IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CRI-2016-092-004659
[2017] NZHC 2198

THE QUEEN

v

BILLY MATARA

Appearances: C D Piho for Crown
R M Mansfield for Prisoner

Date: 11 September 2017

SENTENCING NOTES OF COURTNEY J

Introduction

[1] Billy Matara, you are for sentence today for the attempted murder of Hemi Hingaia, having been found guilty on that charge earlier this year. The maximum penalty for this offence is 14 years' imprisonment.[1]

[2] I can describe the circumstances of the offending quite briefly In May 2016 you had been living in a boarding house in Mangere East for about two months. Mr Hingaia was a resident at the same boarding house. You were not particularly close but nor had there been any trouble between you. In the early hours of 7 May 2016 you went into Mr Hingaia's room and woke him. You asked him to come outside onto the deck for a smoke. Mr Hingaia did notice that you had a pump-action shotgun with you. He described thinking that there was something a bit out of place but he said nothing. The two of you sat on the deck and talked for a little bit. There was no argument.

[3] After a time Mr Hingaia went inside to the kitchen. You must have followed shortly afterwards because when he turned around he saw you standing just outside the kitchen door about four metres away. You were pointing a gun at him. You did not say anything but you shot him in the torso and a few seconds later you hot him again. Then you then ran from the house. Others came to Mr Hingaia's aid.

[4] He was very badly injured. He was fortunate not to have been killed and even a year on, when he gave his evidence at trial, it was obvious that he was still suffering from the consequences of his injuries. In his victim impact statement he explained that he has had to live with a colostomy bag since the incident – reversal surgery was unsuccessful and he cannot undergo another attempt at surgery until the end of this year. He has lost a lot of independence. He has ongoing pain. He still feels the emotional impact of this traumatic event.

[5] So now I turn to sentence on the basis of these facts. In doing so I keep in mind the purposes identified in the Sentencing Act and apply the principles set out in that Act. The main objectives in sentencing in a case like this is denunciation for the

[1] Crimes Act 1961, s 173

offending, deterrence to stop you and others offending in this way and hold you accountable to protect the community.[2] The relevant principles that I need to take into account are the gravity of the offending, taking into account the seriousness of this offence in comparison with other kinds of offences and taking into account the effect of the offending on Mr Hingaia.[3]

Starting point

[6] In sentencing I must find an appropriate starting point, which is the term of imprisonment that would reflect the circumstances of the offending before I make any adjustment to reflect your personal circumstances. In finding the starting point I take into account other cases that involve similar facts.[4] In these cases the starting points have ranged usually between about ten and 11 years. Also of some assistance is the Court of Appeal's decision in *R v Taueki* which concerned grievous bodily harm but which would, in that context, indicate a starting point of between nine and 14 years' imprisonment.[5] Your counsel, Mr Mansfield, says that an appropriate starting point is ten years, the Crown contends for 11 years.

[7] There are some specific features that the Crown says I should take into account in fixing the starting point. The first is premeditation. The Crown says that there was a premeditated offence and it makes that submission based on the texts that you sent to your partner a week or so before the offending on the 1st and againt on the day before the offending, on the 6th of May 2016 and again on the night of the offending, about half-an-hour before the event. In the first two texts you refer to feeling that you want to shoot someone randomly. The last text began "Lord forgive me for what I'm about to do" and then you went on to refer to your children.

[8] The last text would usually be showing an element of premeditation and I am satisfied in a very general sense that there was some premeditation. Although I do not think it was specifically directed towards Mr Hingaia. I think that he was just the unfortunate person who happened to be there at the time. Your counsel has argued

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2 Sentencing Act 2002, s 7.
3 Sentencing Act 2002, s 8.
4 *Skinner v R* [2011] NZCA 655; *Marsters v R* [2011] NZCA 505; *R v Nicol* [2014] NZHC 2110; *R v Vaioletti* [2013] NZHC 3358.
5 *R v Taueki*(2005) 21 CRNZ 769.

that, in assessing your culpability, particularly on this issue, I should have regard to your mental state at the time and not treat this offence as a premeditated one. There are a number of issues I need to think about in relation to this submission.

[9] On 15 April 2016, three weeks before the offending, you went to the Manukau Community Health Centre at the urging of your partner, Ms Nielson, who was very concerned about your erratic thoughts and behaviour, including feelings of paranoia, auditory hallucinations and random thoughts of harming people. This behaviour seemed to be exacerbated by the various stresses you were under over the preceding six months or so. Your mother had died and I know that affected you greatly. You had not been able to care for your children and have them with you, which you very badly wanted, because you could not find appropriate accommodation. You were unhappy in the boarding house. Your relationship with Ms Nielson was breaking down. You were generally struggling with life outside prison, and you were using methamphetamine.

[10] You were seen by the treating psychiatrist, Dr Ellis. In a statement to the Police two weeks after the offending Dr Ellis recorded you telling her about the auditory hallucinations and that you were using methamphetamine. She noted that you were showing auditory hallucinations, paranoid delusions and loose thought associations. She gave a broad diagnosis of psychotic disorder not otherwise specified, which is a generic diagnosis sometimes given to a person who displays symptoms of psychosis but cannot be formally diagnosed due to recent drug use. She prescribed you an anti-psychotic medication.

