

**ORDER PROHIBITING PUBLICATION OF NAME, ADDRESS,  
OCCUPATION, OR IDENTIFYING PARTICULARS OF VICTIM 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  
AUCKLAND REGISTRY**

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

**CRI-2020-090-1335  
[2020] NZHC 2753**

**THE QUEEN**

v

**LIAM HOURIGAN  
HENRY ENOKA KEA**

Hearing: 20 October 2020  
Counsel: H D L Steele for Crown  
R McCausland on instructions from K H Maxwell for Hourigan  
J Verry for Kea  
Judgment: 20 October 2020

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**SENTENCING NOTES OF KATZ J**

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Solicitors: Meredith Connell, Office of the Crown Solicitor, Auckland  
Counsel: K H Maxwell, Barrister, Auckland  
J Verry, Barrister, Auckland

## **Introduction**

[1] Mr Hourigan and Mr Kea, you appear for sentence today on various charges relating to the kidnapping, detention, repeated assaults, and prolonged torture of a man over a 12 hour period in November 2019.

[2] Mr Hourigan, you have also been convicted of a number of additional charges relating to two other incidents of offending within the same general time period.

[3] You have both previously accepted sentence indications in respect of your offending.<sup>1</sup> The sentence I impose today will therefore be in accordance with those indications, with appropriate adjustments for personal mitigating factors, based on various reports that have been filed since the sentence indication was given.

## **The offending**

*21 to 22 November 2019 – Mr Hourigan and Mr Kea*

[4] The first, and most serious, group of charges relate to the events of 21 and 22 November 2019. You each face a number of serious charges arising out of the events of that night.

[5] On 21 November 2019, Mr Hourigan lured the victim to an address in Auckland. Mr Kea, Mr Sefulu (who has previously pleaded guilty to his role in the offending) and two other co-offenders were lying in wait. They overpowered the victim, stripped him naked, tied him up and gagged him. Mr Hourigan held a gun to his head. The offenders punched and kicked the victim repeatedly around the head and body while he lay hogtied and defenceless on the ground, causing a number of injuries. The victim's eyes and face became extremely swollen, restricting his vision. One of the offenders urinated on him. Mr Hourigan demanded that the victim tell him "where the money was", but the victim said he did not know. Mr Hourigan threatened to castrate the victim. Numerous threats were also made to burn him alive.

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<sup>1</sup> *R v Hourigan and Kea* [2020] NZHC 1816.

[6] After several hours of repeated assaults, the victim was transported to another address. He had difficulty breathing while being transported, due to being gagged. At the second address his ordeal continued. He was tied to a chair before being shot in both feet at close range. Mr Hourigan then used a blow torch to burn the victim over much of his body, causing him excruciating pain. An unknown liquid solution was sprayed into his eyes. Lit cigarettes were used to burn his eyelids and shoulder. Mr Hourigan struck the victim multiple times around the head with a metal instrument. The victim's suffering continued unabated, as he was subjected to continuous assaults over a period of hours.

[7] Mr Hourigan and another defendant then attempted to cut off the victim's little finger with scissors but failed in that attempt. Someone left the premises and returned with secateurs. Mr Hourigan used those to cut off the victim's little finger, amputating it permanently. The victim continued to be brutally beaten and told that he was going to be burnt alive. Not surprisingly, the victim believed he would not survive his ordeal.

[8] The offending only came to an end after 12 hours when, in the process of being moved to a third address by Mr Sefulu, the victim managed to loosen his bonds and escape the car he was being transported in. A member of the public came to his aid.

[9] The victim has suffered serious and lasting physical injuries. He is permanently scarred. He describes the impact of your offending as catastrophic. Not surprisingly, he has also suffered devastating psychological trauma. The victim's parents have also been deeply traumatised by the grievous suffering inflicted on their son. Their lives will never be the same. As I said to them earlier, I acknowledge their presence in court today, by remote video link, and the powerful and moving victim impact statements that were read on their behalf in court this morning.

