

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

**CRI-2016-485-000080
[2016] NZHC 2620**

BETWEEN NEW ZEALAND POLICE
Appellant

AND LOSI FILIPO
Respondent

Counsel: S Carter for Appellant
N J Sainsbury for Respondent

Sentence: 2 November 2016

NOTES ON SENTENCE OF COLLINS J

[1] Mr Filipo, you appear for sentencing today having pleaded guilty to the following four charges:

- (1) one charge of injuring with reckless disregard;¹
- (2) one charge of assault with intent to injure;² and
- (3) two charges of male assaults female.³

[2] In sentencing you today I shall:

- (1) describe your offending;
- (2) explain your personal circumstances;

¹ Crimes Act 1961, s 189(2).

² Section 193.

³ Section 194(b).

- (3) explain the starting point to the sentence that I am proposing to impose;
- (4) explain the adjustments which I will make to the starting point; and
- (5) explain your end sentence.

Your offending

[3] At 2.00 am on 11 October 2015, a violent incident occurred in a central Wellington street. The incident was started by you and your brother, Sam Filipo.

[4] The four victims were two women and two men of a similar age to you and your brother.

[5] The four victims were walking along a footpath. You and Sam were on the opposite side of the road. You and Sam crossed the road at which point Sam yelled to the victims. They ignored him and kept walking. You and Sam followed the victims challenging them to a fight. The victims said they did not want to fight.

[6] You then stood in front of Gregory Morgan, the first victim. You grabbed him by the collar with one hand and with your other fist you punched him to the ground. Gregory Morgan was knocked unconscious. While he lay on the ground you stomped on his head about four times.

[7] You then shoved Olivia Samuel, the second victim in her throat causing her to lose balance and fall to the ground. The third victim, Kelsey Odell, was then struck on her chin by you and she fell to the ground.

[8] By this stage Sam had been fighting with the fourth victim, Hayden Williams. There was a pause in their fighting, after which Sam grabbed Hayden Williams and partly restrained him while you punched Hayden Williams in the head.

[9] Gregory Morgan was taken to hospital by ambulance and kept there until later that morning. His victim impact statement explains he had to take six months off work. He suffered bruising, scratches and severe concussion.

[10] Olivia Samuel received bruising to her throat and a sore neck and collarbone. She had to take a day off work.

[11] Kelsey Odell received a scar on her chin, a deep cut inside her mouth and a swollen jaw. She states in her victim impact report that the scar on her chin has caused her to lose confidence in her work as a part-time model. She has had to receive counselling to help her deal with the assault.

[12] Hayden Williams says in his victim impact statement that he suffered a broken finger and as a consequence he could not continue his work as a builder for about three months. He describes in his victim impact statement the emotional shock he suffered as a result of what occurred on 11 October 2015 and says he is “going to have to live with the effects of his assault for the rest of [his] life”.

Your personal circumstances

[13] At the time of this offending you were in your final year at St Patrick’s College in Silverstream. You were fortunate enough to attend Silverstream because of the remarkable efforts of Mr Williamson and his wife. He is a voluntary youth worker who recognised your potential when you were growing up in Waitangirua. Mr Williamson mentored you and took steps to shield you from the adverse social environment that you were experiencing as a young boy.

[14] While at times you struggled academically at school, you developed into being an exceptional rugby player. By the time you were in Year 10 you were selected for the Silverstream First XV. You were also contracted that year to the Warriors Rugby League Club for a four year contract. In 2015 you were selected for the New Zealand Secondary School side. A social media site rated you as being among the top five school boys playing rugby in New Zealand in 2015. That same year the Wellington Rugby Football Union entered into a two year contract with you.

[15] Prior to this incident you had been doing work as a teacher aid at a low decile school where you were trying to help disadvantaged youth. You had also been doing voluntary work with a sports trust four days a week.

[16] After you were charged you took the following steps:

- (1) You attended counselling to assist you in understanding the causes and consequences of your offending.
- (2) You worked as a car groomer to save money to offer as a reparation payment. One thousand dollars was paid into the District Court on the day that you appeared before Judge Davidson.
- (3) You have undertaken approximately 150 hours of voluntary community work.
- (4) You have acknowledged your guilt and have offered to apologise directly to your victims.

Starting point

[17] I take the charge of injuring with reckless disregard as being the lead offence. That offending was particularly disturbing. Your stomping on the head of Gregory Morgan when he was unconscious was a chilling act of violence and could easily have led to Mr Morgan's death.

[18] There were three aggravating features to your offending against Mr Morgan, namely:

- (1) The attacks to Mr Morgan's head. The Court of Appeal has explained:⁴

Even when weapons are not used, attacks on the head of a victim can have particularly serious consequences. Thus, where a victim is subjected to a severe beating or kicking

⁴ *R v Taueki* [2005] 3 NZLR 372 (CA) at [31](e).

causing head injuries, the offender's conduct will be treated similarly to offending involving the use of a weapon.

- (2) The vulnerability of Mr Morgan when you stomped on his head. At that stage he was unconscious and particularly vulnerable.⁵
- (3) Your actions have had serious consequences particularly for Gregory Morgan, Hayden Williams and Kelsey Odell. All three have had their employment curtailed in varying degrees as a result of your actions.

[19] In my assessment, your offending warrants a starting point of a minimum of 18 months' imprisonment. I reach this conclusion by comparing your case to other cases of a similar nature.⁶

[20] In my assessment, there needs to be an uplift to the provisional starting point of 18 months' imprisonment to reflect your offending against the three other victims, particularly the assaults on Kelsey Odell and Olivia Samuel. The minimum starting point in your case should therefore be two years' imprisonment.

