IN THE HIGH COURT OF NEW ZEALAND
ROTORUA REGISTRY

CRI.2006 044 2261

REGINA

v

VERNON TE PONUI STENNING
HERBERT HENRY CHARLES THOMPSON

Hearing: 31 October 2007

Counsel: Harry Edward for Stenning
Bill Lawson for Thompson
Marc Corlett for Crown

Sentenced: 31 October 2007

SENTENCES OF WILLIAMS J

Charge: Causing grievous bodily harm with intent to cause grievous bodily harm.

Sentences: 8 years 9 months' imprisonment

Solicitors:
Crown Solicitor, Rotorua
Lance & Lawson, Rotorua

Copy for:
H S Edward, Rotorua
Sentencing Unit, Law Commission Wellington

Mr Stenning, Mr Thompson, in days gone by it was customary for those being sentenced to stand throughout the process but nowadays there are so many issues that have to be covered that sentencing remarks are inevitably quite long. I invite you and the escorts to remain seated until I ask you both to stand.

Vernon Te Ponui STENNING and Herbert Henry Charles THOMPSON:

[1] Had it not been for some hours of incomprehensible actions on your part 19 months ago, none of us would be here in this courtroom this afternoon. You both pleaded guilty on 25 September this year, the day your trial was due to begin, to offending which occurred on 25 March 2006. Initially, as a result of what you did to the victim, Mr Wahia, that day, you each faced charges of attempted murder and of causing grievous bodily harm with intent. As a result of your pleas that day, the Crown dispensed with the attempted murder charges and accepted pleas from you to the causing grievous bodily harm charge, a charge on which you both face imprisonment for a maximum term of 14 years.

[2] The Summary of Facts which you both signed as correct at the time the plea was entered shows that on that evening you were drinking alcohol, it seems to quite a large extent, and the two of you decided to try and locate Mr Wahia and give him a hiding because somehow or other one or both of you seemed to think he might have been involved in some domestic assault a day or so beforehand.

[3] Pursuant to that plan you both went to another location and obtained a baseball bat. You then went around members of Mr Wahia's family trying to locate him. You finally found him about 9 o'clock that night, several hours later. You duped him into going with you on some excuse of returning property to him, took him to an address where he got out of the car and you, Mr Stenning, took the baseball bat out of the boot, confronted him and the assault began. You, Mr Thompson, punched Mr Wahia. You, Mr Stenning, then hit him twice on the head and twice on the back with the baseball bat. He fell to the ground of course and you hit him again on the head whilst he was there. At that point, Mr Thompson, you punched and kicked the victim about the head, again whilst he was still on the ground.

[4] It was only at that point it seems that you, Mr Thompson, realised something of the seriousness of what the two of you were about and persuaded Mr Stenning to stop. The two of you fled.

[5] Mr Wahia had to be flown to Auckland Hospital and put into a drug-induced coma as he had five serious fractures to his skull and, as we have heard from the victim impact statement, some of his skull had to be permanently removed to allow his brain to swell and to save his life.

[6] We have had the victim impact statement read in open Court. As I have remarked on other occasions, the fact we now have victim impact statements shows how partial our sentencing processes were before victims were allowed to say their piece. I do not intend to re-victimize Mr Wahia by recounting the detail. His own statement is graphic enough as to the havoc that you wrought upon him that night and the chilling and sobering consequences he and his family have suffered since and will suffer for the rest of Mr Wahia's life. It is enough to refer to such workaday things of him having he had to learn to recognise his family again, learn to walk again, learn to eat again, and the fact that he says he has not been out of the house on his own since. He has had to spend a long six months in rehabilitation.

[7] Not read, but part of the material before the Court, is a report from an occupational therapist as to the huge efforts Mr Wahia has had to undertake to try and rehabilitate himself and a medical report to ACC which shows he is about 60% permanently disabled.

