

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

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

**CRI-2018-004-003875
[2019] NZHC 2335**

THE QUEEN

v

**IVAN DOUGLAS CARR
STEVEN GEORGE ANDERSON**

Hearing: 17 September 2019

Counsel: DME Wiseman for Crown
H Smith on instruction for RM Mansfield for Defendants

Judgment: 17 September 2019

SENTENCING REMARKS OF DOWNS J

Solicitors/Counsel:
Crown Solicitor, Auckland.
RM Mansfield, Auckland.
H Smith, Auckland.

Preliminary matters

[1] Two preliminary matters first. Mr Mansfield is ill. But, as I have said to those here this morning, I have read his helpful submissions—plural—and all the material he has prepared for the two of you. For this reason, I shall continue to refer to Mr Mansfield's submissions even though Mr Smith, his junior at trial, is here today and has addressed me orally. Second, I acknowledge the presence of family and whanau, and the Officer-in-Charge.

Introduction

[2] Now, sentencing itself. Mr Carr, you are for sentence on a host of serious charges: four of aggravated robbery; two of robbery; five for unlawful using or taking a car; two of dishonest use of a document; one of demanding with menaces; one aggravated assault; and two thefts. The most serious are the aggravated robbery charges. Each carries a maximum penalty of 14 years' imprisonment. Aggravated robbery is your signature offence.

[3] You committed some of the offences with others, hence the presence of Mr Anderson. You, Mr Anderson, are for sentence on two charges of robbery; and one of aggravated assault. The maximum penalty for robbery is 10 years' imprisonment.

[4] Another offender, Mr Hutchinson, will be sentenced in the next month or so. A disputed facts hearing is required in relation to him.

Facts

[5] I begin with events in relation to you Mr Carr. At approximately 12.30 am on 12 October 2017, you and another unidentified man stopped next to a parked BMW in Hillcrest. The victim was in the car talking to his mother on the telephone. He had parked just outside his home. You were both wearing masks. Either you or the other man confronted the victim with a hammer. A demand was made for the victim's phone, wallet and keys. The victim asked if he could first remove his lecture notes. They were of great value to him—but none to you. His request was declined. Either you or

the other man dragged the victim out of his car. You and the other man then drove the BMW away. You took the victim's wallet and phone. They were worth \$2,400. He did not get these back.

[6] I move forward 18 days to 30 October 2017. Mr Carr, you and an unidentified offender went to a shopping centre in Glen Eden. At approximately 2.30 that afternoon, you robbed an Armourguard cash van at gunpoint. You were the gunman. The Armourguard employee ran away, and around a corner. You chased him. You told him to drop the cash or you would shoot him. He complied. You then came back to the Armourguard van and banged on the window with the pistol. You demanded the driver get out, hoping for more money. He would not. You desisted. You left with your co-offender and the cash case. It held a little over \$11,000.

[7] This robbery was premeditated. You were disguised,¹ and you wore gloves. You and your co-offender watched the van at the shops. You used the stolen BMW I mentioned earlier and a second car, a Toyota. You had stolen the Toyota earlier that day to use in the robbery. The Toyota was found. Its ignition and window were broken. The BMW was also found. The cash was not. Footage of the robbery was played at trial. It shows the gunman—you, Mr Carr—pointing the gun at the Armourguard employee, and a female, who, by chance, was at the shops.

[8] I pause here to note your lawyer, Mr Mansfield argues, at least in his written submissions, there was no evidence the gun was real. I have no doubt it was. The imagery shows what looks like a real pistol, and what everyone at the scene believed was a real pistol. More importantly, the charge was that you used an offensive weapon—a pistol—not that you used what looked like an offensive weapon, which is an alternative species of aggravated robbery.² It was also common ground at trial a pistol was used; the only issue was whether the Crown had proved you were the person wielding it. It is too late now to raise this point, especially without evidence.

[9] I accept there is no evidence the pistol was loaded. But, your victims could not have known that, and you intended they believe otherwise. Hence your use of it.

¹ By a bandana, hooded sweatshirt or jacket, and sunglasses.

² Section 235(c) of the Crimes Act 1961 extends to anything appearing to be an offensive weapon.

