

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**CRI-2005-004-022544
CRI-2005-004-022573
CRI-2005-004-004635**

THE QUEEN

v

**MICHAEL DENNIS BALEITAVUKI
PAUL FRANCIS ROBINSON
CHE DANIEL TARAU**

Hearing: 31 July, 1-4, 7-11, 14-18 and 21-23 August 2006

Appearances: D J McNaughton for the Crown
P H H Tomlinson for the Accused Baleitavuki
S J Bonnar for the Accused Robinson
Ms M A Lowe for the Accused Tarau

Judgment: 15 September 2006

SENTENCE OF FRATER J

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P H H Tomlinson P O Box 194 Shortland Street Auckland for the Accused
Baleitavuki
S J Bonnar P O Box 2674 Shortland Street Auckland for the Accused Robinson
Ms M A Lowe P O Box 941 Auckland for the Accused Tarau

[1] Michael Dennis Baleitavuki, Paul Francis Robinson and Che Daniel Tarau, you appear for sentence today together because you were tried together on a range of charges arising out of the Police operation known as “Operation Strike”. The primary charge you each faced was that of being members of an organised criminal group. In the event, only you Mr Baleitavuki were convicted of that charge. You were found guilty at trial of 19 charges and are to be sentenced on a further 23 which you pleaded guilty to at depositions or subsequently. You Mr Robinson were acquitted on all eight charges you faced at trial. You appear for sentence on five charges arising out of “Operation Strike” to which you pleaded guilty at depositions and on arraignment and one of escaping from custody. You Mr Tarau are to be sentenced on the two charges which the jury found you guilty of and another four to which you pleaded guilty in July of this year.

[2] Before dealing with each individual situation, I want to say something about “Operation Strike” and the sentencing process generally.

[3] “Operation Strike” had its genesis in the audacious burglaries of the premises of Car Haulways in Otahuhu on 18 and 20 February 2005. These were well planned and carried out at lightening speed. On each occasion heavy stolen vehicles were used to ram raid the security fence surrounding the premises, from which high value vehicles were stolen: on the first, four Range Rovers and, in a second visit the same night, two Ford F250 utilities; in the second burglary, a BMW Series 5 sedan, two Holden Commodores and a Holden Commodore Crewman utility were taken. You were each linked, directly or indirectly to one or other of those burglaries, although only you Mr Baleitavuki were actually convicted of one of the Car Haulways burglaries. Following the burglaries the Police set up the operation and it was as a result of the efforts of that team that the offending that you have each pleaded to or been found guilty of came to light. The primary offences were burglaries targeting high value and high quality goods, mainly motor vehicles, but cash, clothing, computers, and valuable artefacts were also taken from business premises and shops. Most of the time more than one offender was involved. The practice seemed to be that after the burglaries the proceeds were shared out among members of the group. Vehicles changed hands frequently, sometimes being used by one person for a day or two and then abandoned. There was evidence of cars being

used in high-speed chases. Sometimes the vehicles were damaged, and to avoid detection, at least for a while, number plates were stolen from one vehicle and placed on another.

[4] Evidence was given at trial that you all had friends or associates in common, although the time that you spent with each other varied considerably.

[5] The Crown claimed that your association was part of an organised criminal group known as the “KOAs” or “Kings of Auckland” or “Kiss Our Arse”. Within the group you were each said to have had a nickname. Mr Baleitavuki was known as “Rust”; Mr Robinson as “P Robba”; and Mr Tarau as “Viper”, and I accept the evidence in that regard. Obviously the jury did not accept that there was sufficient evidence linking Mr Robinson and Mr Tarau to the organised criminal aspects of the group but there is no doubt that there was at least some social contact between you and there was some commonality between your offending.

[6] In imposing sentence on you, I am bound to take into account the purposes and principles of sentences as set out in the Sentencing Act 2002.

