

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

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

**CRI-2017-044-003104
[2018] NZHC 2891**

THE QUEEN

v

GEORGE CHRISTOPHER POMEE

Hearing: 9 November 2018

Counsel: MJ Mortimer for Crown
LB Cordwell for Defendant

Judgment: 9 November 2018

SENTENCING REMARKS OF DOWNS J

Solicitors/Counsel:
Crown Solicitor, Auckland.
LB Cordwell, Auckland.

Introduction

[1] Mr Pomee, you are for sentence on two charges of aggravated robbery and one of kidnapping. You will recall reference this morning to other charges—I have dismissed those. The charges for which you are for sentence are third-strike offences. This means I must impose the maximum penalty of 14 years' imprisonment. In short, I have no choice about that. And, I must order you to serve the sentence without parole, unless that would be manifestly unjust.

[2] You will recall pleading guilty after a sentence indication. I said I would likely conclude it would be manifestly unjust to preclude the possibility of parole. But, I also said I would likely impose a minimum period of imprisonment. I am going to sentence you as I said I would.

Facts

[3] I begin, as I must, with your first- and second-strike offences.

First-strike

[4] Two robberies earned you your first strike.

[5] On 11 November 2013, you approached the victim from behind and tried to grab his mobile phone. He resisted. You punched him to the face, causing him to fall and hit his head. While he was on the ground, dazed, you took his phone and keys. You ran away.

[6] On 14 November 2013, you approached another victim from behind. She was 67. This victim was about to withdraw money from an ATM. You grabbed her wallet, hurting her finger. Again, you ran away.

[7] You were sentenced to one year and 11 months' imprisonment. You were also sentenced for similar thefts.

Second-strike

[8] On 23 April 2015, you committed aggravated robbery. Your victim was only 16. You took his bank card and phone, and demanded the PIN for each. You were armed with a piece of wood. You threatened the victim with violence—and death. You said you had a gun too. You made the victim accompany you to a local TAB, where you emptied his account (of \$8).

[9] You then asked him for cash, which he did not have. You took his shoes as “security”. You told him to meet you the next day. You said if he told anyone what happened your gang would come after him. When the two of you met the next day, he gave you \$20. You took his money but did not return his property.

[10] For this offending, you were sentenced to 16 months’ imprisonment.

[11] All of this you no doubt remember.

Your offending for sentence today

[12] On 3 August 2017, two men parked their car. You and your associates parked next to them. You then robbed them, searching them and their car. You took a packet of cigarettes, \$55 in cash and a mobile phone. The victims did not suffer any physical injuries. However, during the robbery, you and your colleagues yelled at the victims not to look at you or you would “smash” them.

[13] On 9 August 2017—and so only six days later—you committed more serious offences at the same location. You and two co-offenders parked next to the victim’s car. The victim, a visitor to New Zealand, was sitting inside. You got out, spoke to him and searched his car.

[14] The victim got out of his car. He tried to stop you. At this point, one of your co-offenders got out of your car. He went into the victim’s car and took his mobile phone. You turned the victim’s car off, took the keys and began walking back to your car.

[15] The victim asked for his money. You said you would return it for \$500. He relented. You and your co-offenders drove him to an ATM about 10 minutes away. Demand was there made for his watch. He refused. The demand for cash was increased to \$600. The victim withdrew the money and gave it to one of your colleagues. The victim again asked for his property.

[16] You then asked how much more money he had. You told him to empty his pockets. A co-offender then punched the victim three to four times in the face, and demanded his watch and ring. The victim complied. He was driven further. You demanded he give you his phone's PIN. You showed him a magazine containing .22 calibre ammunition. You said: "You see this? I'm going to kill you".

[17] The car was then stopped. You and a co-offender repeatedly punched the victim in the head.

[18] He promptly called Police, or had another call them. The Police saw you get out of the car, and give a bag to someone else. It contained cash and the victim's bank cards. It also contained a .22 calibre rifle and a magazine with like ammunition.

[19] It follows that someone who should have enjoyed his time in this country was terrorised.

Victim impact

[20] I have read the victims' statements. They were terrified. One described nightmares for months after you robbed him. And, hypersensitivity.

[21] Members of the community should be safe, and feel safe, in public places.

Manifestly unjust?

[22] I must sentence you to the maximum sentence of 14 years' imprisonment for each of these offences.¹ And, I must order you serve this term without parole, unless

¹ Sentencing Act 2002, s 86D(3) and (6).

that would be manifestly unjust. This requires consideration of the sentence I would have imposed but for the three-strikes regime.²

[23] Your 9 August offending exhibits four aggravating factors, things that make it worse:

- (a) It was premeditated. You targeted the same location six days earlier.
- (b) It involved actual violence. You punched the victim repeatedly, and to his head.
- (c) You threatened to kill the victim. You showed him a magazine with bullets. The later search reveals a gun was present. It follows your threat was credible. And frightening.
- (d) Your acted in concert with others, and so risked escalation of harm.