[10] The events I have just outlined give rise to the charges against you both of kidnapping,<sup>2</sup> aggravated robbery,<sup>3</sup> unlawful possession of a pistol,<sup>4</sup> wounding with

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<sup>2</sup> Crimes Act 1961 s 209(b), maximum penalty 14 years' imprisonment.

<sup>3</sup> Crimes Act 1961 s 235(b), maximum penalty 14 years' imprisonment.

<sup>4</sup> Arms Act 1983 s 50(1)(a), maximum penalty 3 years' imprisonment.

intent to cause grievous bodily harm (five charges),<sup>5</sup> threatening to kill,<sup>6</sup> assault with a weapon,<sup>7</sup> and injuring with intent to injure.<sup>8</sup>

*17 November 2019 – Mr Hourigan*

[11] Mr Hourigan, you have also been convicted of one charge of arson<sup>9</sup> relating to an attack on a vape shop in Epsom in November 2019. Following an unsuccessful arson attack on that shop the previous night, in the early hours of the morning on 17 November 2019 two of your associates drove a stolen car through the front of the vape shop. Then, under your instructions, they set fire to the car and, as a consequence, the shop itself. People were living in the flats above the shop at the time, although there is no evidence you were aware of that until after the fire had been started. Thirteen fire crews attended the blaze. Three people were treated at the scene by St John's ambulance service, one for moderate injuries and two for minor injuries.

[12] The fire caused very extensive damage to the building, causing losses of over \$450,000. In addition, the manager of the vape business, who lived above the store, has suffered uninsured losses of approximately \$50,000, including the loss of all his furniture and personal belongings. The whole experience has been extremely traumatic for him and he now lives in constant fear, as we heard when he read his victim impact statement this morning.

*10 December 2019 – Mr Hourigan*

[13] The final set of charges against you, Mr Hourigan, relate to events on 10 December 2019, when the police attempted to stop you. You fled in your vehicle at approximately 2.50 pm, driving dangerously and at speeds of up to 120 kilometres per hour in a residential area where a significant number of primary schools are located. Once you got onto the motorway you drove at speeds of up to 200 kilometres per hour. After an hour and a half you dumped your vehicle and tried to escape through

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<sup>5</sup> Crimes Act 1961 s 188(1), maximum penalty 14 years' imprisonment.

<sup>6</sup> Crimes Act 1961 s 306(1)(a), maximum penalty 7 years' imprisonment.

<sup>7</sup> Crimes Act 1961 s 202C, maximum penalty 14 years' imprisonment.

<sup>8</sup> Crimes Act 1961 s 189(2), maximum penalty 5 years' imprisonment.

<sup>9</sup> Crimes Act 1961 s 267(1)(b)), maximum penalty 14 years' imprisonment.

residential properties. You discarded a loaded revolver while running away. Another loaded and primed firearm, as well as a machete, were found in your vehicle.

[14] This gives rise to two charges of failing to stop,<sup>10</sup> reckless driving,<sup>11</sup> unlawful possession of a pistol (two charges),<sup>12</sup> unlawful possession of ammunition<sup>13</sup> and possession of an offensive weapon.<sup>14</sup>

### **Starting point**

[15] The first set of charges, relating to the kidnapping and associated events of 21 and 22 November 2019, are clearly the most serious. Counsel are agreed that the kidnapping and violence charges are inextricably interlinked. Rather than try and take one lead charge and then uplift for other charges, counsel each identified an appropriate overall starting point for the totality of the offending, including the kidnapping and the violent offending. I will take the same approach.