[7] Counsel are agreed that the relevant purposes include the need to hold you accountable for your offending, to provide for the interests of your victims, to denounce your behaviour, to provide for reparation, to deter you and others from offending in a similar way and to provide for your rehabilitation.

[8] While these were not burglaries of domestic premises, that does not diminish the anguish, the inconvenience and the loss caused to your victims.

[9] I have received a large bundle of victim impact statements. Uniformly, the victims speak of the financial loss that they have suffered as a result of your offending. In the case of businesses, there has been the need to spend money on upgraded security systems, the loss of insurance no claims bonuses, the general inconvenience caused to the running of the business, and the effect of the burglaries on customers. For the offences involving individuals, there is a general pattern of inconvenience, frustration and, in many cases, very real financial loss.

[10] Insofar as the relevant principles of sentencing are concerned, I am required to take into account the gravity of the offending and its seriousness. I need to impose the least restrictive sentence appropriate in the circumstances and, as far as possible, to be consistent between offenders and take into account each of your backgrounds and personal circumstances.

[11] Having done that, I need to consider the aggravating and mitigating factors which apply in each case, which of course, include the amount of property involved, previous convictions, premeditation and matters of that sort, but I will deal with those in relation to each of you separately.

Michael Dennis Baleitavuki

[12] I start with your position, Mr Baleitavuki.

[13] You are in somewhat of a different category from Mr Robinson and Mr Tarau. For one thing, you were the only one of the three convicted of being a member of an organised criminal group. Your counsel expressed some surprise about that and made comment about the Crown's submission suggesting that you were the leader of the group. Obviously the Crown case against the three of you in this regard depended largely on the evidence of Jolie Leach, who was a co-offender and a Police informant and whose evidence, it is probably fair to say, the jury rejected in large part. However, her evidence was not the only evidence that is relevant in relation to this charge. There was also the evidence of Det Sgt Schmidt about your boast to him when you were apprehended to the effect that you were a respected criminal in the criminal community, that you ran a gang of 10 guys and that you were a career criminal. And indeed, there was plenty of other evidence of your involvement with the group in the form of photographs which were produced showing you in stolen motor vehicles, or associating with others prior to offending taking place. There were also the numerous examples of tagging, not only at your home in Mangere but where you were living with your partner, and there was a photograph showing that you had "KOA" tattooed on your person. I have no difficulty in accepting the jury's verdict in respect of that charge against you.

[14] The 42 offences for which you appear for sentence were committed between 27 February 2004 and 2 March 2005. However, most were carried out during a discrete period from the end of November 2004 and the beginning of March the following year when you either committed burglaries yourself or received goods stolen in burglaries committed by others. Sometimes the offending was on a daily basis; in other instances, there were several offences committed on the same day – although not necessarily all by you, there were certainly offences from which you received stolen property committed on the same day.

[15] From the burglaries of the premises of Orca in Newmarket, a pharmacy in Waikanae and the City Star Convenience Store in Parnell, you obtained cash. From the Parnell store you also obtained cigarettes, energy pills and phone cards. Computer equipment and other electronic gear was taken in the burglaries of Briscoes in Morningside, Unitech, and the Mt Albert community centre or YMCA. And from the second Car Haulaways burglary vehicles were obtained. You were identified as being a participant in that burglary when you were seen driving one of the stolen Holden Commodores.

[16] Another group of offending that you were involved in was the theft from and damage to the “Pay and Display” machines belonging to Wilson Parking and North Shore City Council. Those machines were completely damaged and at least \$1,000 in cash and coins was taken from each one of them.

[17] Many of the goods, the subject of the receiving charges, were found in a lock-up in Onehunga which was taken out in the name of your sister but clearly you took control of. They included a \$17,000 painting stolen from the International Art Centre, a Capidemonte dish taken from French Ltd in Parnell, a Royal Albert living-room gift set, various passports and a suitcase of books. Other stolen items were found at the home you were sharing with your partner. These included a sheepskin rug taken in the burglary of the Great Wall Souvenir Shop, and designer clothing taken from Etage. Then there were the motor vehicles, which you took either individually or with others: a Mercedes Benz, a Subaru Forester and a Subaru Legacy, all of which were involved in a car chase in the Waikato area.