[10] I move forward five weeks to 7 December 2017. An insurance assessor noticed a client's stolen Volkswagen outside your home Mr Carr. The Volkswagen was worth approximately \$50,000. The assessor called Police. A large tow truck arrived to remove the Volkswagen. You quickly got into it and drove it away. You abandoned the Volkswagen later that day.

[11] I move forward five months to 1 April 2018. Mr Carr, you stole a Subaru in Takapuna. You did so as you intended to use it in a robbery a few days later. I return to that soon. You used a credit card from the stolen Subaru to buy \$32 of food at McDonald's and then \$66 of items from a hardware store.

[12] On 3 April, Mr Carr, you and Mr Hutchinson snatched a handbag sitting right next to a woman on a park bench. It and its contents were worth \$500. You both stole another bag out of a nearby car in Birkenhead. It contained a gold ring worth \$200, with, presumably, greater sentimental value. The two of you then came into the city and stole a motorbike from Britomart worth \$10,000. None of this property was recovered.

[13] On 5 April a little after 1 pm, Mr Carr, you and Mr Hutchinson robbed an Armourguard cash van outside a shopping mall in Milford. This robbery was premeditated. You used the Subaru you had taken four days earlier. You were the driver. You followed the van while it made its rounds in Milford. Once at the mall, you reversed the Subaru into the cash van, hitting it. Your co-offender was wearing a mask. He got out. He confronted the Armourguard employee with a knife. The victim dropped to the ground. Your co-offender took the cash case. The two of you left in the Subaru, driven by you, Mr Carr. You later abandoned it. Together, you stole \$34,000. The cash was not recovered. The car was.

[14] I move forward three and a half weeks. After 9 pm on 29 April 2018, Mr Carr you and a co-offender went to a motel in Takapuna. You went to commit robbery. The two of you had agreed to meet this night; I infer for this reason. Mr Carr, you covered your face with the hood of your jacket or top. You were wearing gloves. You went into one of the units with a small axe. You demanded money from the family in the unit. You slapped one of the victims to the face and to the back of the head. His

mother armed herself with a knife from the kitchen. You grabbed another of the victims, used her as a shield, and placed the axe against her neck. You continued to demand money. You stole a handbag, cash, a gold watch and other items worth more than \$6,500. You and your co-offender Mr Hutchinson then fled. None of this property was recovered. As will be apparent, this robbery was premeditated too.

[15] This brings me to 4 May 2018—only four days later—and to Mr Anderson’s offending. Mr Carr and Mr Anderson, you committed a series of offences, including another cash van robbery. You Mr Carr, first stole a Mazda. At approximately 3.17 pm, you and Mr Anderson were driving the Mazda on Queen Street. One of you got out and robbed a tourist on the street of their camera bag and its contents. The victim’s brother gave chase. He held onto the Mazda’s roof rack as you both drove away. The two of you accelerated quickly, turned a corner, and swerved left and right to dislodge him. You succeeded. The victim was thrown from the car and landed on the road.

[16] At approximately 4 pm, the two of you drove to the Bank of New Zealand on Dominion Road. An Armourguard cash van was replenishing the ATM with cash. You, Mr Anderson, were wearing a hooded top, pulled down over your face. You rushed the Armourguard employee. Having watched the footage, I am sure you tried to punch him. I am not sure you made contact. There was then a brief scuffle. You took the cash case. Both of you left in the Mazda stolen earlier that day. You then hid the Mazda in a garage. You divided the stolen cash—\$280,000—between you. Fortunately, you were both caught that afternoon. The Mazda was recovered. So too, fortunately, the cash.

[17] This cash van robbery was less sophisticated than the earlier ones, but, I conclude, planned. It too involved use of a stolen car earlier that day, and obviously, the same type of target. Another feature implies premeditation, which I come too later.

