

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

**I TE KŌTI MATUA O AOTEAROA
TE TIHI-O-MARU ROHE**

**CRI-2018-012-001542
[2019] NZHC 1235**

THE QUEEN

v

RUSSELL JOHN BEAUMONT

Hearing: 31 May 2019
Appearances: H Bennett for Crown
T Jackson for Defendant
Judgment: 31 May 2019

SENTENCING NOTES OF DUNNINGHAM J

[1] Russell Beaumont, you are here today for sentencing because you have pleaded guilty to charges of wounding with intent to cause grievous bodily harm (“GBH”), threatening to kill and wilful trespass. As I said at the last hearing, I acknowledge that you identify as female and you have adopted the name Rose Beaumont, but you are charged under your given name and that is why when I sentence you I will be using that name.

[2] Before I discuss the sentencing process and the reasons for the sentence I am to impose, I will first summarise the facts which gave rise to the charges.

Facts

[3] You knew the victim in this matter, Karl Lefeber. You had worked together at the Little Sparrow Tattoo Parlour. About three years ago when you were suffering from depression your relationship with him soured and you lost ownership of the tattoo parlour. You blamed him and others for this. On 23 January 2017, you were trespassed from the tattoo parlour, where the victim continued to work.

[4] The attack which led to these charges occurred on the afternoon of 5 July 2018. You left your home to go to the tattoo parlour carrying two large knives and an ice axe. You entered the parlour holding one of the knives in your left hand and the ice axe in your right hand and you yelled "I'm going to kill you" to the victim as you approached him. You struck out at the victim with the knife, entering the palm of his right hand. You then raised the ice axe and swung it downwards towards his head. He raised his right arm to protect his head, and the ice axe struck his forearm with sufficient force to cut through the skin to the bone. You then struck the victim at least three more times with the ice axe, knocking him to the ground and you continued to strike him when he was on the ground inflicting two more blows to the victim's right arm as he protected his head. Eventually, the victim was able to grab the ice axe with his left hand, but you continued to punch him and yell abuse at him. This included spitting in his face and calling him "faggot scum thieving cunt". The attack only stopped when the police arrived and removed the weapons and restrained you.

Pre-sentence report

[5] To assist me in sentencing you today I have received a pre-sentence report. It does explain that at the time of your offending you had suffered an extended period of personal and business difficulties which had a significant impact on your mental and physical health. These issues included the end of your marriage of 18 years, your decision to identify as transgender, which was not always well received in your local community, and then, the loss of your business, which you considered occurred in a way which was underhand and in breach of trust you had placed in certain people. In any event, it meant that by mid 2018 when these events occurred, you were at a very low point in your life. You were suffering from depression, living in a sleepout, not sleeping well and you had no stable income.

[6] However, the pre-sentence report also points out that since that point you have made some progress. The report writer considers you have reasonable insight into some of your risk factors and into the work you will need to do in order to move on and re-establish yourself in the future. Importantly, you are assessed at low risk of reoffending.

Victim impact statement

[7] I also have the victim impact statement of Mr Lefeber and we heard him read that today. He described the ongoing physical impact of the attack. This includes that he suffers ongoing pain from the fracture in his vertebrae, and from a damaged nerve in his right elbow, and he has difficulty sleeping. His shop had to be closed for at least a week following the incident, causing a loss in income. The attack has also understandably had psychological effects on him. He now feels unsafe and is suspicious of people, and he replays the attack, over and over in his head. Now these are serious consequences of what you did.

Sentencing

[8] The most serious offence is the charge of wounding with intent to cause GBH. In order to set the starting point for sentence on that charge, both the lawyers have referred me to the lead case for sentencing on this type of charge which is *R v Taueki*.¹

[9] They both accept that your offending falls within Band 2 and that would warrant a starting point of 5-10 years. Band 2 is appropriate for this type of offending which features two or three aggravating features. Ms Bennett submitted that the aggravating features here are the element of premeditation, the serious injury, the use of weapons and the fact that it was a form of vigilante action because you used serious violence to take the law into your own hands when acting out of revenge.² However, she accepts that the injuries were not life threatening nor as serious as those in many other cases where weapons are used, so she suggests that a starting point of six to seven years' imprisonment would be appropriate.

¹ *R v Taueki* [2005] 3 NZLR 372.

² At [38]-[39].

[10] Your lawyer has accepted that there was a degree of premeditation, although he describes it as “short term” and “desperate”. It seems you told your partner what you proposed to do and then you walked the 1.5 kilometres to the parlour to carry out the attack. The other aggravating feature which he accepts is present is that the attack involved two weapons, the knife and the ice axe, and it involved a strike at the head, although your lawyer says it was intended to damage the victim’s hands and arms rather than to inflict a mortal injury. He suggested that a starting point of no more than four years would be appropriate.

[11] I accept that the offending falls within Band 2. I consider the key aggravating features were the premeditation, the use of weapons and the attack to the head. I accept that the attack to the head was perhaps only a moderately aggravating feature, because it was deflected and did not cause injury to the head. I also do not consider it a true vigilante attack. I consider that this aspect of the attack is adequately captured by the factor of premeditation because you did set out to get the victim.

[12] I would set a starting point of six and a half years’ imprisonment but uplift that to seven to reflect the additional charges of threatening to kill and wilful trespass.