Similar charges to which you pleaded guilty involved a Mitsubishi Airtrek and a Holden Astra.

[18] There was a separate group involving two firearms charges. One related to a pump action sawn-off shotgun found on the search of your property on 20 October 2004 – this was found to be loaded and ready to be fired. The Police also found live shotgun cartridges. Then, on 2 March 2005, immediately prior to your arrest, the Police found a Mossberg shotgun and ammunition at your home.

[19] Next there were the offences relating to your escape from custody. That happened on 27 October 2005 when you and six other prisoners were being escorted from Mt Eden Prison to this Court for the depositions hearing. When the vehicle was stopped at the traffic lights at Khyber Pass, at the intersection of Symonds St and Newton Rd, you and three others, including Mr Robinson, were seen to escape through an air vent on the vehicle roof. At the time you were handcuffed to Travis Lowe. You all ran down Symonds St towards Mt Eden Rd. You and Mr Lowe separated from the others and went into Exmouth St. There you stood in the northbound lane together and, when a vehicle stopped, you opened the door and demanded that the driver get out. When he refused you grabbed him and attempted to drag him out. When he resisted and tried to drive away, you jumped into the vehicle, crawled across him and attempted to push him out of it. He threw the keys away and just as you grabbed him, you were apprehended. As a result of the assault, the driver of the vehicle received moderate bruising but it did not require medical attention.

[20] The final charge that you appear for sentence on today is one of assault on a Police Officer in the Court holding cells, again while you were on remand awaiting trial for the current offences. The Police Officer involved suffered a cut, bruising and a swelling above his left eye and a sprain to his finger from the assault.

[21] The Crown estimate that the total value of the property stolen or received by you was \$675,422.95. In addition, they note that there were consequential losses with added security costs and damage of \$135,193.25. Accordingly, they claim that

the total financial impact of your offending is in excess of \$800,000. Of that, goods and property worth in excess of \$200,000 are unrecovered.

[22] You are 29 years of age. Your parents separated when you were young but you have maintained the support of both of them. However, it is clear that your childhood and early years were not easy. You were in trouble with the law from an early stage. You were expelled from school and have never held a long-term job. You say you do not believe in going on a welfare benefit. Obviously, over the years, you have been supported, in large measure, by the proceeds of your criminal offending.

[23] You have a long history of offending. It goes back to 1993 when you appeared in the Youth Court. You have some 79 previous convictions. Among them there are 28 burglaries, two attempted burglaries, two convictions for being in possession of instruments for burglary, four aggravated robberies, one aggravated assault and also convictions for theft and entering with intent. You have received the full range of penalties, including sentences of imprisonment, the most recent being imposed in August 2004.

[24] As I have said, notwithstanding all that, your parents remain supportive of you, as does your partner of six years.

[25] The pre-sentence report writer attributed your criminal offending to your association with other criminals, alcohol and drug abuse, your propensity for violence and gambling. You say that you stopped using alcohol and drugs before the current offending which was fuelled by your addiction to gambling. You are said to be unwilling to address any of the other factors. You say you do not need the intervention of the Probation Service, having completed a life skills and substance abuse course or courses while on remand. As a result of that, you say that your problems with substance abuse are under control. I do not accept that. Nor, in fact, did the report writer who said you were a high-risk offender with a low level of motivation to change.