[16] There is no guideline judgment for kidnapping. Counsel were agreed, however, that *R v Taueki*, the guideline judgment for grievous bodily harm offending, provides some guidance in the assessment of the appropriate starting point.<sup>15</sup>

[17] I identify the following aggravating factors of the offending: extreme violence<sup>16</sup> and particular cruelty in the commission of the offence;<sup>17</sup> premeditation;<sup>18</sup> use of weapons;<sup>19</sup> serious injury inflicted (both mental and physical);<sup>20</sup> attacks on the head;<sup>21</sup> vulnerability of the victim, who was tied up, gagged and unable to move;<sup>22</sup>

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<sup>10</sup> Land Transport Act 1998 ss 52A(3), 52A(6) and 114(2), maximum penalty 6 months' disqualification and a \$10,000 fine.

<sup>11</sup> Land Transport Act 1998 s 35(1)(a), maximum penalty 3 months' imprisonment and a \$4,500 fine, 6 months' disqualification.

<sup>12</sup> Arms Act 1983 s 45(1), maximum penalty 4 years' imprisonment and a \$4,500 fine.

<sup>13</sup> Arms Act 1983 s 45(1), maximum penalty 4 years' imprisonment and a \$4,500 fine.

<sup>14</sup> Crimes Act 1961 s 202A(4)(a), maximum penalty 14 years' imprisonment.

<sup>15</sup> *R v Taueki* [2005] 3 NZLR 372 (CA).

<sup>16</sup> Sentencing Act 2002, s 9(1)(a); *R v Taueki* [2005] 3 NZLR 372 (CA) at [31(a)].

<sup>17</sup> Sentencing Act 2002, s 9(1)(e); *R v Taueki* [2005] 3 NZLR 372 (CA) at [31(a)].

<sup>18</sup> Sentencing Act 2002, s 9(1)(i); *R v Taueki* [2005] 3 NZLR 372 (CA) at [31(b)].

<sup>19</sup> Sentencing Act 2002, s 9(1)(a); *R v Taueki* [2005] 3 NZLR 372 (CA) at [31(d)].

<sup>20</sup> Sentencing Act 2002, s 9(1)(d); *R v Taueki* [2005] 3 NZLR 372 (CA) at [31(c)].

<sup>21</sup> *R v Taueki* [2005] 3 NZLR 372 (CA) at [31(e)].

<sup>22</sup> *R v Taueki* [2005] 3 NZLR 372 (CA) at [31(i)].

multiple attackers; and (given that the offending also included a kidnapping) the length of the detention.<sup>23</sup>

[18] This combination of aggravating factors places the offending at the very top of Band 3 of *Taueki*. Indeed, I note that none of the examples of offending given in that case are as serious as the offending in this case. As Crown counsel submitted this morning, this is offending at the extreme end of the criminal spectrum. In addition, your offending involved kidnapping and a 12 hour detention. These various factors, taken in combination, warrant an overall starting point above the top end of *Taueki* Band 3.

[19] Counsel have referred me to a number of cases which they say are in some way analogous to this one.<sup>24</sup> Of those, *R v Sefulu* is the most relevant, as it is a sentencing decision in respect of one of the co-defendants in the current alleged offending who pleaded guilty at an early stage and was sentenced in the District Court in May 2020. When sentencing Mr Sefulu, Judge A C Roberts observed that the gratuitous violence in this case reads like something from a Quentin Tarantino movie. He observed that in all his time as a judge he had never seen such a graphic summary of facts, with such elevated acts of violence, short of a murder charge. He concluded that a 15 year starting point was appropriate. I agree with the Judge's observations. The barbarity and cruelty of your offending, and the suffering you inflicted on the victim, is almost incomprehensible. This was exceptionally sadistic, callous, premeditated and prolonged offending.

[20] Mr Kea, you were not the lead offender, but you were a willing henchman and participant in the offending. You were involved in many of the assaults against the victim and you also aided and abetted Mr Hourigan's extreme violence against the victim. Your role in the offending was similar to that of Mr Sefulu and I therefore accept the Crown submission that the same starting point, 15 years' imprisonment, is appropriate for you.

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<sup>23</sup> See for example *Hemara-Watts v R* [2017] NZCA 306 and *R v Salt* [2017] NZHC 1467.

