

POLICE

v

TAMATI MAHIA

Date: 3 August 2018

Counsel: Ms A Herman for the Crown
Ms M Henry for the Defendant

SENTENCING NOTES OF DOHERTY J

[9:59:31]

[1] Tamati Mahia, you are here for sentence and that is because you used a bottle to inflict an injury on someone with whom you were fighting. You have pleaded guilty to doing that having being charged with wounding with intent to injure; that carries a sentence of 7 years imprisonment as a maximum response.

[2] On 18 July 2017 you with friends were drinking and there was an altercation between two of those friends. You imposed yourself into that argument which had been a fight. In the course of that, you got the better of the person that you were fighting with. I am told that that person ended up on the ground covering himself up in an attempt to avoid your assault on him. You found a beer bottle nearby described as a Heineken bottle – I am not sure of its dimensions – but whatever, you then broke the bottle and used it in the fight and you stabbed this person in the thigh.

[3] He was ultimately admitted to hospital. He suffered a gash which required 18 stitches and of course the pain and trauma that went with that. Ultimately he is okay and I have had the benefit of a statement from him about the effects on him. This is what he says, “At that time I think it was wrongful of him [that is you] to stab me. I also think he should

be punished for what he had done to me. I was angry and hateful towards him. I thought of him as a friend but not anymore. Now I have forgiven him for what he did. It was just an act of stupidity and it did not help with the alcohol consumption. Right now, I am physically okay.”

[4] So he did not have lasting effects, and he said, “Right now, I have no hard feelings towards him. He had apologised to me in person and shook my hand but I would not want to be around him anymore. I just want to do my own thing.”

[5] This seems to have been completely out of character for you. This is the first time you have been before the Courts, at least for anything that has resulted in a conviction.

[6] I have also had the benefit not only of the submissions of your lawyer but also of a report from the Probation Service. That highlights similar things to what your counsel has highlighted.

[7] You had a good family upbringing. You have and maintained your family support and I am told your father has come here from Perth today to support you. You were recognised as a bright kid although you left school without perhaps nurturing that characteristic. This whole thing has been a shock for your family and they are not impressed but very, very supportive of you. You are in a relationship and you have a child and your partner describes you as a soft hearted person, humble and most importantly a supportive father for a small family. You have a job and you have got glowing references from your employers and from others in references that have been provided to me.

[8] The Probation Service says – and I have spent some time with your lawyer about this – that you take the view that there was some sort of accidental stabbing for the victim. You have pleaded guilty to intending to injure that person and you did it by taking one weapon and converting it into a more dangerous weapon; a bottle which you smashed and then used the sharp edges. You are very lucky, when you stab people in the thigh that you do not cause death. There are big arteries down there where they lead to death and that was one of the issues here which caused the medical people to take this man into the operating theatre to try and stem the flow of blood.

[9] The Probation Service recognises that this is a serious offence but says that your positive attributes ought to overcome the starting point which is imprisonment because that is what this community has said about this sort of offending. Otherwise, 7 years imprisonment would not be a disincentive.

[10] The purposes of sentencing you are the obvious things of denouncing this sort of conduct; making you accountable for what you have done. But in light of what has been happening around this place, particularly Rarotonga of late, there has also got to be deterrence and I do not make any apology for saying that deterrence is the major purpose of my sentencing you today.

[11] Drinking, fashioning weapons by breaking bottles and then taking them into the fray seems to be becoming prevalent. You are the second person that I have sentenced this week for similar offending. Yours is not as bad an offence as the last one but it's still in exactly the same category; young people, taking the opportunity to fashion a weapon and use it and cause serious injury.

[12] So that is the starting point for me: deterring others in this community and to say that this Court will impose stern sentences to reinforce what the community has said is serious offending.

[13] Ms Henry, on your part and the Crown counsel have referred me to a number of other cases and one of the principles of sentencing is pretty much that like cases get treated in similar circumstances. The New Zealand cases of *R v. Taueki* and *R v. Nuku* give a steer to the New Zealand courts as to what response there ought to be depending upon the seriousness and the seriousness is often viewed by the number of aggravating features, or the bad features over and above the inherent nature of the offence.

[14] This Court has taken notice of those cases as a guide to it although this court does not have any tariff cases or indications of sentence from its Court of Appeal but it takes into account where things ought to start and perhaps finish. Your counsel has said that while I should note those cases as being of general assistance to the Court, she submits their application must be considered in light of "the context of our jurisdiction" and I am presuming she is meaning the Cook Islands jurisdiction.

[15] I note, and as I have said to you the maximum sentences available for serious offending like this and in particular this offence, are an indication that the community through Parliament views this as serious offending and while there might be certain matters in mitigation that relate to “the jurisdiction” and the social culture of the Cook Islands, I do not think I agree with your counsel in relation to starting points.

[16] The aggravating features of your offending are your conscious and premeditated use of the weapon. I agree with your counsel that you did not carry something into the fight but you saw an opportunity and you used a broken bottle on someone who was already vulnerable. He was covering up. You picked it up and you fashioned something more dangerous and you used it and you injured him seriously. I suppose it is also an aggravating feature that you had punched the person earlier to the head but I do not take that into account here.


[17] You are in a category of a lot of things in your favour. You immediately pleaded guilty. For that, you will be entitled to a reduction of a third of whatever starting point the sentence was. Those who plead guilty at first opportunity get that significant discount. You are of good character. Counsel has produced all of those letters which tell me that. You are from a good family and they are here to support you. This seems totally out of character for you. You are relatively young. You have got a young family and of significance to me is that you have sought help for yourself by undergoing some rehabilitative courses.

[18] But I cannot get away from the fact that the most important thing here is deterrence to the rest of the community. You are another young person who has felt able to do what you did in circumstances that you did quite freely and this court has to show that anyone who is going to do that will face serious consequences.

[19] The lowest I can get your starting point is a sentence of 18 months imprisonment.

[20] For your mitigating factors, you will receive a one third discount from that of 6 months for your guilty plea and a further 6 months for your remorse, the fact that you have apologised, your otherwise good character and your family circumstances.

[21] Unfortunately for you, you will serve a sentence of 6 months imprisonment starting now.



Colin Doherty, J