[26] The Crown took the second Car Haulaways burglary as the lead offence for sentencing purposes and taking into account your previous convictions, the loss suffered by your victims – in other words, the financial consequences of your offending – and the high degree of premeditation involved, submitted that I should take a starting point at the very upper end of the available penalty, namely between six and eight years imprisonment. That submission was made on the basis of the Crown's review of the relevant sentencing decisions of *R v Andrian* (1996) 13 CRNZ 449, *R v Nguyen* CA110/01 2 July 2001, *R v Lowe* CA62/05 4 July 2005, and also *Senior v Police* (2000) 18 CRNZ 340 and *R v Rohloff* CA 193/03 24 September 2003.

[27] I will go through them.

[28] In *Andrian* a starting point of 12 years imprisonment was endorsed. There the prisoner had 78 previous burglaries and the burglaries for which he appeared for sentence had been committed two months after his release.

[29] *Nguyen* was a ringleader in a group involved in stealing goods valued in excess of \$400,000. In that case a starting point of nine years was taken.

[30] In *Lowe*, where the prisoner had been convicted of 39 previous burglaries and faced sentence on 15 more, a starting point of eight years was considered appropriate, taking into account the previous criminal history, the totality of the offending, the offending while on parole, the planning and premeditation and the need for deterrence and protection of the community.

[31] And in *Rohloff*, where there were nine charges of burglary and two of theft, from a starting point of six years imprisonment, a sentence of four and a half years was imposed following guilty pleas.

[32] In this case the Crown have emphasised the extremely high value of the goods involved to support a starting point of seven to eight years imprisonment. In addition, the Crown submit that cumulative sentences should be imposed for the

Arms Act offences, for the escaping from custody and the participation in an organised criminal group.

[33] In response, Mr Tomlinson did not attempt to excuse your offending. He submitted, however, that I can take it from your pleas of guilty to some of the offences and also your involvement in courses while on remand that you do accept responsibility for your offending and that those steps are indicative of your willingness to change your behaviour. He submits, however, that your offending is in a different category from that in the cases relied upon by the Crown. In particular, he has challenged the emphasis on the value of the goods and pointed out that although you have a substantial list of previous convictions, including a large number for burglaries, most were committed while you were still a teenager and that there has not been anywhere near the same history of offending, certainly not of burglary offences, in recent years. Accordingly, he suggested that you could be categorised more as a spree burglar than a recidivist burglary and, in all the circumstances, submitted that a sentence for the dishonesty offences in the vicinity of five years would be appropriate.

[34] I accept, on the basis of *R v Lowe*, that in cases involving recidivist burglars which, notwithstanding your counsel's submissions, I consider you are, a slightly different approach should be taken to the assessment of an appropriate starting point in that it should include your previous convictions and should be based on them. I accept that you are not in anywhere near the same category as *Andrian* where the starting point was 12 years, and the Crown did not suggest that. I also accept that your offending was not as frequent as that in *Lowe*. However, I cannot disregard the extremely high value of the goods involved. Even if I only focus on the goods unrecovered, we are still looking at a figure in excess of \$200,000. I also take into account the totality and frequency of your offending and the planning and premeditation necessarily involved in it.

[35] Having regard to all those factors, I consider that a starting point in the vicinity of seven years imprisonment is appropriate in this case for the dishonesty offences.

[36] The next question is how to deal with the fact that you have been convicted of being involved in an organised criminal group? The cases that the Crown cited, in particular *R v Anderson* CA27/04 23 June 2004, which was an appeal from a decision of mine, suggest that it may be appropriate to impose a cumulative sentence. However, in the circumstances of this case, I consider it more appropriate to reflect the fact of that conviction as an aggravating factor to take into account in reaching a final sentence to impose for the dishonesty offences. I balance that against the mitigating impact of the guilty pleas that you entered to some of the offences. I also give you some, but I should say pretty limited, credit for the support that you have from your partner and your mother because, in my view, it has not so far been reflected in any realistic changes on your part or indications that you are really proposing to change.

[37] Balancing those factors as best I can, I consider that a sentence of six years imprisonment is appropriate on the dishonesty offences.