[8] The Probation report and counsel's helpful submissions, Mr Stenning, tell me you are 32 years of age, a single man with a child. You come from an atmosphere where there has been violence in your family but, unlike some members of your whanau, you have resisted getting involved with gangs and the like. But you told the Probation Officer that you were quite "sick of seeing women being treated so badly in your family" and it may be that in your brain, disordered by alcohol, that was the root cause of what happened to Mr Wahia.

[9] To the Probation Service, to the Court, to the victim and to your whanau, you have expressed your regrets and your remorse. Essentially, for the purposes of sentencing, you are here as a first offender this afternoon. But you took the law into your own hands that night, and that is a significant part of the reason why you are here.

[10] Mr Thompson, you too, according to the :Probation Service, are a young man, 29, with a good family background. Essentially there is nothing in your conviction history which plays any part in the sentencing this afternoon. Your previous offending seems to have stemmed from your father's illness. You, too, are very remorseful. You have expressed your apologies and written a letter in that regard.

[11] Before I deal with the submissions made by the lawyers, so as you understand, and the many people here this afternoon understand, I need to describe the approach to sentencing in cases like this that the Court of Appeal has decided in a case called *R v Taueki* [2005] 3 NZLR 372. The lawyers might have talked to you about that.

[12] In the case of *Taueki* the Court of Appeal divided offending involving the infliction of grievous bodily harm into three bands for the purposes of starting to sentence somebody. Band 1, three to six years' imprisonment, is if it involves violence but not including any of the many aggravating factors the Court of Appeal discussed in another part of the judgment. Band 2, where the starting point is five to 10 years involves two or three of those factors. And band 3, the most serious and the band which applies, counsel agree, to your offending, involves a combination of a number of aggravating factors.

[13] Those factors, the factors that make the infliction of grievous bodily harm more serious than it might otherwise have been, includes such things as extreme violence, premeditation, planning of the offence, infliction of serious injury, use of weapons, attacks on the head as opposed to other parts of the body, there being more than one attacker, vulnerable victims and a particular concern in this case what the

Court of Appeal called “vigilante” actions, that is to say people who take the law into their own hands and inflict grievous bodily harm as a result.

[14] For the Crown, Mr Corlett suggests that the starting point within band 3 should be something of the order of 10-13 years’ imprisonment out of the 14 year maximum. He points to the gravity of the offence, of course to the victim impact report and some eight of those worsening factors listed by the Court of Appeal in *Taueki*’s case which he says apply in this instance. Naturally enough he also draws my attention to the question as to whether there is to be any difference between the two of you as far as sentencing is concerned.

[15] As far as what we call ‘mitigating factors’ are concerned, those that make the offence less serious, Mr Corlett acknowledges, of course, your pleas to the charge and responsibly accepts that you, Mr Stenning, were prepared to plead to the charge to which you ultimately pleaded at the depositions hearing more than six months or so before the trial date.

[16] For you, Mr Stenning, Mr Edward accepts that you are in band 3 of the *Taueki* case but says you are towards the bottom of that, although he accepts there are at least five of those worsening factors present in your case. He, of course, relies to reduce the sentence to be imposed on your plea and your remorse.

[17] For you, Mr Thompson, Mr Lawson also accepts that there were a number of those worsening factors in your case and that you are in band 3 of the *Taueki* case., He, too, emphasises your acceptance of responsibility, your remorse, including the letters and the oral statement of your remorse and the offer of amends in the sum of $1000, and submits that you played the lesser role in this matter. He points to the fact that it was you who encouraged Mr Stenning to stop the beating once the seriousness of it became obvious.

[18] Before I try to sum up those issues there are one or two others matters I need to cover.

[19] The first is that at the time you committed this offence you said to the Police that you thought that the victim had been involved in an assault on another woman and that it was as retribution for that that you did what you did that night.

[20] Mr Wahia has said through Mr Corlett for the Crown, that although there was apparently an assault on that other woman a night or two beforehand, he, Mr Wahia, was not involved. Despite the fact that apparently his suggested involvement has been reported in the media, he resists any notion he was involved in that assault. I accept what Mr Wahia says, through Mr Corlett. I accept also that the two of you, in some disordered way, thought that night that he may have been involved in the assault. But it plays no part in the sentence to be imposed upon you because, as I mention again going back to that *Taueki* case, the law takes vigilante actions of people who take the law into their own hands very seriously, irrespective of why they do it.