Aggravating factors

[18] There are many aggravating features—things that make the offending more serious. All apply to you, Mr Carr; only some to you, Mr Anderson:

- (a) Much of the offending was premeditated; indeed, two of the aggravated robberies were very well planned.
- (b) Some offending involved dangerous weapons: a hammer, a pistol, a knife, a small axe.
- (c) There was use of violence beyond that inherent to robbery or aggravated robbery.
- (d) There was the targeting of vulnerable victims—particularly the Armourguard staff—in busy shopping centres, in daylight.
- (e) Offending on bail. Mr Carr, you committed the Glen Eden aggravated robbery while you were on bail.
- (f) The motel aggravated robbery was something like a home invasion.
- (g) Much valuable property remains unrecovered.
- (h) There are many victims. I assume some continue to suffer, especially psychologically. I say “assume” because, oddly, I have been given only one victim impact report. Why this is so remains unclear. This is unsatisfactory.
- (i) All offending happened within only eight months. Its intensity and seriousness are standout features.

Starting point

[19] Mr Carr, determining your starting point is difficult because you have committed many serious offences, and because any number of approaches is available. The Crown recommends I identify a starting point for each offence, or offence set, imagining each in isolation, and then look at everything together. Mr Mansfield urges a different approach. He invites me to focus on the Glen Eden offending, and then increase its starting point for all your other offending.

[20] I decline to approach things that way. It is less transparent. It also risks overlooking serious offending. The Crown's proposed approach is orthodox. I adopt it.

[21] In relation to your starting point, Mr Anderson, the Crown and Mr Mansfield are not far apart.

[22] Mr Carr, your aggravated robbery of the BMW defines clean classification but is a bad example of its kind.³ A weapon was presented, and masks worn. The victim was pulled from his own car, outside his own home. Taking the victim's lecture notes after he asked to keep them was gratuitous.

[23] The Crown says this offending would attract a starting point of five or six years in isolation. Mr Mansfield offers no starting point.

[24] I consider the case lies somewhere between a bad street aggravated robbery and the aggravated robbery of a taxi driver. For this reason, and the factors I have referred to, it would warrant a starting point of three and a half years' imprisonment in isolation.

[25] The parties agree your aggravated robbery of the cash van in Glen Eden, and your related demanding with menaces of the second guard, and your unlawful use of the stolen car that day, comprise the most serious offence set. You were disguised. You watched the van. You chased an Armourguard employee, pointing a pistol at him and a female member of the public. I repeat, she just happened to be there. You presented the pistol at a second employee in the sense that you banged it against the van window. The offence was very well planned. The Armourguard staff were vulnerable by dint of their occupation. They and the public were endangered. The cash was not recovered. You were then on bail for breach of community work. The mix is serious.

[26] The Crown contends a starting point of 10 or 11 years is warranted on the assumption this also encompasses the aggravated robbery of the BMW and your

³ See *R v Mako* [2000] 2 NZLR 170 (CA).

unlawful use of the Volkswagen. Mr Mansfield advances a 10-year starting point on the same assumption. Both consider similar cases called *McMaster*⁴ and *Campbell*.⁵

[27] I consider the Glen Eden offending warrants a nine-year starting point in isolation, meaning *without* reference to the aggravated robbery of the BMW, which I have already discussed, or the unlawful use of the Volkswagen. As observed, the mix of aggravating features is serious. Mr Campbell's case is similar, but perhaps a little more serious than yours. Mr McMaster's case is similar too. His starting point is not obvious from the decision; he received a final sentence of eight years' imprisonment.

[28] The next set comprises your Milford cash van aggravated robbery, and all the other offences between 1 and 5 April. A knife was used in this robbery. And, presented at the victim. That you were not its wielder is beside the point. The victim was vulnerable because of his role. The robbery was committed at a busy shopping centre. This aggravated robbery was very well planned too. The cash was not recovered. And, of course, there are your many surrounding offences: the unlawful taking or use of a car, your twice fraudulent use of a credit card, your thefts of the bags, one of which was snatched from next to its owner, and the unlawful taking of a \$10,000 motorbike, the owner of which was uninsured.

[29] The one victim impact report I do have, as I said earlier, is from this owner. He says the bike was his pride and joy, which he spent countless hours restoring. Its loss greatly upsets him.

[30] The Crown contends the Milford cash van aggravated robbery—alone—would warrant six and a half years. Mr Mansfield offers no starting point.

[31] I consider the Crown's analysis correct.⁶ A global starting point of seven and a half years' imprisonment is easily reached for all your offending between 1 and 5 April, and once your earlier use of the Volkswagen is added to the April mix. The surrounding offending is far from trivial; it caused harm to several victims.

⁴ *R v McMaster* [2009] NZCA 393.