[38] The escaping charge obviously warrants a cumulative sentence. Given the violence involved and that fact that it was committed while you were on remand, I consider that a sentence of 12 months imprisonment is appropriate, but I reduce that by four months to reflect the guilty pleas.

[39] Then there were the Arms Act offences. I accept, on the basis of the Court of Appeal decision in *R v Richardson* CA450/02 25 March 2003 that it is appropriate to treat them cumulatively and I do so. A further sentence of six months imprisonment is warranted for them, again discounted by two months for your guilty pleas, making a total of four months.

[40] Then there is the issue of a minimum non-parole period and whether I should impose that in relation to the total effective sentence of seven years imprisonment. It seems to me that the provisions of s 86 as amended are met in this case. I do not propose to go through them. I will impose a minimum non-parole period of four years.

[41] So please stand.

[42] Mr Baleitavuki, on the lead burglary charge, that is the second Car Haulways burglary, you are sentenced to six years imprisonment. On the remaining two burglaries that you were found guilty of – the Briscoes burglary and the City Star Convenience Store – you are sentenced to five years imprisonment. On the theft involving the Wilsons Parking and North Shore City Council “Pay and Display” machines, you are sentenced to three years imprisonment and also to three years imprisonment for the intentional damage of those machines. On the receiving charges relating to the Peter Beadle painting and the Capidemonte dish, which carry a maximum of seven years imprisonment, you are sentenced to 18 months imprisonment. On the receiving charges relating to the books and the Royal Albert set, you are sentenced to six months imprisonment. For the receiving of passports which you were found guilty of, that is the four charges, you are sentenced on each to one month imprisonment, and for the unlawful taking of motor vehicles – the Mercedes Benz, the Subaru Forester and the Subaru Legacy – you are sentenced to 18 months imprisonment. All those sentences are to be served concurrently.

[43] I will now deal with the dishonesty offences to which you pleaded guilty. On the four burglary charges, those involving Orca, the Amcal Pharmacy, Unitech and the Mt Albert Community Centre, you are sentenced to three years imprisonment. On the charge of theft from the Coaster bus, 18 months imprisonment. On the receiving charges involving the Bosch tools and the Video-Ezy playstation, 18 months imprisonment. On the receiving charges relating to clothing from Etage and Great Wall Sheepskins, you are sentenced to three months imprisonment. On the receiving charge relating to the Sony Ericssen T 30 to one month imprisonment. On the charge of unlawfully taking a motor vehicle (the Mitsubishi Airtrek), you are sentenced to 18 months imprisonment. For the three charges of unlawful interference with motor vehicles – the Subaru Imprezza, the Ford Mustang and the Toyota Corolla – to six months imprisonment. For the unlawfully getting into the Holden Astra, to six months imprisonment. All to be served concurrently.

[44] On the escaping from lawful custody charge, you are sentenced to eight months imprisonment, and on the related assault charge to three months imprisonment. Also three months on the attempted unlawful taking of a motor vehicle charge, and three months imprisonment on the assault on a Police Officer in

the Police cells. Those sentences are to be served concurrently with each other but cumulatively on the sentences for the dishonesty offences.

[45] Finally, on the two the unlawful possession of firearms charges, you are sentenced to four months imprisonment, and for the unlawful possession of explosives also to four months imprisonment. Those sentences are to be served concurrently with each other but cumulatively on the other sentences.

[46] That is a total sentence of seven years imprisonment, against which I impose a minimum non-parole period of four years imprisonment.

[47] Obviously there is no prospect of reparation and I do not make any orders in that regard.

[48] Stand down.

[49] Counsel can be excused.

Paul Francis Robinson

[50] That brings me to Mr Robinson.

