IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

I TE KŌTI MATUA O AOTEAROA
ŌTAUTAHI ROHE

CRI-2018-409-000128
[2019] NZHC 335

BETWEEN	QUENTIN DYLAN WOODS Appellant
AND	NEW ZEALAND POLICE Respondent

Hearing: 28 February 2019

Appearances: N R Wham for Appellant
K A Courteney for Respondent

Judgment: 4 March 2019

JUDGMENT OF GENDALL J

Introduction

[1] The appellant, Quentin Woods, pleaded guilty to two groups of charges. The first related to offending on 9 July 2018 consisting of threatening to kill, Summary Offences assault, behaving threateningly, and two charges of common assault. The second related to events that occurred on 23 September 2018 and involved charges of threatening to kill, breaching release conditions and two charges of common assault. Mr Woods was sentenced by Judge Saunders on 28 November 2018 to a term of 12 months' imprisonment. Release conditions were imposed for a period to run of 12 months. He appeals that sentence on the basis that first, it was manifestly excessive and secondly, the Court did not have jurisdiction to impose the release conditions it did.

[2] It should be noted that the Department of Corrections has received correspondence from the appellant indicating the appellant would now like to be

referred to as "Amy Woods", and for the pronouns "she" and "her" to be used. For consistency with the decision appealed against, however, the reports and the submissions filed, this judgment will use "he", "him" and "his". No disrespect is intended by this.

Facts

[3] At the time of the incident on 9 July 2018, the appellant was at his home address in Templeton, where he was subject to GPS monitoring and 24/7 supervision. The three victims in this set of offending were all Christchurch residential care supervisors.

[4] At about 2.45 pm the appellant used a razor blade to cut his right arm. He then, while standing approximately three metres away from Matthew Smith, a residential care supervisor, held the razor blade in the direction of Mr Smith's face and said: "Can I cut your face?" The appellant then wrapped his arm around Mr Smith's neck and squeezed tightly for approximately two seconds. The duress alarm was activated and this, it seems, caused the appellant to let go of the victim's neck.

[5] At about 7.00 pm that day, the appellant was transported to Christchurch Hospital due to the cuts to his arm. At the hospital he stated to Leonard Welsh that he was going to kill him. When the appellant and Mr Welsh went outside for a cigarette, the appellant turned suddenly towards the victim and shoulder barged him twice, causing Mr Walsh to lose his balance and stumble off the footpath. The appellant picked up a road cone and lifted it above his head. Gary Lee-Taylor who was present then grabbed the road cone off the appellant. The appellant wrapped his arm around Mr Lee-Taylor's neck in an attempt to place him in a headlock. Mr Lee-Taylor broke free and the appellant had to be restrained on the ground with the assistance of hospital security until the police arrived.

[6] In relation to the incident on 23 September 2018, the appellant was at that time subject to electronic monitoring at a specified address. At around 8.15 pm, Timothy Makaafi and Jamie Hack, both residential support workers, discovered the appellant was not at the required address. They both contacted him explaining he needed to return, and went to the address to wait for him. When the appellant returned he

verbally abused Mr Makaafi and Mr Hack, and said to Mr Hack repeatedly: "I'm going to kill you".

[7] The appellant then punched Mr Hack in the left side of his face near his ear and attempted to head-butt him in the face but missed. Mr Hack struck the appellant and moved away from him to call police. Mr Makaafi intervened and attempted to calm the appellant down. The appellant struck him with a closed fist twice to the side of the face. Mr Makaafi was attempting to restrain the appellant when he was head-butted in the forehead. Both men then managed to restrain the appellant until police arrived.

District Court decision

[8] In relation to the first set of offending, Judge Saunders in the District Court took the two common assaults and the threatening to kill as the lead charges. His Honour imposed terms of six months' imprisonment for each of those charges. He further sentenced the appellant to three months' imprisonment for the Summary Offences assault and two months for behaving threateningly. All those sentences were imposed concurrently, resulting in six months' imprisonment for the offending on 9 July 2018.

[9] The Judge considered that the second set of offending on 23 September 2018 should be signalled by a separate sentence, cumulative on the first. His Honour imposed six months' imprisonment for the common assault on Mr Hack and the threat to kill, and a concurrent four months for the assault on Mr Makaafi and the breach of release conditions.

