IN THE DISTRICT COURT
AT HAMILTON

CRI-2008-019-007547

THE QUEEN

v

ROBERT HENRY MANGU

Hearing: 21 July 2009

Appearances: J O'Sullivan for the Crown
N Deobhakta for the Prisoner

Judgment: 21 July 2009

NOTES OF JUDGE MLSF BURNETT ON SENTENCING

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[1] Mr Mangu, the prisoner is 51 years of age and appears today for sentence on two burglaries, each of which carry a maximum penalty of 10 years' imprisonment and both were burglaries at a dwelling house.

[2] The circumstances showed that on 4 September 2008, Mr Mangu had entered a residential property at about 9 am in the morning. The elderly lady's son had, ironically, left the house to go to jury duty and, shortly after he left, the prisoner, Mr Mangu, entered the house.

[3] The elderly owner was still in the house and the prisoner went directly to her bedroom and took her handbag from inside her wardrobe. As he was exiting the house down the stairs, he was confronted by the elderly woman and challenged by

her. He had her handbag hidden up his jumper and the elderly victim immediately appreciated what had happened. She confronted him, followed him down the steps and was able to take the registration number of the vehicle that he got into.

[4] At trial, his partner confirmed in her evidence, that the prisoner had use of that motor vehicle that morning. The jury took only some 20 minutes to reach their verdict despite a spirited defence.

[5] So there is no discount for a guilty plea in respect of that matter. $400 reparation is sought and I do not understand that to be opposed. I make that order for reparation.

[6] Then, whilst on bail for that earlier matter, the prisoner carried out another burglary, this time at night and the summary of facts discloses that on 19 November 2008, at night time, he entered a property by using a glass cutter to cut a hole in a glass window pane, he then used a tool to open the locked window and then in the house, he took a set of keys and opened both front and rear doors to the house.

[7] Whilst inside the house, he entered a bedroom where one of the female occupiers was asleep and he left various items but taking the keys with him. A cost of $650 reparation is sought in replacing the keys and changing the locks and glass on the window.

[8] The prisoner pleaded guilty to that matter and so gets the benefit of a guilty plea. It seems that he was then granted further bail but was not attending Court and was subsequently arrested and has been in custody since May 2009. It is also observed that he was on bail in respect of that second burglary and on release conditions at the moment.

[9] In respect of the principles for that sentencing, I refer to the decision in *R v Ward* [1976] 1 NZLR 588 (CA) the protection of the public, clearly, is a significant factor and deterrence also is a significant sentencing principle to address

and it was noted that sentencing judges are likely to impose more severe sentences on those offenders who have previously appeared for the same offence.

[10] It is accepted by Mr Deobhakta on the prisoner's behalf, that the prisoner has 64 previous burglary convictions and accepts that he is a recidivist offender. He also has more than 10 convictions for receiving, which are equally serious property offences, given that the purpose of burglaries are, generally, to sell the items that are stolen.

[11] Ms O'Sullivan for the Crown, also pointed me to a number of concerns in the prisoner's conviction history which spans 30 years. He has 22 convictions for being in an enclosed yard or entering with intent or trespass. In 1980, he has two convictions for indecent assault, accompanied by five burglaries during the day of the indecent assault or the night of the indecent assault. Four of those burglaries were by night and the fifth burglary by day. So in that two day period, there were five burglaries and two indecent assaults.

[12] He has a conviction for rape in 1988 and for peeping near a dwelling house and loitering near a dwelling house in 2001 and they were also burglaries. Entering into an enclosed yard on three occasions, entering with intent and then onwards with burglaries as well.

[13] So this is a man who comes to Court with a serious history and who represents a serious danger to vulnerable victims. Certainly, the concern that I felt at trial, was that had the elderly victim in the September burglary confronted the prisoner, when he was still inside the house, he would not have hesitated to ensure that he could get away, despite any attempt by her to prevent him. She came across as a plucky and brave victim who, having challenged him verbally, then followed him down the steps. Had she challenged him inside the house and attempted to block his exit, the matter may well have been considerably more serious and this is the concern that this prisoner continues to present, when he enters houses, occupied houses particularly at night.

[14] Indeed, the Crown put forward that the public is entitled to the protection from this prisoner and is entitled to a break from his offending. The Crown seeks a starting point of some four to four and a half years with an uplift of two years and then acknowledging recognition of the mitigating feature of the guilty plea, in respect of one of those offences.

[15] For the prisoner, Mr Deobhakta, accepts that imprisonment is the inevitable outcome, seeks that the sentence not be a crushing one, acknowledges the previous offending and accepts that the prisoner is recidivist. He refers to the fact that the prisoner's partner has had treatment for cancer and that the prisoner has had a hard young life and is thought to have reached a point in his life, when he says, again, he will accept counselling to address the features of his hard young life.

[16] Mr Deobhakta seeks to distinguish the first burglary on the basis that it was less serious, that there was no actual harm inflicted on the victim and that it took place during daylight hours and that only a small item was taken. He accepts a sentence in the region of four to four and a half years.

[17] Looking at the authority of *R v Columbus* [2008] NZCA 192 where the Court of Appeal provides guidance for sentencing for burglaries, there the starting point is to identify the culpability inherent in the offending by reference to its circumstances. The same principle applies in burglary sentencing where the intrinsic nature and gravity of the offence charged is the primary consideration and here, of course, the maximum penalty is 10 years. One was a burglary by night with the summary of facts, which I do not understand to be disputed today, discloses that the prisoner said that if the burglary had taken place at night, he must have been under the influence of alcohol or methamphetamine.

[18] I accept from the pre-sentence report that the view expressed to the writer is that the prisoner is now no longer subject to drugs, although, it was recorded there that he was said to have been drug-free for some five years, which does not match what is said in the summary of facts, in relation to the second burglary.

[19] It is acknowledged that he has a gambling addiction and, clearly, he is still addicted to burglary. In *R v Columbus* [2008] NZCA 192, the Court also provides guidance when sentencing for burglary, as for other offences, the circumstances of the offending predominate when fixing the starting point.

[20] So the aggravating features are the fact that there was one burglary by night. Both houses were occupied when the prisoner burgled, that the occupants were clearly put at danger. The prisoner was willing to acknowledge that he had, in respect of the second burglary, that he may well have been influenced by drugs and he was, of course, on bail.

[21] Other cases considered are *Dudley v Police* 26/02/09, French J, HC Christchurch CRI-2009-409-1 and *R v Phillips* [2008] NZCA 440 and following *R v Columbus* [2008] NZCA 192 which endorsed the approach for sentencing as set out in *R v Taueki* [2005] 3 NZLR 372; (2005) 21 CRNZ 769 (CA), a starting point, in my view, for the first burglary is 18 months' imprisonment, that remains at 18 months, there will be no discount for any mitigating features. In respect of the second burglary, there is a starting point of two years' imprisonment, that is reduced to 16 months for the mitigating features which total 34 months cummulatively . I make a reparation order for $400 for the first burglary and $650 for the second burglary and reparation repayment is suspended during imprisonment.

[22] Then I apply the principle in *R v Clark* 9/12/97, CA 334/97 that there must be no concession for multiple offending subject, of course, to the totality principle.

[23] Then I look at an uplift for the previous offending and I take an uplift of between 16 and 24 months and settle on 20 months and add that to the 34 months which brings a total of 54 months, in other words, four and a half years as the end sentence.

[24] I am satisfied that the totality of sentencing does not offend against the totality of the overall culpability of the offending and this prisoner.

MLSF Burnett
District Court Judge