[51] Mr Robinson your offending relates to four separate incidents. The most serious was the burglary of Kiwi Yachting Consultants in the early hours of Christmas morning 2004 when you broke into the premises, removed a cash box and a laptop computer and broke the glass of the doorframe to exit. This caused the alarm to go off and a security guard arrived on the scene. When he confronted you, you threw the laptop at him and hit him on the knee, which disabled him. As you did so, a group of associates who were waiting in a stolen vehicle came by and you got into the vehicle and drove off. You were identified by the security guard and your fingerprints were later found on the abandoned vehicle. You pleaded guilty to the burglary at depositions and to a charge of unlawfully getting into the motor vehicle on arraignment. You also pleaded guilty at depositions to unlawfully getting into a stolen Mazda Astina and unlawfully taking a Toyota Hi-ace van in which motor vehicle registration plates altered to read "Robba" were found. The final

dishonesty offence was a charge of unlawfully using a Holden Commodore vehicle on 24 February. That was one of the vehicles taken in the second Car Haulways burglary. Following your arrest for that offending you were remanded in custody and you have remained in custody ever since.

[52] While in custody and being transported to this Court for the depositions hearing, you along with Mr Baleitavuki escaped from custody. That offending happened on 27 October. You were not apprehended until later that same day.

[53] You are now 24 years old.

[54] You first came to official notice in 2000 when you were 18 years old on a charge of unlawfully taking a motor vehicle. You re-appeared in 2001 on charges of failing to answer District Court bail, wilful damage and burglary. As writer of your pre-sentence report notes, your offending has continued unabated since that time. You also have a drug-related conviction and convictions for driving offences. Apart from the present charges you have 31 convictions, including four previous convictions for burglary. You have previously been sentenced to supervision and imprisonment. You did not comply with the community-based sentences.

[55] You come from a financially secure and stable family. They remain supportive of you but do not know quite what to do to make of the change in your behaviour. You say that you began using alcohol at a young age and, after you left school at 15, drifted into a lifestyle of petty crime and drug use. You have been given every opportunity to change; at 17 you were sent to psychological counselling. You have also attended a residential alcohol and drug treatment programme but to date that has not brought any significant change in your outlook.

[56] You say that when you leave prison you want to work on the house that you have bought with your partner. However, if you are going to keep out of trouble you need to change your behaviour. You also have to be honest about the causes of your offending, which I am not sure that you have been able to do so far. On the one hand, you acknowledge that alcohol and drugs, including methamphetamine, were factors involved in your offending. On the other, you also say that your offending

was motivated by gambling. Your former probation officer is not convinced of that. He believes that your consumption of drugs and the influence of your associates is a more likely cause of your recidivist offending. And although you express remorse, the report writer is sceptical about your motivation to change. You are described as being somewhat immature with little insight and making minimum effort to engage. She believes that your risk of re-offending could escalate if you do not engage in appropriate programmes and learn the strategies necessary to keep you out of trouble in future. And I agree with that.

[57] However, the reality that I am faced with on sentencing you is that you have now spent 19 months in custody on remand and will therefore be due for release either immediately or very shortly after I sentence you today.

[58] The Crown submit that a sentence of imprisonment is inevitable and Mr Bonnar does not disagree with that. The only question is for how long? The Crown submit that given your history an appropriate starting point for the dishonesty offences is between two and three years imprisonment, with a cumulative sentence for the escaping of between six and 12 months imprisonment, so making a final sentence of between 20 and 32 months imprisonment after taking into account the aggravating factors, which they identify as premeditation, the loss involved to your victims, your previous convictions, and balancing that against your guilty pleas – and the Crown recognise that, in that regard, a discount of 30 percent, as promised by Judge Moore at depositions, should be given.

[59] Mr Bonnar, on your behalf, submitted that the only substantive aggravating factor in the present case is your previous convictions. While he acknowledged that there was a certain amount of premeditation involved in the burglary offences, he submitted that the offences of unlawful taking and getting into motor vehicles were more opportunistic in nature and that your escape from the Chubb van was in that category as well. He therefore submitted that an end sentence of between 16 and 20 months imprisonment should be imposed.