<sup>24</sup> *R v Sefulu* [2020] NZDC 8233; *R v Mulvey* [2016] NZHC 2568; *R v Couper* [2017] NZCA 588; and *R v Salt* [2017] NZHC 1467.

[21] Mr Hourigan, you were clearly the lead offender. You purchased items in preparation for the offending, personally lured the victim to the property, held a gun to his head, threatened to castrate him, systematically burnt him with a blow torch, and cut off his finger with secateurs. This clearly warrants a higher starting point than Mr Kea and Mr Sefulu, and I set that at 16 years.

[22] Your starting point must then be uplifted to reflect the arson charge you face and also your offending on 10 December 2019 when you attempted to flee the police. On a standalone basis the arson charge would attract a starting point of five years. The driving and associated firearms offending would normally warrant a starting point of about three years, possibly more given the risk to the public that was inherent in that offending. Taking into account the principle of totality, however, the appropriate uplift for all of your other offending is two years. This brings your starting point to 18 years' imprisonment.

### **Guilty plea discount**

[23] Your guilty pleas were entered at a relatively early stage, but not at the first realistic opportunity. Mr Sefulu, who faced the same charges, was sentenced on 12 May 2020, and presumably entered his guilty pleas some time before that. I assess the appropriate guilty plea in your case at 20 per cent.

### **Personal mitigating circumstances**

[24] I now turn to consider what discounts, if any, are appropriate to reflect your personal circumstances

[25] I am required to take into account your personal, family, whanau, community and cultural background and the way in which that background may have related to the commission of the offending.<sup>25</sup> The Court of Appeal has made it clear that when an offender's upbringing has been marred by such issues as cultural and social dislocation, systemic poverty, violence, alcohol and drug abuse (including by family members), unemployment, and educational underachievement such matters ought to

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<sup>25</sup> Sentencing Act 2002, s 27.

be taken into account at sentencing, if they are shown to contribute causatively to the offending.<sup>26</sup>

[26] You have both provided me with reports on your cultural and personal circumstances, prepared by specialist report writers. I have also received pre-sentence reports for each of you and two clinical psychologists' reports in respect of Mr Kea (one of which is historical).

[27] Mr Hourigan, you identify as Māori through your maternal whakapapa, although you say that you know little of your Māori heritage. You report being exposed as a child to family violence (including against you), cannabis growing, and parents who were addicted to methamphetamine. You were expelled from your first primary school at the age of 8 or 9, and later also expelled from high school. You were sent to a Youth Justice Facility in your mid-teens and this appears to have set you on the path to gang affiliation. You have used methamphetamine since you were aged 15 or 16 and were first imprisoned in 2012, when you were 17 years old. You believe that the violence you endured as a young child has desensitised you to violence and in that way has contributed to your violent offending. You also identify methamphetamine addiction as a key driver of your offending behaviour.

[28] Your counsel submits that there is clear evidence of systemic deprivation in your background and a linkage between that, and drug addiction, to your offending.

[29] Mr Kea, you were born in New Zealand, of Cook Island heritage. The reports you have provided indicate you had a dysfunctional and violent upbringing, culminating in being placed in state care in your early teens. You are the second generation of your family to be involved in gang culture and the reports before me note the normalisation of gang behaviour within your extended family. You meet the diagnostic criteria for anti-social personality disorder. You lack remorse and are assessed as having a high risk of violent recidivism.

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<sup>26</sup> *Zhang v R* [2019] NZCA 507, [2019] 3 NZLR 648; *Poi and Wilson v R* [2020] NZCA 312 at [27]; *Carr and Anderson v R* [2020] NZCA 357 at [60].

[30] The Crown acknowledges that your backgrounds, details of which are set out more fully in the reports that have been provided to me, could justify a sentence discount of up to 10 per cent. Defence counsel submit that a 15 per cent discount is warranted. I accept the Crown submission and assess the appropriate discount for personal mitigating factors at 10 per cent. A higher discount cannot be justified given the serious and premeditated nature of your offending and the risk you both pose of future violent offending. There is a clear need for community protection here.