[21] I emphasise, for you and for the benefit of some members of the media, that a starting point is not an end sentence. Judges who impose sentences usually set a starting point that is based upon the seriousness of the offending. Thereafter adjustments are made, up or down, to the starting point. In your case the adjustments all relate to mitigating factors that are personal to you.

Adjustments

Your age

[22] The first adjustment I make reflects the fact that you were only 17 at the time of your offending. Youthfulness of an offender is an important factor when sentencing a young person. This is because:⁷

⁵ Sentencing Act 2002, s 9(1)(g); *R v Taueki*, above n 4, at [31](i).

⁶ *Waitohi v R* [2014] NZCA 614 at [15]; *L v R* [2014] NZCA 41; *Harris v R* [2013] NZCA 218; *AL v Police* HC Invercargill CRI-2011-425-44, 29 November 2011 and *R v Osuji* HC Auckland CRI-2010-404-353, 15 September 2011.

⁷ *Churchward v R* [2011] NZCA 531 at [77].

There are age-related neurological differences between young people and adults, including that young people may be more vulnerable or susceptible to negative influences and outside pressures (including peer pressure) and may be more impulsive than adults.

No previous convictions

[23] You have not previously appeared before the courts and I am not aware of you having previously been involved in any incident that might have resulted in you being brought before a court. You are therefore entitled to credit for the fact that this has been your first and only offending.

Rehabilitative steps

[24] A unique feature of your case are the steps that you have taken, on a voluntary basis, to rehabilitate yourself and to address your offending. Those steps include:

- (1) Undertaking counselling to enable you to understand the cause and consequences of your offending.
- (2) Your payment of reparation.
- (3) Your willingness to apologise to your victims.
- (4) The fact that you have undertaken approximately 150 hours of voluntary community work.

Guilty plea

[25] You are also entitled to credit for your guilty plea.⁸

⁸ Sentencing Act 2002, s 9(2)(b).

Overall assessment

[26] I have considered as I am required to do the options for discharging you with or without conviction that are referred to in s 11 of the Sentencing Act. I do not consider those options are appropriate in the circumstances of your case.

[27] I am also mindful that the circumstances of your case have resulted in significant publicity, which has in itself been a form of punishment for you. As a result of that publicity your contract with the Wellington Rugby Football Union has been brought to an end.

[28] More importantly, I am in no doubt that if you continue to receive the assistance and guidance of those who have helped you thus far, you have every prospect of developing into being a productive member of our community.

[29] You have experienced a significant setback in your goal to become a professional rugby player. That dream however is not at an end. You have the opportunity to demonstrate that you are worthy of being a professional rugby player.

[30] When I assess the gravity of your offending against the personal mitigating features, I am in no doubt that you are best punished by way of a sentence that is short of a custodial sentence.

[31] The community-based sentences available under the Sentencing Act include community work, community detention and supervision.

[32] A sentence of supervision is a significant sentence. It places you under the supervision of a probation officer. The objective of a sentence of supervision is to rehabilitate and reintegrate an offender. A sentence of supervision aims to ensure that you do not reoffend again and that you benefit from the careful monitoring of a probation officer.⁹

[33] I am mindful that a sentence of supervision was part of the sentence your older brother Sam received. Although he was less culpable than you, he was a year

⁹ Sentencing Act 2002, s 46.

older and had a previous conviction, albeit for a minor offence. It is important that I try to treat as consistently as I can those who commit similar crimes.¹⁰

[34] It is also important I bear in mind that you are being re-sentenced as a consequence of a successful police appeal. It is a well-established principle of sentencing that in these types of cases the Court should impose the minimum sentence that is reasonably available.

The sentence

[35] After careful reflection, I am satisfied that in your case Mr Filippo the appropriate sentence is one of supervision. This is the sentence recommended by Mr Edwards from the probation service. He recommends two conditions, namely that:

- (1) You attend a drug and alcohol assessment programme and any recommended counselling.
- (2) You attend a “Living without Violence” programme and to complete the programme if recommended.

I am sentencing you therefore to a period of nine months’ supervision in relation to the lead offence with those special conditions as recommended by Mr Edwards.

[36] The \$1,000 you paid into the District Court is to be paid to the victims by way of reparation. That reparation order is part of your sentence.

[37] You are sentenced to concurrent terms of six months’ supervision in relation to the other three charges.

[38] In imposing this sentence I am satisfied that it meets the purposes and principles set out in the Sentencing Act 2002. In particular this sentence will:

¹⁰ Sentencing Act 2002, s 8(e).

- (1) hold you accountable for the harm that you have done to the community by your offending;¹¹
- (2) provide for the victims;¹²
- (3) promote in you a sense of responsibility for your offending;¹³
- (3) deter you and others from committing the same or a similar type of offence;¹⁴
- (4) assist in your rehabilitation and reintegration;¹⁵ and
- (5) is the least restrictive outcome that is appropriate in the circumstances.¹⁶

[39] You may now stand down.

D B Collins J

Solicitors:
Crown Solicitor, Wellington

¹¹ Sentencing Act 2002, s 7(1)(a).

¹² Section 7(1)(c).

¹³ Section 7(1)(b).

¹⁴ Section 7(1)(f).

¹⁵ Section 7(1)(h).

¹⁶ Section 8(g).