

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

CRI 2006-044-7302

THE QUEEN

v

VANCE PARAKI TUHEKE

Hearing: 17 December 2007

Counsel: K Glubb and I Brookie for Crown
G Anderson for Prisoner

Sentence imposed: Wounding with intent to cause grievous bodily harm (x1)
10 years 6 months imprisonment
Minimum non-parole period imposed of 5 years 3 months

Judgment: 17 December 2007

SENTENCING NOTES OF HEATH J

Solicitors:
Crown Solicitor, Auckland
Counsel:
G Anderson, Auckland

Introduction

[1] Vance Paraki Tuheke, you appear for sentence today having pleaded guilty on 6 August 2007 to one count of causing grievous bodily harm with intent to do so. The maximum penalty for that offence is one of 14 years imprisonment.

[2] Originally, you were charged with attempted murder. The Crown elected to proceed against you on the charge of grievous bodily harm alone. You entered a plea of guilty promptly to that charge. You are entitled to significant credit for that guilty plea.

[3] Originally, you appeared for sentence on 5 October 2007. Notwithstanding prior indications from the Crown to the contrary, during the course of that hearing I indicated to counsel that I wished to consider the possibility of imposing a sentence of preventive detention. Sentencing was adjourned to enable the appropriate reports to be obtained.

[4] I have now received and read reports from a psychologist and a psychiatrist which have assisted me greatly in determining the appropriate sentence to impose. I make it clear to you immediately that I intend to impose a finite term of imprisonment rather than preventive detention. Having said that, the information conveyed in the reports I sought have probably worked in your favour long term.

Facts

[5] It is apparent from the various reports I have read that you do not necessarily accept all the facts set out in the Crown summary. I did consider whether an opportunity should be given to dispute questions of fact. I decided not to do that because, in my view, the sentence can be determined by reference to undisputed or incontrovertible facts.

[6] On the evening of 6 July 2006, you spoke by telephone to your estranged partner, Ms Brett. You did that having been served with a protection order that she had taken out against you.

[7] As a result you were angry. It seems clear that when you telephoned Ms Brett you had assumed she was associating with another man. You contend that you were provoked by observations made by a male whom you could hear when speaking to your former partner.

[8] Whether you heard something you regarded as provocative is a point I leave open. But, even assuming in your favour, that you did, what was said could not possibly be regarded, on any objective view, as justifying or excusing, in whole or in part, the actions that followed.

[9] You drove to your former partner's home. You were angry. In my view, your anger was aggravated by your jealousy and fuelled by drink.

[10] You arrived at her home at about 1.30am on 7 July 2006. You were armed with a hunting knife.

[11] You advanced upon Mr James, the male whom you say you had heard while speaking to your partner. Your view is that he came towards you but it is plain that you thrust the knife towards his chest and throat. Mr James managed to ward off initial blows but tripped backwards in the process. You punched him in the right side of his head and, as he attempted to regain his footing you stabbed him in the left side of his face.

[12] The x-ray photographs I have seen show the knife embedded in Mr James' face in the cavity beneath the nose and between the eyes and mouth. The tip of the blade almost entered the right eye socket. The force of the blow was such that the handle of the knife broke off. Despite the obvious injuries you inflicted, it appears you continued to threaten him. Eventually you left in your vehicle.

[13] You were located two days later, in hiding at an associate's address in Northland. Ms Brett had driven you to that location. She has already been sentenced by the Court for her part in trying to help you avoid detection.

[14] Mr James was hospitalised. The victim impact statement makes distressing reading. He has had to undergo surgery under a general anaesthetic to remove the blade. He suffered a fractured cheek, severed a sinus cavity and received two broken eye sockets. He has been traumatised by the events of that evening. He will never be the same again. It was purely luck that he survived your attack.

Personal circumstances

[15] Mr Tuheke, you are now aged 33 years old, I think. You have four children aged 10, 7, 6 and 3. You left school at the age of 15 years with no qualifications of a formal nature. At the time of your offending, you were working as a digger operator.

[16] It is clear that you have been regarded as a good employee by those for whom you have worked in the past.