⁵ *R v Campbell* HC Napier CRI-2009-069-2003, 15 December 2010.

⁶ *R v Mako*, above n 3, at [54].

[32] Next Mr Carr, is your aggravated robbery of the motel. This was something like a home invasion. Closed-circuit television footage shows you and Mr Hutchinson “casing the joint”. You and he had agreed to meet this night, as I said, for this purpose. It follows this offence was premeditated, meaning planned. It involved an intrusion into a temporary dwelling with a weapon, violence against an occupant, and threat of worse—holding an axe to the female’s neck. This aspect was particularly cowardly. \$6,500 of property was not recovered. It is reasonable to assume the occupants must have been terrified.

[33] The Crown contends this aggravated robbery would warrant an eight-year starting point in isolation. Mr Mansfield offers no starting point. I consider the Crown’s starting point too high because you went inside alone and the violence, while cowardly, was not that exhibited in some cases. I would adopt a six-year starting point if I were dealing with this offence alone.⁷

[34] The final set concerns both of you: the offences on 4 May on Queen Street and Dominion Road following Mr Carr’s taking of the Mazda. The robbery of the Queen Street tourist was, I accept, opportunistic. I also accept neither of you anticipated the actions of his brother in holding onto the car. However, the actions of you in both driving away, and trying to dislodge this victim, are significant and seriously aggravating. This victim could have suffered very bad injury, even death, if, for example, he had fallen to the road head first, or fallen and been hit by another car. In combination, the Queen Street offences would warrant a starting point of at least three years’ imprisonment.

[35] Remarkably, the attention all this attracted did not dissuade either of you from committing another aggravated robbery within 45 minutes; your third cash van robbery Mr Carr. This implies this robbery had been planned. Had it not, it is all but certain the two of you would have quickly gone to ground and stayed there for a time. Use of the stolen Mazda and nature of the target imply premeditation. This robbery involved actual violence, albeit at the lower end of the scale: Mr Anderson’s punch did not connect. This victim was vulnerable, again by reason of his occupation. And,

⁷ *R v Mako*, above n 3, at [58].

this too occurred in a busy shopping area, again in daylight. If the two of you not been caught, you would have stolen between you \$280,000. That by anyone's measure is a lot of money.

[36] The Crown contends this cash van robbery should attract a four and a half year starting point. Mr Mansfield contends it should attract a four-year starting point.

[37] I accept neither analysis. The cited case of *Morgan* is similar,⁸ but even if more serious, a first-instance example only. A five-year starting appropriately recognises the vulnerability of Armourgard personnel doing no more than their job—and yet more banditry in a public place. And, this robbery was a hairs-breadth away from an aggravated robbery.⁹

[38] Mr Carr, if I simply added these figures together, the starting point would be 34 years' imprisonment. The law requires a more humane and nuanced approach through operation of a principle called totality. The totality principle has two competing aspects. The first requires a Judge to ensure the sentence reflects the combined seriousness of *all* offences. The second requires a Judge to ensure the sentence is not disproportionality severe. The Court of Appeal has said the first aspect is particularly important when an offender commits multiple aggravated robberies, and stressed the maximum penalty applies to each offence.¹⁰

[39] The Crown contends your global starting point should be 17 or 18 years' imprisonment. Mr Mansfield argues for the lesser figure of 14 years' imprisonment. Both rely on cases called *Kite*¹¹ and *Shedden*,¹² which involved starting points of 14 and 20 years' respectively.

[40] Mr Carr, overall, your offending is more serious than Mr Kite's, but less serious than that of Mr Shedden. Mr Shedden shot a victim during one of his aggravated robberies. You caused no one serious injury. But, you did use weapons and violence,

⁸ *R v Morgan* HC Invercargill CRI-2004-059-958, 21 October 2004.

⁹ This charge is robbery, not aggravated robbery. A five-year starting point would be half of the available maximum.

¹⁰ *R v Mako*, above n 3, at [51]

¹¹ *R v Kite* [2007] NZCA 385.

