undue hardship. I grant that request for suppression.

[26] To date, Ms A your name has also been suppressed, in order to avoid identification of the complainant. Mrs Thode, on your behalf, seeks suppression of your name because it is likely to lead to his identification. The complainant's family also supports this. The Crown submits that the publication of your name no longer risks identifying that of the complainant and that there is no basis for a permanent name suppression order over your name. Mrs Thode submits the risk is still there because people know the nature of your relationship. On the information before me, I do not consider publication of your name is likely to lead to the identification of the complainant's. I consider there is no basis for suppressing your name. However, because Mrs Thode indicates you may appeal that finding, I order continued interim name suppression for 20 working days to allow an appeal to be filed and if one is filed, until the determination of that appeal.

[27] I will just check here the media understand that. I permit photographs briefly now but on the basis that they are not to be published unless name suppression lapses, as I have explained.

Sentence

[28] Ms A, please stand. Ms A, I sentence you to five years imprisonment for the offence of wounding with intention to cause grievous bodily harm. Thank you.

Palmer J