[17] Your previous record discloses a history of violent conduct. It is of real concern that, in 1998, you were sentenced to two years imprisonment in relation to an attack that bears alarming similarities to the offence for which you are now to be sentenced.

[18] On that occasion, armed with a knife, you drove again to someone's home, a former partner's, forcibly gained entry and repeatedly stabbed her and a person with her whom you (wrongly) believed to be her new boyfriend.

[19] On that occasion you were charged with two counts of wounding with intent to cause grievous bodily harm and one of aggravated burglary. Surprisingly, you were sentenced by a District Court Judge to a term of only two years imprisonment on both of the wounding charges, to be served concurrently. That was a very lenient sentence for offending of this type.

[20] It was the existence of that conviction and the factual similarities to the present case that caused me to consider whether to impose a sentence of preventive detention. Both the psychologist and the psychiatrist to whom you were referred agree that the similarities in the two offences give rise to concerns that you could offend in that way again. The psychologist sees a “clear pattern of violence indicating a common theme of feeling humiliated by other men in front of” your partner. The psychologist also comments on your inability to manage the anger that gave rise to your offending. The psychiatrist confirms that you do not suffer from any mental disorder and also focuses on your inability to manage anger particularly after consuming alcohol or drugs.

[21] Neither the psychologist nor the psychiatrist supports a sentence of preventive detention. Rather, they consider that a lengthy finite sentence will give time to the prison authorities to address your inherent problems. They perceive that you do now have motivation to accept rehabilitative treatment while you are in prison.

[22] Mr Tuheke, I see three common features of the two similar incidents that cause me concern. They are the combination of anger, jealousy and intoxication. Your inability to manage the emotions of anger and jealousy is aggravated by the abuse of alcohol and illicit substances. You need help to address those issues.

Competing submissions

[23] Mr Glubb, for the Crown, accepts that the reports do not justify a sentence of preventive detention. However, based on the guideline appellate case applicable to offences of this type¹ he submits that a lengthy term of imprisonment is inevitable.

[24] Mr Glubb submits that your offending falls within the third band of that authority; the most serious type of case in which the starting point for sentence can be anywhere in the range of 9 years to 14 years imprisonment.

¹ *R v Taueki* [2005] 3 NZLR 372 (CA)

[25] Mr Glubb submits that this is a case which is near to or the worst of its type, thereby justifying a sentence close to the maximum period available.

[26] As aggravating factors Mr Glubb points to the extreme violence, premeditation, home invasion, serious injuries to the victim and the use of a weapon to attack the head of the victim.

[27] He also refers also to the victim impact statement. As I have alluded to, Mr James was hospitalised for some time. He was forced to return to hospital three weeks later with a severe infection caused by the fracture of the cheekbone. He has permanently lost sensation to much of his cheek and has permanent watering of his left eye, coupled with double vision when he looks downward. He faces two further operations to correct the muscle damage to his eyes and to eliminate scarring to his face.

[28] He has been made redundant as a result of his prolonged recovery and a relationship of two years has ended.

[29] You can see that the consequences of your offending have been devastating to him, both physically and emotionally.

Submissions on behalf of prisoner

[30] On your behalf, Mr Anderson has accepted that your victim is lucky to be alive. However, he argued that your offending was not premeditated in the sense that there was a perceived element of provocation and alcohol was a major contributing cause. He submitted that it was questionable whether you intended to stab your victim in the head.

[31] Mr Anderson has referred to your employment history. He refers to you as a working man, a good employee and a family man. He refers to your problems in upbringing and the difficulties you have in dealing with your emotions. He urges me to find that the sentencing falls within the upper reaches of the second band of the

guideline case, meaning that the starting point would be assessed somewhere between 9 and 10 years imprisonment.

[32] As mitigating factors, Mr Anderson points to your guilty plea, your co-operation with the police and your expressed remorse. Mr Anderson has provided to me a favourable reference from your former employer. Mr Anderson also indicates, on your behalf, that you acknowledge that the victim will always suffer severely from the injuries you inflicted.

Analysis

[33] In sentencing you there are a number of considerations I am bound by law to take into account. Some of these are competing in nature.