¹² *R v Shedden* HC Auckland T024003, 12 December 2003.

and your offending risked serious harm on several occasions. Things can easily go wrong when weapons are used in this context, be they a pistol, a knife, a small axe, or hammer. What if, for example, the BMW's owner had resisted? Or, what if the female you had grabbed by the neck holding an axe there had fought back? The Armourguard victims did as they were trained—they did not resist. But what if one had? Again, what about the man who held onto the Mazda as you and Mr Anderson accelerated quickly, turned a corner, and then swerved left and right to dislodge him?

[41] Mr Carr, you committed six robberies, including four aggravated robberies, and many other offences within only eight months. As I said, aggravated robbery is your signature offence. I adopt a global starting point of 18 years' imprisonment. A higher starting point could be disproportionately severe. But, a lower one would fail to reflect the totality of your offending.

[42] Mr Anderson, I have already said your starting points, in isolation, are three and five years respectively. I adopt a global starting point of six years' imprisonment. This reflects the operation of the totality principle I spoke of earlier.

Personal aggravating factors

[43] Mr Carr, you have an extensive criminal history traceable to 1998. Between then and 2004, you committed four burglaries and unlawfully took or interfered with eight cars or motorbikes. In 2004, you committed an aggravated robbery with a firearm. You received a two-year prison sentence. Since then you have committed offences of violence. For example, in 2010 you assaulted a police officer. You received a short term of imprisonment. In 2013, you committed a less serious assault for which reparation was the only penalty. In 2015, you assaulted with intent to injure. You received a 10-month term of imprisonment. You unlawfully took a car in July 2016. You unlawfully used a motorcycle the same year.

[44] Mr Anderson, your criminal history is less extensive than Mr Carr's but is more serious. This offending constitutes your second-strike. In 2014, you committed a robbery and received a first-strike warning. You were given a two-year, three-month prison term. Like Mr Carr, you have a propensity to rob. In 1998, you committed two aggravated robberies and an aggravated wounding. You received a three-year prison

sentence. In 2000, you committed an aggravated robbery, kidnapped and raped. You received an 11-year sentence. You have also burgled and unlawfully interfered with or taken several cars.

[45] The Crown contends I should uplift each of your starting points by six months. Mr Mansfield responsibly accepts this approach is available.

[46] I do not do so for you Mr Carr. An uplift, though available, is unnecessary; your starting point is already long. But, I do so for you Mr Anderson. A six-month uplift is warranted even though this offending is your second-strike; your record is bad; indeed, very bad.¹³ This produces an adjusted starting point for you Mr Anderson of six and a half-year's imprisonment.

Mitigating factors?

Pre-sentence reports

[47] Mr Carr, you are 38 and part-Maori; your father was Maori; your mother Pakeha. You are married, with five children. You told the pre-sentence report writer your childhood was marred by poverty and violence within the home. You apparently left home when you were 12 or 13 and you lived on the streets.

[48] You told the pre-sentence report writer you were merely a co-offender who went along with the primary offender or what other offenders wanted. I do not accept that. I, of course, was the trial Judge. You were the gunman in the Glen Eden aggravated robbery. The extent and intensity of your offending also disprove your thesis of reluctant participation at the behest of another or others.

[49] You also say the offending was not planned and "just happened". I do not accept that explanation is accurate for most of your offending. Two of the cash van robberies were very well planned. The last of these was less sophisticated but also planned. So too the motel aggravated robbery. As I said earlier, the closed-circuit television footage shows you "casing the joint". The aggravated robbery of the BMW perhaps had an opportunistic element in the choice of victim, but you and your

¹³ Compare *Barnes v R* [2018] NZCA 42, [2018] 3 NZLR 49.

co-offender each wore a mask and a hammer was wielded. Clearly, you and he had been looking for someone to rob. Things like this do not just happen. The exception is the Queen Street robbery; I accept this *was* opportunistic offending.

[50] You also told the pre-sentence writer you are no longer a member of the Rebels Motorcycle gang. I hope this is correct. Gang association inevitably leads to one place: prison.

[51] You appear to be using your time in prison profitably. You have completed lots of courses. But, perhaps unsurprisingly, you are considered to pose a high risk of re-offending and a high risk of harm to others.

[52] Mr Anderson, you are 37 and Maori of the Cook Islands. You have three children. You describe being a “heavy” user of methamphetamine. Treatment for substance abuse is recommended.