[10] This resulted in an overall sentence of 12 months' imprisonment. Judge Saunders further sentenced the appellant to 12 months of release conditions, being those recommended in the pre-sentence report.

Principles on appeal

[11] Appeals against sentence are allowed as of right by s 244 of the Criminal Procedure Act 2011, and must be determined in accordance with s 250 of that Act. An

appeal against sentence may only be allowed by this Court if it is satisfied that there has been an error in the imposition of the sentence and that a different sentence should be imposed.[1] As the Court of Appeal mentioned in *Tutakangahau v R* quoting the lower court's decision, a "…court will not intervene where the sentence is within the range that can be properly be justified by accepted sentencing principles".[2] It is only appropriate for this Court to intervene and substitute its own views if the sentence being appealed is "manifestly excessive" and not justified by the relevant sentencing principles.[3]

Submissions

Appellant's submissions

[12] Ms Wham, counsel for the appellant, contends that the overall sentence of 12 months' imprisonment was a manifestly excessive sentence. She submits that the Judge did not give the appellant any credit for his early guilty pleas, the information in the pre-sentence report, totality, and most significantly the report obtained under s 38 of the Criminal Procedure (Mentally Impaired Persons) Act 2003. This report sets out background information about the appellant's history and identifies him as having significant mental health problems, as well as having experienced childhood trauma. Ms Wham contends that the Judge accepted the information in the s 38 report but simply "took the opportunity to tell Mr Woods variations on the theme that he should just exercise better self-control".

[13] Ms Wham further submits that the Judge imposed unlawful release conditions. This is firstly due to the requirement for the appellant to abide by the conditions of a programme between 8.00 am and 8.00 pm every day. Ms Wham contends that this programme is specific to the appellant and requires him to have person to person monitoring for those 12 hours, which she argues is "intensive monitoring by stealth". Intensive monitoring may only be imposed when the court makes an extended supervision order, which was not the case here.[4]

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1 Criminal Procedure Act 2011, ss 250(2) and 250(3).
2 *Tutakangahau v R* [2014] NZCA 279, [2014] 3 NZLR 482 at [36].
3 *Ripia v R* [2011] NZCA 101 at [15].
4 Parole Act 2002, s 107IAC(1).

[14] Ms Wham also takes issue with a release condition that she submits is a residential restrictions condition (which I assume is essentially for the period 8 p.m. to 8 a.m. daily monitored by GPS), which she says is prohibited under s 93(2B) of the Sentencing Act 2002. She does not exactly specify, however, which of the eight conditions imposed on the appellant she is referring to.

Respondent's submissions

[15] Ms Courteney, for the respondent, argues that the sentence here is not manifestly excessive. She does acknowledge that it is unclear from the Judge's sentencing notes whether the matters the appellant raises were taken into account or not, but Ms Courteney records that the focus on this appeal, like any other, must be "on the sentence imposed rather than the process by which the sentence is reached".[5] It is therefore only relevant whether the end sentence was manifestly excessive. Given the number of charges on which the Judge was sentencing the appellant, Ms Courteney maintains an end sentence of 12 months' imprisonment cannot be described as manifestly excessive. Each incident involved the appellant assaulting and threatening multiple victims, all of whom were trying to care for him. The appellant targeted the victims' heads in several of the assaults. Ms Courteney notes the victim impact statements that were filed and suggests these may also properly have had some effect on the end sentence.

[16] On this aspect, Ms Courteney cites the case of *McCormack v Police*, where Miller J considered an appeal against the sentence imposed for an arson charge and an assault charge.[6] There, His Honour commented: "It is important that deterrent sentences be imposed for behaviour of this kind towards social workers, who perform a difficult and essential task."[7] Ms Courteney submits that in the present case, similarly a deterrent sentence was called for.

[17] With regard to the release conditions appeal, Ms Courteney submits that they were lawful and appropriate. She notes that the appellant had previously raised the same arguments in relation to similar release conditions on other offending of which

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5 *Tutakangahau v R*, above n 2, at [36].
6 *McCormack v Police* [2012] NZHC 2970.
7 At [14].

he was convicted and at that time those conditions were upheld.[8] The appellant has sought leave to bring a second appeal to the Court of Appeal in relation to that particular decision of this Court[9] and the Court of Appeal shortly is to hear this matter on 4 April 2019.