[24] Your 3 August offending also involved explicit threats of violence and actions in concert. There were two victims.

[25] The Crown argues the global starting point would have been eight years' imprisonment or so. Your lawyer advances a range of between six and eight years' imprisonment. I would have adopted a starting point of six and a half years' imprisonment, but for the three strikes regime. Because I must sentence you to the maximum penalty, detail is unnecessary. I have considered all of the cases referred to me, including an important one called *Mako*,³ and considered that another Judge adopted a starting point of two years and eight months' imprisonment for a co-offender in relation to only the kidnapping.⁴

[26] I would have increased the starting point by six months because of your criminal record. As will be apparent from your first- and second-strike offences, you

² *R v Harrison* [2016] NZCA 381, [2016] 3 NZLR 602 at [108]–[109].

³ *R v Mako* [2000] 2 NZLR 170 (CA) at [59]; *Wipa v R* [2018] NZCA 219; *R v Jadallah* [2018] NZHC 1211; *Inamata v R* [2017] NZCA 556 and *Barnes v R* [2018] NZCA 42, [2018] 3 NZLR 49.

⁴ *R v Vunipola* [2018] NZHC 2719.

have committed similar crimes in the past. In total, you have 16 previous convictions, including 10 for dishonesty.

[27] You are only 24. You have a three-year old daughter. You describe your childhood as “unremarkable”.

[28] I have read two reports. One from a psychiatrist; another from a probation officer. These are something of a mixed bag.

[29] You acknowledged wrongdoing to each. You said you need to accept responsibility for your actions. You also referred to the bad influence others have on you, particularly gang associates. You said you have “pulled out of the gangs now”. I do not know whether this is true, but I hope it is. You are described as becoming emotional in relation to your daughter.

[30] However, the reports also speak of your harmful use of drugs and alcohol, of anti-social personality traits, and of a high risk of further violence, at least when “distressed, or under the influence of substances”.

[31] Standing back, there are no real mitigating factors beyond your guilty pleas. Your expressions of remorse and insight do not add materially to your pleas, because nothing tangible yet arises. Put another way, while what you have said encourages hope of reform, your observations at this stage remain just that.

[32] As to your guilty pleas, you were charged on 10 and 15 August 2017. You did not plead guilty until more than a year later—one week before trial. In these circumstances, I would have allowed a discount of 10 per cent.

[33] So, what does this mean? But for the three-strikes regime, I would have sentenced you to six years and three months’ imprisonment. I would also have imposed a minimum period of at least 50 per cent. Against this background, I am satisfied parole ineligibility for the duration of the mandatory sentence of 14 years’ imprisonment would be manifestly unjust.

[34] First, as just discussed, were it not for the three-strikes regime, I would have sentenced you to six years and three months' imprisonment. Instead, your sentence will be 14 years' imprisonment—more than double. Ordering you to serve it without parole would add more than 10 years to the minimum period I would otherwise have imposed. The three-strikes regime envisages a disproportionate sentencing response; not a grossly disproportionate one.

[35] Second, while your offending is serious, the sentence of 14 years' imprisonment is significantly longer than anything you have received to date. For your earlier first- and second-strike offences you received sentences that were much, much shorter.

[36] Third, you are only 24. You are still young. Absent the possibility of parole, you would not be released until you were 38.

[37] I deal now with the minimum period of imprisonment.

Minimum period of imprisonment

[38] The three-strike regime says nothing about the minimum period of imprisonment when a Court concludes a non-parole order would be manifestly unjust, as I have just done.⁵ I assume orthodox principle is applicable.⁶

[39] I am satisfied a period of more than one-third of your sentence is necessary to denounce your offending, and to protect the community. Indeed, that much is common ground between the prosecution and your lawyer.

[40] The psychiatrist and probation officer consider you pose a high risk of violence. With respect to them, that risk is self-evident from your offending, which again, is escalating.

⁵ Sentencing Act, ss 86A–86L.

⁶ Section 86.

[41] The Crown contends your minimum period could be as much as seven years. Mr Cordwell acknowledges this, but emphasises your age, your desire to rehabilitate and your pleas of guilty.

[42] I fix the minimum period at five and a half years—approximately 40 per cent of your mandatory sentence. In doing so, I have given weight to the factors identified this morning by Mr Cordwell.

Sentence

[43] So, Mr Pomee please stand:

- (a) On each charge, I sentence you, as I must, to 14 years' imprisonment.
- (b) You must serve at least five and a half years before you will be eligible for parole.

[44] You may stand down.

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Downs J