[53] You say the Dominion Road cash van robbery was not premeditated, and you decided to commit this offence when you saw the van drive past. As will be apparent from what I said earlier, I do not accept that. While this cash van robbery was less sophisticated than the earlier ones, it also involved use of a stolen car taken earlier that day. The nature of the target also implies premeditation. And, as I have said, that you were prepared to commit this offence so quickly after all the attention on Queen Street implies you and Mr Carr had decided to go ahead irrespective.

[54] You also say you were not aware of the man hanging onto the car. I do not accept that. The Mazda was clearly driven to dislodge him. But, as I have said, I accept the Queen Street robbery was opportunistic.

[55] Mr Anderson, you too have completed lots of courses while in prison. But, you are also considered to pose a high risk of re-offending, and a high risk of harm to others.

Cultural reports

[56] Ms Shelley Turner prepared a cultural report about each of you. The reports provide more information about your backgrounds; and contend for linkage between those and these offences. Mr Mansfield contends this linkage should warrant discount of up to 20 percent for each of you. The reports rely heavily on what each of you told Ms Turner. Yours, Mr Carr, comes with positive references, including a recent reference from your wife. You have support in the community.

[57] Mr Carr, you describe a difficult home life, which included an instance of sexual abuse, and more general violence. You associated with a youth gang when you left home at a young age. You entered the criminal justice system at the age of 17. You have never left it, sadly. You joined the Rebels Motorcycle gang when you were 29. Your wife says you have a problem with methamphetamine.

[58] Mr Anderson, you describe your life changing at the age of 12. You began to use cannabis and to get into trouble with the wrong crowd. You later stole from the Principal and were expelled from secondary school. You too joined a youth gang. You describe sexual abuse as a teenager in state care. By 16, you had entered the criminal justice system. Sadly, you have not left it either. You too later joined the Rebels Motorcycle club. I have already spoken of your apparent problem with methamphetamine.

[59] Ms Turner says your respective experiences demonstrate linkage to the commission of these offences.

[60] An offender's background may arguably extend to what is described as systemic disadvantage, meaning longstanding deprivations that affect—and afflict—some groups, at least when that background informs the commission of the offence.¹⁴ However, this type of consideration has only a modest effect on sentence when the offending is serious. Indeed, it may have little application, if any.¹⁵ Frequently, other

¹⁴ Sentencing Act 2002, s 27(1)(b); *Solicitor-General v Heta* [2018] NZHC 2453 and cases cited therein.

¹⁵ *Keil v R* [2017] NZCA 563 at [58]; *Solicitor-General v Heta*, above n 13, at [57]; and *R v Misitea* [1987] 2 NZLR 257 (CA).

sentencing principles prevail, especially denunciation and community protection. Equally importantly, the law does not accept some groups may use violence—but not others.¹⁶ No other approach is conceivable.

[61] In any event, discounts in this context require care. Correlation and causation are not synonymous. Many people with disadvantaged backgrounds do not commit criminal offences let alone very serious ones like this, and many law abiding people remain so despite difficult lives. Excessive discounts in this context risk undermining the criminal law's precepts of human agency and choice. This is not to deny the importance of upbringing or circumstance; it is to maintain perspective.

[62] Mr Carr and Mr Anderson, I am not satisfied there is sufficient linkage between your offending and your respective backgrounds to warrant discount. I acknowledge the hardships you have each encountered, and your early exposure to the criminal justice system. However, these do not explain robbery—let alone serial aggravated robbery in your case Mr Carr. And as foreshadowed, your offending is too serious for this factor to have purchase even if linkage existed.

[63] I conclude this topic by repeating what I said earlier, the message is important: many people with disadvantaged backgrounds do not commit criminal offences, let alone ones like this.

Guilty pleas and admissions of fact

[64] Mr Anderson, you pleaded guilty to all your charges seven days before trial: those were the Queen Street offences and the Dominion Road cash van robbery. Mr Carr, you pleaded guilty at the same time, but only to those offences. You defended the remaining 13 charges. Mr Mansfield contends a 15 percent reduction is justified.

[65] The guilty pleas were late, and in the face of overwhelming evidence on these charges. You were both caught red-handed; indeed, while each of you was still in possession of much of the stolen cash that afternoon. Unduly generous discounts are not fair to those defendants who promptly plead guilty. I adopt 10 percent for you

¹⁶ *Keil v R*, above n 15, at [58].