[18] The first condition opposed by the appellant, regarding attendance at a programme between 8.00 am and 8.00 pm each day of the week, was previously, in not dissimilar circumstances in the first High Court decision, found to be lawful. This Court considered in that decision there was a clear rational nexus between the condition and the purposes of imposing conditions under s 93(3) of the Sentencing Act, and that the condition was necessary and proportional.[10] Ms Courteney contends that such a condition is also necessary for the appellant in the present case, due to his risk of further offending and his needs as assessed by the s 38 report.

[19] The second opposed release condition is referred to by the appellant as "residential restrictions". Ms Courteney assumes the appellant is referring to the following release conditions which were imposed by Judge Saunders:

> 4. To comply with the requirements of electronic monitoring, and provide access to the approved residence to the Probation Officer and representatives of the monitoring company, for the purpose of maintaining the electronic monitoring equipment as directed by the Probation Officer.
>
> 5. To be at that address between the hours of 8.00 pm and 8.00 am unless there is the prior written approval of a Probation Officer.

[20] In the first High Court decision where Mr Woods as appellant opposed a similarly worded set of conditions, this Court referred to the statement of Woolford J in *Whichman v Department of Corrections*:[11]

> In order for the conditions imposed upon the appellant to be "residential restrictions" all five of the conditions listed under s 33(2) of the Act needed to be imposed upon him.

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8 *Woods v Police* [2018] NZHC 2189.
9 [2018] NZHC 2189 (the first High Court decision).
10 At [31].
11 *Whichman v Department of Corrections* [2013] NZHC 3075 at [33].

[21] As was the case in the first High Court decision, Ms Courteney submits the appellant is only subject to three of the restrictions noted in s 33(2) of the Parole Act 2002. Accordingly, the respondent takes the position the appellant is not subject to residential restrictions. She says this reflects the finding reached by this Court in *the* first High Court decision.[12]

Law

[22] The respondent's submissions before me quite properly went on to draw the Court's attention to s 94(3) of the Sentencing Act 2002 which enables the Court, if it sees fit, to:

> (a) suspend any condition or vary the duration of any condition, or impose additional conditions; or
>
> (b) discharge a condition and substitute any other condition described in section 93 that could have been imposed on the offender at the time when the offender was convicted of the offence for which the sentence was imposed.

[23] Section 93 also allows the Court where, as here, it sentences an offender to imprisonment for 12 months or less, to impose any special conditions including, "without limitation, conditions of a kind described in section 15(3) of the Parole Act 2002, other than a residential restriction condition referred to in section 15(3)(ab) of that Act". Subsection (3) requires that a special condition must not be imposed unless it is designed to:

> (a) reduce the risk of reoffending by the offender; or
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> (b) facilitate or promote the rehabilitation and reintegration of the offender; or
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> (c) provide for the reasonable concerns of victims of the offender.

[24] The Court of Appeal stated in *Patterson v R* that: "any given condition must exhibit a rational nexus to the s 93(3) purposes, and that when considered with other conditions to be imposed it must be reasonably necessary and proportional".[13]

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12 At [24]-[25].
13 *Patterson v R* [2017] NZCA 66 at [11].

[25] Section 33 of the Parole Act discusses residential restrictions. Subsection (2) sets out the requirements of an offender under such a restriction as follows:

> (a) to stay at a specified residence:
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> (b) to be under the supervision of a probation officer and to co-operate with, and comply with any lawful direction given by, that probation officer:
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> (c) to be at the residence—
>
> (i) at times specified by the Board; or
>
> (ii) at all times:
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> (d) to submit, in accordance with the directions of a probation officer, to the electronic monitoring of compliance with his or her residential restrictions:
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> (e) to keep in his or her possession the licence issued under section 53(3) and, if requested to do so by a constable or a probation officer, must produce the licence for inspection.

Analysis

[26] Regrettably here, Judge Saunders in his decision did not set out his sentencing methodology. To his credit, however, the Judge spent some time in his decision referring to the detailed and helpful s 38 report he had before him, noting the appellant's hard life and upbringing and encouraging and commenting on the appellant's real need to learn how to control his anger. As to this last aspect, Judge Saunders went to some lengths to talk to the appellant directly, to encourage him to seek appropriate help and to work on turning around his life now. That is to be applauded.

[27] With all the material which was before him, Judge Saunders approached sentencing by imposing two cumulative six months' imprisonment sentences for each group of offending, with the sentences within each group being imposed concurrently. This resulted in the overall sentence of 12 months' imprisonment.