[60] I am satisfied that the escaping charge should be dealt with cumulatively and that the others can be dealt with concurrently.

[61] If you would please stand, Mr Robinson.

[62] I regard the Kiwi Yachting burglary as the lead offence. In line with *R v Lowe*, I will take a starting point of 30 months imprisonment to reflect the nature of your offending, previous convictions and the effect on your victims. I then discount that by 10 months to reflect your guilty pleas, to give a finite sentence of 20 months for the burglary. On the other charges, I impose concurrent sentences of one year's imprisonment on the two charges of unlawfully taking motor vehicles, and six months imprisonment on the two charges of unlawfully getting into motor vehicles. On the charge of escaping, which I accept did not involve the same degree of violence as Mr Baleitavuki's offending, I take a starting point of six months imprisonment and reduce that to four months to reflect your guilty plea. That makes a total sentence of 24 months or two years imprisonment. Those sentences will be subject to standard release conditions plus special conditions for a further six months after your sentence expiry date as recommended by the pre-sentence report writer, namely:

- i) First, that you be assessed and, if found suitable, attend and complete a residential alcohol and drug treatment programme;
- ii) Secondly, that you be assessed and, if found suitable, attend and complete a problematic gambling treatment programme;
and
- iii) Thirdly, that you attend and complete any other counselling or programme that your probation officer recommends.

[63] In view of your previous failure to comply with community-based sentences and the length of time already spent in custody, obviously home detention is not an option and I therefore decline you leave to apply for it.

[64] Stand down.

[65] Counsel may be excused.

Che Daniel Tarau

[66] Finally it is your turn, Mr Tarau.

[67] Mr Tarau, you pleaded guilty to three charges of burglary and one of unlawfully taking a motor vehicle and you were found guilty by the jury of one charge of burglary and one of unlawfully taking a motor vehicle.

[68] The offending occurred over a six week period in January and February 2005: The first in point of time was on 1 or 2 February when you and your associate, Jonathan Barclay, gained access to a penthouse at the Hilton Hotel where you removed property valued at more than \$50,000, including mobile phones, luggage, jewellery, cash, passports, access cards and the key to an Aston Martin car. The next afternoon you returned with the access card and the key and drove off in the car which you subsequently drove around in for a few days. Then, on 26 January, you and another co-offender, Travis Lowe, together with Jonathan Barclay, went to the premises of Ubertec in Parnell which you broke into. You say that Mr Barclay did that first. However, it seems to me that whether he did or not is really immaterial. The fact is that over a four hour period the three of you removed a large quantity of computer equipment from the premises. Pictures show that the place was left in complete disarray. As a result, the proprietor has faced considerable loss, both financially, and in terms of lost time and customer confidence. Finally, on 16 February you were involved with others in the burglary of MSS Auto at Mt Wellington. That involved the same modus operandi as the Car Haulways burglaries, which I have already mentioned. The perimeter fence was rammed and three motor vehicles were stolen. One was a red Mercedes CLK 230 which was found abandoned on the Khyber Pass off-ramp. That, in fact, happened within an hour of the burglary. A leather glove containing your DNA was found in the car and I am satisfied that on that basis you were found guilty of the burglary and the unlawful taking. The significance of this particular offending is that one of the other vehicles taken in the MSS Auto burglary was used two days later to ram raid the premises at Car Haulways in the first of the burglaries there.

[69] The total value of the goods taken and damage or loss caused in your offending was \$711,000, although over \$500,000 of that relates to the vehicles which were recovered. I think there is something over \$100,000 in unrecovered property from the Ubertec and the Hilton Hotel burglaries.