Mr Anderson. I adopt the same figure for you Mr Carr and apply it to *all* your charges even though you went to trial on most. I do so for this reason: you admitted many facts at trial. This saved time, money and mitigated stress to witnesses and victims.

[66] Mr Anderson, I made a restorative justice referral at your request. Nothing came of this.

[67] This leaves one aspect under this heading. Mr Carr and Mr Anderson, I have also read your letters of apology. Yours, Mr Carr, to me as the sentencing Judge; and yours, Mr Anderson, to the victims. While I thank you for these, I am not persuaded they warrant additional discount.

Minimum period of imprisonment

[68] Mr Anderson, you must serve your entire sentence because these offences comprise your second strike—this you know. I would have imposed a minimum period of 50 percent had this not been the case given the seriousness of the offending, your record of like offending, the need to denounce the offending, and the need to protect the public.¹⁷

[69] Mr Carr, the Crown seeks a minimum period of two-thirds of your sentence, or at least up to that. Mr Mansfield resists a minimum period. He submits this may hinder your prospect of rehabilitation.

[70] Mr Carr, the intensity and seriousness of your offending make this an obvious case for a minimum period. I therefore impose one, but of 50 percent only. This acknowledges the advantages the Parole Board enjoys in assessing risk, especially when that decision is years away. It also provides you, Mr Carr, with an incentive for reform. I am mindful here of the positive references attached to your cultural report, including the more recent one from your wife.

¹⁷ Sentencing Act 2002, s 86C(6).

Reparation

[71] The Crown seeks reparation of almost \$34,000 from you Mr Carr: \$10,000 for the stolen motorbike; the balance for damage or loss in relation to the stolen BMW, Volkswagen, and Mazda. I decline to make a reparation order for the simple reason you could not meet it.

[72] Thank you for being patient, I am almost there.

Sentence

[73] The sentence I impose on each of you will largely reflect what I have said about each charge, but with adjustment to some to ensure the result is what I have said it will be. Please stand gentlemen.

[74] Mr Anderson, I sentence you to a term of imprisonment of five years and 10 months; this is a sentence on the Dominion Road robbery. I impose 18-month terms of imprisonment on the Queen Street robbery and aggravated assault. These are concurrent.

[75] Mr Carr, I impose a sentence of 16 years' imprisonment with a minimum period of half that. I do that this way: I impose 10 years for the Glen Eden aggravated robbery; three years and six months for the related demanding with menaces; six years for the Milford aggravated robbery, cumulative on the Glen Eden one; three years for the BMW aggravated robbery; five years and five months for that in relation to the motel; 18 months for the Queen Street robbery; five years and 10 months for the Dominion Road robbery; 18 months for aggravated assault; 18 months for all the unlawful takings or use of motor vehicle; three months for the dishonest use of the credit card; six months for the thefts.

[76] I impose a minimum period of five years on the Glen Eden aggravated robbery, and three years cumulative on the Milford aggravated robbery. Hence your sentence of 16 years with a minimum period of half.

[77] Thank you, you may stand down.

| Mr Anderson | |
|---|---|
| Charge | Penalty |
| Dominion Road robbery | 5 years and 10 months |
| Queen Street robbery | 18 months |
| Aggravated assault | 18 months |
| Mr Carr | |
| Charge | Penalty |
| Glen Eden aggravated robbery | 10 years |
| Demanding with menaces | 3 years and 6 months |
| Milford aggravated robbery | <i>6 years cumulative on the Glen Eden aggravated robbery</i> |
| BMW aggravated robbery | 3 years |
| Motel aggravated robbery | 5 years and 5 months |
| Queen Street robbery | 18 months |
| Dominion Road robbery | 5 years and 10 months |
| Aggravated assault | 18 months |
| Unlawful takings or use of vehicles (x 5) | 18 months |
| Dishonest use of document (x 2) | 3 months |
| Theft (x 2) | 6 months |
| Minimum periods | |
| Glen Eden aggravated robbery | 5 years |
| Milford aggravated robbery | <i>3 years cumulative on the Glen Eden aggravated robbery</i> |

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Downs J