[31] Mr Kea, you have not demonstrated any remorse. Mr Hourigan, you have indicated some limited remorse, described as “superficial” by the writer of your pre-sentence report. You have also provided me with a letter of apology to the victim’s family this morning, very much at the eleventh hour. Mr Hourigan, you have shown some insight into your offending and I hope that will continue to develop in the years ahead. Your remorse is not, however, at a level that could justify a sentencing discount.

### **Minimum period of imprisonment**

[32] I now turn to the issue of whether a minimum period of imprisonment should be imposed.

[33] The court may impose a minimum period of imprisonment if it is satisfied that the usual parole period is insufficient for any or all of the following purposes: holding the offender accountable for the harm done to the victim and the community by the offending, denouncing the conduct in which the offender was involved, deterring the offender or other persons from committing the same or a similar offence and/or protecting the community from the offender.<sup>27</sup>

[34] The harm done to the victim of the lead offending in this case was extreme. He no doubt suffered excruciating pain as well as psychological terror. His physical and mental scars are likely to remain with him for the rest of his life. You must be held accountable for that harm and your conduct must be denounced to the fullest extent possible. You appear to both be at high risk of violent recidivism. Community

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<sup>27</sup> Sentencing Act 2002, s 86.

protection is therefore a key consideration. Taking these various matters into account, I accept the Crown submission that the imposition of a 50 per cent minimum period of imprisonment is appropriate. Indeed, both of your counsel responsibly accepted that that must be so.

### **Suppression order**

[35] Finally, I make an order permanently suppressing the identity of the victim (including his name, address, occupation or any identifying details) pursuant to s 202 of the Criminal Procedure Act 2011, on the ground that publication would be likely to cause him undue hardship.

### **Sentence**

[36] Mr Hourigan, please stand. I sentence you as follows:

- (a) On each of the charges of kidnapping, aggravated robbery and wounding with intent to cause grievous bodily harm (five charges) you are sentenced to 12 years and 7 months' imprisonment, with a minimum period of imprisonment of 50 per cent.
- (b) On the charge of unlawful possession of a pistol you are sentenced to one year's imprisonment.
- (c) On the charge of threatening to kill (representative) you are sentenced to two years' imprisonment.
- (d) On the charge of assault with a blunt weapon you are sentenced to one year's imprisonment.
- (e) On the charge of injuring with intent to injure, you are sentenced to two year's imprisonment.
- (f) On the charge of arson you are sentenced to three years and six months' imprisonment.

- (g) On the charges of failing to stop you are convicted and discharged.
- (h) On the charge of reckless driving you are sentenced to three months' imprisonment.
- (i) On each of the charges of unlawfully carrying a pistol (two charges) and unlawfully carrying an explosive, you are sentenced to one year's imprisonment.
- (j) On the charge of possessing an offensive weapon you are sentenced to one year's imprisonment.

[37] All of these sentences are to be served concurrently, which means that your total end sentence is 12 years and 7 months' imprisonment, with a minimum period of imprisonment of 50 per cent.

[38] Mr Kea, please stand. I sentence you as follows:

- (a) On each of the charges of kidnapping, aggravated robbery and wounding with intent to cause grievous bodily harm (five charges) you are sentenced to 10 years and 6 months' imprisonment, with a minimum period of imprisonment of 50 per cent.
- (b) On the charge of unlawful possession of a pistol you are sentenced to one year's imprisonment.
- (c) On the charge of threatening to kill (representative) you are sentenced to two years' imprisonment.
- (d) On the charge of assault with a blunt weapon you are sentenced to one year's imprisonment.
- (e) On the charge of injuring with intent to injure, you are sentenced to two years' imprisonment.

[39] All of these sentences are to be served concurrently, which means that your total end sentence is 10 years and 6 months' imprisonment, with a minimum period of imprisonment of 50 per cent.

[40] You may stand down.

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**Katz J**