[70] You are 26 years of age. Your childhood was difficult. Your parents separated when you were young and you and your twin brother had to make choices about where you would stay. You went with your father; your twin brother went with your mother. Your father was physically abusive towards you and I accept that that has had ongoing implications for you. You left school when you were 15 with no formal qualifications. Thereafter you have spent some time as a labourer but you have mainly been unemployed. You began drinking alcohol and using drugs when you were 16. You say you began using methamphetamine when you were 21 and became addicted to it by the time you were 23 or 24, by which stage you were using approximately half a gram or a gram a day. You told the pre-sentence report writer that it was at that stage that you began offending regularly, although I note that your first conviction was entered as far back as 1997. Apart from your present offences, you have 20 previous convictions. You have two previous convictions for burglary, one for possessing instruments for burglary, three of receiving, four of using credit cards and two of unlawfully getting into or taking motor vehicles. You have received the full range of penalties, including periodic detention, community service, supervision and imprisonment.

[71] Like your co-offenders, you have been in prison for the last 19 months on remand. However, in your case I am satisfied that the time has not been wasted. While in prison you have reflected on your past and the causes of your offending. I accept that you are extremely remorseful and sorry. You have expressed regret for the distress you have caused your victims, and that is something that you now acknowledge you did not do before. You did not think of the implications of what you were doing at the time. You have now realised the impact that drugs have had on your offending and also the adverse effect of your association with your co-offenders. Accordingly you have taken the positive step of being asked to be segregated from your co-offenders. You have also refrained from using methamphetamine, and that is verified by the fact that you have returned negative

drug samples on testing. You have also been given a positive reference by one of your prison guards. You say that on your release you want to relocate to Wellington and live with your girlfriend and your young baby. You say that you do not intend to use drugs again. As the pre-sentence report writer says, that all points to a high motivation to change.

[72] However, it is accepted that a prison sentence should be imposed. The Crown submit that the starting point in fixing that should be in line with that imposed on Christopher Wise, and also Mr Barclay who was your co-offender in both the Ubertec and the Hilton Hotel burglaries. A five year starting point was imposed for each of them. In Mr Wise's case, after giving credit for guilty pleas, there was a finite sentence of three and a half years, and Mr Barclay received a final sentence of two and a half years after he was given credit for assistance to the Police, as well as his guilty pleas.

[73] For sentencing purposes I will take the MSS Auto burglary as the lead offence as that is the one on which you went to trial and on which you were found guilty by the jury. However, I do not accept the Crown's submission that five years is an appropriate starting point in your case. I accept Ms Lowe's submission that it is too high because neither your list of previous convictions nor the number of offences for which you appear for sentence today is anywhere near as high as those of either Mr Barclay or Mr Wise. While you cannot be categorised as a first time burglar, you are only just entering the realms of the recidivist burglar. I therefore take a lower starting point in your case of four years imprisonment. From that I consider it appropriate to grant a reduction of one year, and I accept that that is generous, to reflect your guilty pleas and also to reflect your genuine remorse and to acknowledge the positive steps that you have taken while on remand to address the causes of your offending.

[74] If you would please stand, Mr Tarau.

[75] On the MSS Auto charge I impose a sentence of three years imprisonment and I will also impose that sentence on the other three burglaries to which you pleaded guilty. Those sentences are to be served concurrently. On each of the

charges of unlawfully taking a motor vehicle, you are sentenced to concurrent sentences of one year imprisonment.

[76] I accept that there is no possibility of reparation. I think you already have outstanding fines in excess of \$1,000.

[77] I hope that you use your remaining time in prison profitably and, if possible, enter a drug rehabilitation treatment programme. Alternatively if you are released shortly, I would hope that that would be a condition of your release, because it will not be easy for you on the outside. It is up to you whether you make good the promises of change that you have indicated so far. You have the possibility of doing so. I hope you will.

[78] Stand down.

M A Frater J

Addendum:

[79] It has been brought to my attention that, in sentencing Mr Baleitavuki I omitted to impose a sentence on the charge of participating in an organised criminal group, for which I said I would impose a concurrent sentence. I now do so. Given that the charge carries a maximum sentence of five years imprisonment, I impose a concurrent sentence of 18 months imprisonment.

M A Frater J