[21] The second matter I wanted to emphasize – and in doing so I acknowledge the presence of so many people here this afternoon from all three camps – involves the testimonials and letters of support that have been provided for both of you and, of course, the Wahia family is also strongly supported.

[22] If what you did that night had been significantly less serious than what it was, if it had not had anywhere near the horrendous consequences it has had for the Wahia family, then the support the two of you have received could have played a much bigger part in reducing the sentences that you now face. You are fortunate to retain the support of your whanau. The Wahias are fortunate to have their support. But the seriousness of what you did is so bad that there is very little weight that I can give to those testimonials when I sentence. I do that now and I ask you both to stand.

[23] I have to try and fashion a sentence that will hold the two of you accountable for what you did, recognise the harm that you did to the victim and to his family and in a much lesser sense to the community and try to ensure that the sense of responsibility that you now feel for the family is maintained. I have to punish you of

course and denounce the conduct that you undertook that night and try to deter you and others from taking the law into your own hands for some imagined slight.

[24] It is accepted by all counsel that you are, as I said, in band 3 of the *Taueki* case so that in considering the length of imprisonment to impose on you I start in the region of 9-14 years.

[25] There are at least eight of those worsening factors present in your case. This was a premeditated plan that you pursued over several hours, driving about the countryside trying to find Mr Wahia in order to implement your intention to beat him with a bat. It was extreme violence by the two of you. You went to the lengths of getting a weapon, the bat, but not just that, you used your own weapons, your fists and your feet. The principal object of your violence was his head, secondly, his body and you caused very serious injury and damage to both – as we have heard from the victim impact statement.

[26] What you did has had a major impact on Mr Wahia and his family, his enjoyment of life in the 19 months since the assault and it will permanently disable him for the future to the extent apparently of about 60% of his ability to enjoy life. And he was a vulnerable victim, lured by you on a pretext to go with a person he regarded as a member of his extended whanau, and then set upon, without warning and without any chance to defend himself. And, as I have mentioned several times, this was vigilante violence for some imagined slight and you decided to mete out a major beating to the victim.

[27] So the circumstances of the offence, leaving your personal circumstances to one side, suggests that the appropriate starting point here is of the order of 11-12 years' imprisonment.

[28] But there are mitigating factors to which you are entitled to point to reduce that sentence.

[29] First, there are the pleas. They were only formally entered on the day before trial but I accept that they were offered at an earlier stage and in any case your

defences would have been compromised by the video statement. Mr Stenning offered that earlier than you, Mr Thompson. That could potentially lead to a small difference in the sentences.

[30] Both of you are remorseful. Both of you accept your responsibility. Both of you are apologetic and those are circumstances that need to be taken into account to reduce the sentence. You may have thought that there had been some family violence but, as I have said several times, this was vigilante response.

[31] It is stressed to me that the level of your actual involvement in the beating differed. It was only you, Mr Stenning, who used the bat on Mr Wahia and you, Mr Thompson, who called him off. That, too, could lead to a modest difference in sentence.

[32] In the end, however, looking at the offending overall, I conclude that the differences between you are insufficient to differentiate in the sentences to be imposed upon you.

[33] Both of you under the influence of alcohol concocted a plan to mete out savage violence to a defenceless man. Both of you went to significant efforts to implement a plan by obtaining a weapon, driving about the countryside to find out where he was, and then both of you carried out the joint plan. As it happens, only one of you used the bat but the other inflicted other violence at some point in the incident before the call was made to stop. Therefore, the necessary reduction from the starting point for sentence means that your positions are pretty much the same.

[34] After giving full discount for all the mitigating features, in my view the ultimate sentence to be imposed on each of you is one of eight years and nine months' imprisonment and you are sentenced to that.

[35] In saying that, I acknowledge I have made some small express reduction beyond what I originally contemplated for the expressions of remorse and apologies. Stand down.

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WILLIAMS J.