[11] I do not know whether you were taking that medication at the time of the offending. I do not know how recently you had used methamphetamine prior to the offending, though it does seem from Ms Neilson's statements to the Police that you had been using in the weeks beforehand.

[12] In May 2017, you were examined by a consultant forensic psychiatrist, Dr Cavney, for the purposes of assessing fitness to stand trial and the possibility of an insanity defence. You were in custody at the time, on remand for this offending. Dr Cavney was hampered in his task by your refusal to engage with him, so he focused

on the question of fitness to stand trial. But nevertheless he expressed the view, based on the statements given by your partner and by Dr Ellis, that you:

> … demonstrated clear evidence of psychosis that likely had its onset before the … offending. It is also probable that [you were] acutely psychotic at the time …

[13] Dr Cavney's view was that, when you saw Dr Ellis just a couple of weeks before the offending, you would have fulfilled the statutory criteria for mental disorder under the Mental Health (Compulsory Assessment and Treatment) Act 1993.

[14] I was sufficiently concerned about all of this that I agreed to Mr Mansfield's request for a report under s 38(2)(b) of Mental Health (Compulsory Assessment and Treatment) Act. A previous sentencing date was adjourned to allow for this. But you declined to co-operate with the psychiatrist engaged for that purpose. Dr Kumar was unable to conduct a full psychiatric examination because you would not engage, apparently you did not want to jeopardise your appeal. You would not engage with Ms Young, the psychologist, for the same reason. Neither saw any indication of current mental illness in their dealings with you. You do not accept you have any psychiatric condition, though you do identify two people within your immediate family with schizophrenia and I note Dr Ellis' comment in her report that methamphetamine use often mimics schizophrenia which is why it is so difficult to make a diagnosis.

[15] For today's purposes I accept that you were most likely psychotic at the time of the offending, at least as a result of methamphetamine use, but possibly as a result of some other underlying disorder as well or instead of. To the extent that any psychosis was the result of methamphetamine use, I cannot take that into account as a mitigating factor.[6] But Mr Mansfield has not asked me to do that. He has simply argued that I should take this evidence into account in assessing your culpability and in assessing the nature of this offending as not premeditated. This I am prepared to do. In the circumstances I will not treat the offence as premeditated in the sense of an aggravating factor. I do not, however, see the issue as one that would justify a

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6 Sentencing Act 2002, s 9(3).

discrete discount and nor does Mr Mansfield seek that, though I note that that has been the approach in some other similar cases.[7]

[16] The second aspect of the offending is the unprovoked nature of the attack. Mr Hingaia had done nothing to invite violence against him. It was luck and prompt medical attention that saved him. He could easily have bled to death, since you did not stop to help. But this issue is really linked to premeditation and I treat it in the same way.

[17] The other two issues are the use of a deadly weapon and the extreme level of violence. Mr Mansfield accepts that these are aggravating features. To an extent, of course, they are inherent in the charge, but it is right to say that the shooting of Mr Hingaia twice is a serious aggravating factor because it made a fatal outcome more likely.

[18] Looking at all of these factors I find that the appropriate starting point is ten years.

Personal factors

[19] I turn next to the question of whether there are personal factors that would require me to increase or decrease that starting point. The Crown seeks an uplift of six months for your previous offending. You do have a very list of previous convictions, over 100. However, they are almost all for non-violent offences; there are quite a lot of driving offences, there are some dishonesty offences, there are breaches of community work. But very few violent offences. Apart from the aggravated robbery in 2010, for which you were sentenced to four years' imprisonment, the violent offences were really limited to assault and, judging from the sentences imposed, they were assaults at the lower end of the spectrum. In these circumstances, there is no reason for anything but the most modest uplift to recognise the previous aggravated robbery and I impose an uplift of two months for that.

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7 C.f. *R v Simon* [2017] NZHC 235. The outcome would have been the same.

No-parole and minimum period of imprisonment

[20] There are no factors that would reduce the figure from that. Because this conviction is a stage 2 offence you must serve the sentence, which will be ten years and two months without parole or early release.

[21] Although you will be required to serve the full term of that sentence I am nevertheless required to indicate whether and, if so, what minimum period of imprisonment I would otherwise have imposed. I think that it is clear that had the issue of parole been live, and given the seriousness of the offence and the effect on the victim, a minimum period would have been required and I would have regarded a period of 40 per cent as appropriate.

Result

[22] Mr Matara, would you please stand. All of what I have just explained adds up that you will be sentenced to ten years and two months for this offending. I hope that as you sat and listened to what your counsel said today you understood and accepted many of the points that he made. You have clearly had a really difficult life. It is to your credit, I have to say, that there is hardly any violence in it and it is a great shame that you have committed this offence and it has been so serious. And I recognise that some of your offending started way, way back. You have got a lot of Youth Court offences. And I recognise that that is the hallmark of a really disrupted childhood and difficult life and Mr Mansfield has urged you, even at this late stage, to take steps to do what you can to make things better for yourself and probably the drug use is the one thing that would make the most difference. So I have had to sentence you today to a non-parole sentence, which is a high one. If things were different I would not have done that. But I urge you to do what you can in prison to make you life better. Stand down please.

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P Courtney J