[13] From that starting point your lawyer argues there should be a discount for mitigating factors. He says your offending was out of character and was due to the fact you were suffering chronic depression at the time, for which you were receiving a high dose of anti-depressant medication. At the time you were being prescribed quetiapine, a drug that is prescribed for serious mental health disorders, including major depression. On the previous day, your doctor had made notes recording that your mood was dipping, that you had not been sleeping, and that you were not tolerating the quetiapine. Your lawyer also points out that at the time you were undergoing hormone treatment as part of your gender reassignment to address your gender dysphoria.

[14] His submission is that you were at a significant low point at the time of the offending and that is supported by an affidavit from Tracey Honeywell, your partner, who considers your actions that day to be as “the result of a build up of all the pressure, mental illness and what appeared ... to be a sense in [you] of utter hopelessness”. She

was so concerned about your mental state on that day that she contacted the Kensington Hospital Crisis Team and then the police because she was afraid you were going to take your own life. Mr Jackson submits that I should apply an allowance for those personal mitigating factors of up to 12 months.

[15] He also submits that an appropriate discount for your guilty plea should be 25 per cent. While he accepts the guilty plea was made some nine months after the day you were charged with the offending, he considers there was no unnecessary delay. He notes that the charge of attempted murder was laid shortly after the initial charge of wounding with intent and it was to that charge, that a plea of not guilty was indicated and the proceedings moved to the High Court. You then had a change of counsel and you next appeared on 14 November 2018 when the sentencing indication was sought and set down for 3 April. He notes that you have not received any benefit through selection of a lesser charge and he considers that your plea to the three charges which now remain should be regarded as an early plea.

[16] The Crown, however, does not consider the further material warrants any reduction from the sentence which was indicated to you on 3 April 2019. While the Crown accepts that the pre-sentence report refers to your issues with your hormone therapy medication, and the fact you were in a desperate state and had sought help from your GP on the day of the offending, they point out that no expert medical evidence establishing your medical and mental health issues have been provided with the report. They also say there is a lack of linking between that and the offending which occurred.

[17] The Crown, therefore does not consider there is any need to depart from the indication I gave you on 3 April 2019.

Analysis

[18] Despite a lack of detailed medical evidence on this point I am satisfied that the mental health issues you were facing were a significant factor in your offending. You had a difficult upbringing and then experienced an extended period of personal and business difficulties, and this included dealing with your gender dysphoria. All of this led to a bout of significant depression at the time of the offending for which you were

receiving medication and I consider that is supported by the doctor's notes, your partner's affidavit, and the pre-sentence report.

[19] While I accept there is no detailed clinical information on your mental health condition, I do not ignore the combined evidence which is before me which satisfies me that you were severely depressed and distressed at the time of the offending. I consider that there is some evidence of a causative link between your mental health at the time, and the offending. While there were other factors clearly at play, such as your animosity towards the victim, I consider that things would not have escalated to this point had you not been significantly depressed at the time.

[20] The Court has always recognised that impaired mental functioning, whether temporary or permanent, is relevant to sentencing.³ While I do not have detailed medical information about your mental health, I accept you were significantly depressed and it led you to act in a way that was significantly out of character. This means that there is less need for deterrence to be a factor in sentencing you. I also consider that given the issues you have been facing, including your gender dysphoria, there is a risk that imprisonment will be more difficult for you than for other people and a lengthy prison sentence will impair your ability to be rehabilitated and to re-integrate at the conclusion of your sentence.

[21] Having said that, I am satisfied, you were well aware that what you were doing was wrong and I do not consider your mental health issues materially reduced the moral culpability of your offending. For all these reasons, I consider the discount I give you should be at the lower end of the range of discounts given to reflect mental health issues and I believe a discount of one year, to take the sentence to six years, would be appropriate.

[22] In terms of the discount for a guilty plea, I do not see any reason to award a discount of more than 20 per cent. Despite the explanation your lawyer has carefully given, I consider it was open to you to plead guilty to these charges at an earlier stage, and I remain of the view that a discount of 20 per cent for your guilty plea is

³ *E v R* [2011] NZCA 13, citing *R v Verdons* [2007] VSCA 102, at [32].

appropriate. So, the end sentence would therefore be one of four years and 10 months' imprisonment.

[23] Russell Beaumont would you please stand.

[24] Russell Beaumont, on the charge of wounding with intent to cause grievous bodily harm, you are sentenced to four years and 10 months' imprisonment. On the charge of threatening to kill, you are sentenced to six months' imprisonment to be served concurrently, and on the charge of wilful trespass, you are sentenced to two months' imprisonment, also to be served concurrently.

[25] Given your conviction for wounding with intent to cause grievous bodily harm, you are now subject to the three strikes law. I am going to give you a warning of the consequences of another serious violence conviction. You will also be given a written notice which contains a list of these 'serious violent offences'.

1. If you are convicted of any one or more serious violent offences other than murder committed after this warning and if a Judge imposes a sentence of imprisonment then you will serve that sentence without parole or early release.
2. If you are convicted of murder committed after this warning then you must be sentenced to life imprisonment without parole unless it would be manifestly unjust to do so. In that event the Judge must sentence you to a minimum term of imprisonment.

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