[34] I am required to hold you accountable for the harm that you have done to the victim and to the community by this offending. Your plea of guilty suggests that you have taken a degree of responsibility for your offending and have acknowledged the harm you have caused.

[35] I must provide for the interests of the victim. I must also protect the community from you whilst assisting in your rehabilitation and reintegration into the community.

[36] I am required to take account of the gravity of the offending and the general consistency in sentencing. In my view, this was an offence near to the worst of its type. Therefore, the law requires me to impose a penalty close to the maximum term prescribed for the offending. In doing that, I must temper any sentence against the need for rehabilitation and impose the least restrictive outcome available.

[37] On any view of the facts, this was a gross overreaction to a situation that could easily have been resolved peaceably and reasonably. You could not, on any objective view, be regarded as someone provoked by what Mr James may have said in the background when you spoke to your former partner. You brooded on what you had heard. When you decided to act you took a knife with you. You forcibly

entered a private residence and stabbed an occupant deliberately in the head. The injuries you inflicted have a lasting effect on your victim.

[38] In short, this was serious violence with a lethal weapon that took place during a home invasion. You are very fortunate that you are not facing a murder charge today.

[39] I have no doubt from what I have heard and read that you are a man, Mr Tuheke, with good qualities. But you have acted in ways in the past which show that those good qualities can be overcome significantly by your inability to manage your emotions. And that is aggravated when you use alcohol or drugs. Those are the things you must address in your life before you can be released into the community and try to play a more valuable role, rather than the destructive role you have played in the past.

[40] All of the aggravating features relating to the offending fall within the elements of the crime itself. Personal aggravating features are your previous convictions, one of which (as I have said) is an offence of a remarkably similar nature to that on which you now appear for sentence.

[41] You are entitled to credit for having pleaded guilty and having accepted responsibility for your actions.

[42] The aggravating features relating to the offence justify a starting point within the third band of the sentencing guideline case. I use a starting point of 12 years imprisonment and add a further two years to reflect personal aggravating features, namely your previous conviction.

[43] You are, however, entitled to credit for your relatively early acceptance of responsibility through the entry of a guilty plea. I fix that at 25%, a period of three years six months. I regard any credit for remorse as being subsumed within that allowance.

[44] On that basis the final sentence will be one of ten years six months imprisonment.

Minimum non-parole period

[45] The Crown has sought a minimum non-parole period, submitting that a minimum period of two-thirds is appropriate having regard to the need for denunciation, accountability, deterrence and protection of the public.

[46] In my view, the possibility of parole at the completion of one-third of your nominal sentence would be insufficient to achieve the purposes of sentencing I have mentioned and would not provide the requisite degree of protection for the community.

[47] However, given the importance of the need for treatment while you are in prison and the need for you to have an incentive to undergo that and to be released if you are successful, I regard it as desirable to keep the minimum period as low as possible so that you have that incentive to rehabilitate.

[48] In my view, a minimum non-parole period representing 50% of the finite sentence is appropriate. That is a period of five years three months imprisonment.

Reparation

[49] There is no ability to make reparation by way of emotional harm and, for that reason, I decline to make any order.

Result

[50] Mr Tuheke, you are sentenced to a term of imprisonment of ten years six months imprisonment on the single charge to which you have pleaded guilty. A minimum sentence of five years three months imprisonment is imposed.

[51] I request that a copy of these sentencing notes and the psychologist and psychiatric reports of 4 and 6 December 2007 be sent to the Superintendent of the

penal institution in which you will serve your sentence so that he or she may make appropriate arrangements for treatment on the anger, jealousy, drug and alcohol related issues to which I have referred. I also request that a copy of those documents be sent to the Parole Board for consideration when you do come up, eventually, for parole.

[52] Mr Tuheke, you have expressed a desire to be a better father for your children. You have expressed a desire to lead a normal and constructive life. Using those wishes as a motivating factor, you need to consider that this is your last opportunity to get your problems sorted out. If you sort out your problems on this occasion you may well have some success in establishing the sort of links with your family and children that you wish to do so. If you do not, you can rest assured that you will probably spend most of the rest of your life in prison. It is your choice. You have to decide how much you want to rehabilitate.

[53] Stand down please.

P R Heath J