[28] On all of this, Mr Woods had pleaded guilty to nine charges, some of which carry substantial maximum penalties, for example seven years' imprisonment for threatening to kill and 12 months' imprisonment for common assault. As I have noted,

the Judge chose to impose cumulative sentences for each group of offending, with the sentences within each group being imposed concurrently which, in my view, clearly shows that he had regard to totality. There were several aggravating features present, and it is clear from the Judge's sentencing notes that he was fully cognisant of the appellant's mitigating circumstances.

[29] As I have noted, the appellant suggests Judge Saunders did not give any credit for his early guilty pleas, nor for the appellant's personal circumstances and history as set out in the reports. Further, the appellant submits no adjustment for totality was made.

[30] Unfortunately, it is not clear from the Judge's sentencing notes whether the matters the appellant has raised were or were not taken into account. I repeat the Judge did not set out his sentencing methodology. But, as the Court of Appeal notes in *Tutakangahau v R*, the focus on an appeal must be "on the sentence imposed rather than the process by which the sentence is reached".[14] In this case, the focus must be whether the sentence imposed by Judge Saunders is manifestly excessive and therefore a different sentence should be imposed.

[31] Clearly, a significant discount should have been allowed here for the appellant's guilty pleas. It is a pity the Judge did not specifically refer to this, and specify that he had weaved appropriate discounts into his sentencing calculation. Although that did not occur here, I am satisfied that he did take into account totality and the appellant's personal circumstances and history and that overall the final sentence of 12 months' imprisonment imposed for the raft of offending here was not manifestly excessive in the sense referred to by the Court of Appeal in *Tutakangahau*.[15]

[32] I am satisfied too that, given the number of charges the appellant was to be sentenced on which had significance here, an end sentence of 12 months' imprisonment cannot be described as manifestly excessive. Each incident involved the appellant assaulting and threatening multiple victims – all of whom were trying to

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14 *Tutakangahau v R,* above n 2 at [36].
15 Above n 2.

look after the appellant. The appellant also targeted the victims' heads in several of the assaults. Also, the Judge had the victim impact statements before him which tellingly included comments from these residential care specialists, such as:

(a) "I do not feel safe to care for [the appellant]." (Jamie Hack)

(b) "As a result of the incident which occurred on the 9th of July 2018 I am fearful to be around [the appellant] again…I was fearful for my safety as I thought he was going to strike me in the face with the blade…I was scared that [the appellant] was going to choke me out and at this point I was fearful for my life." (Matthew Smith)

(c) "…I am left feeling a bit hesitant about being around [the appellant] again. During the incident I was very fearful for my safety as I believed the threats were directly aimed at me." (Leonard Walsh).

[33] With regard to the legality of the release conditions, as I have noted, this Court recently ruled on these same arguments from the same appellant.[16] The Court found there, that the condition requiring attendance at a programme was not intensive monitoring, but rather an allowable programme as defined in s 16 of the Parole Act. Such a programme continues to be necessary for the appellant given his mental health, and in order to assist his rehabilitation and reduce his risk of reoffending.

[34] In that earlier decision, this Court also found that the appellant, on a similarly worded set of conditions, was not subject to residential restrictions. The Court there, as I have noted, referred to the decision in *Whichman*, where the Judge also held: "The fact that a curfew may be imposed in addition to electronic monitoring as a special condition does not necessarily bring an offender within the residential restrictions regime".[17] In *Hohua v Police* it was found that a curfew "may readily be considered to be a special condition which could aid one or more of the objectives set out in s

16 *Woods v Police*, above n 8.
17 *Whichman v Department of Corrections*, above n 11, at [32].

93(3)".[18] I am satisfied here the appellant does not meet all five requirements for residential restrictions under s 33 of the Parole Act. His release conditions of electronic monitoring and curfew are therefore not unlawful.

Conclusion

[35] For all the reasons outlined above, I conclude that in all the circumstances here, the sentence of 12 months' imprisonment imposed on the appellant was not manifestly excessive. I find, too, that the release conditions imposed by Judge Saunders were lawful and necessary to meet the purpose of special conditions under s 93(3) of the Sentencing Act. Overall, I conclude that no appealable error occurred in Judge Saunders' decision.

[36] This appeal is dismissed.

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Gendall J

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[18] *Hohua v Police* HC Rotorua CRI-2013-463-21, 20 March 2013 at [10].