

**IN THE DISTRICT COURT
AT AUCKLAND**

CRI-2008-083-002487

THE QUEEN

v

JAMES JOSEPH KAPA

Hearing: 26 August 2010

Appearances: D Bell for the Crown
J Bioletti for the Prisoner

Judgment: 26 August 2010 at 5.00 pm

NOTES OF JUDGE G V HUBBLE ON SENTENCING

[1] Mr Kapa, you are facing at this stage the single charge of burglary which carries a maximum term of imprisonment of 10 years. However, it has the unusual feature that it happened to be involving the Waiouru Museum and these New Zealand icons, which of course have brought it into the public light.

[2] Now Mr Van Wakeren pleaded guilty some time earlier and he came before me. He had refunded his share of the reward of \$100,000. He had pleaded guilty much earlier than you have. But he was also facing a charge, additional to those that you are facing, involving some hundreds of thousands of dollars of mortgage fraud.

[3] What the Court must focus on is the totality of offending and it is very difficult to divide up an appropriate sentence for one category as against another. If Mr Van Wakeren was appearing just on Operation Valour as you are, it may be that a much higher sentence than the six years I imposed would have been appropriate. So it is difficult to draw between you and him a precision of what is just in relation to Operation Valour.

[4] I did not sentence Mr Van Wakeren to 11 years for Operation Valour. Indeed, that was not open to me. The maximum penalty for burglary is 10 years. He was sentenced to 11 years because of an accumulation of serious offending over five or six areas.

[5] You on the other hand, have not been dealt with for all matters at the same time. You have had two sentences, one for Operation Pokie and one more recently for Operation Prince in respect of which Judge Joyce sentenced you to five and a half years' imprisonment. So you are coming before the Court today in a somewhat different circumstance in that you have received two sentences in the past, just two months ago, five and a half years with a minimum period of two and a half years.

[6] What the Crown is now seeking is a cumulative period of six years on top of that with a minimum period of imprisonment of four and a half years. On the other hand, Mr Bioletti in a moving address, has urged on the Court the view that the Court should impose a sentence of five years cumulative on the earlier sentence of Operation Pokie only, (not Operation Prince) and perhaps no minimum period or a shorter minimum period.

[7] What you did has been outlined to the Court a number of times before. Your claim of course is that you just borrowed the medals because you intended always to give them back after asking for a ransom but initially of course, you wanted a great deal of money.

[8] What you say is that you were going to retain or hold these medals as guardian and were going to use them to trade against the sentences that you knew you were going to receive for other offending. I must say, I take all that with something of a grain of salt. The medals apparently had a value in excess of \$5.5 million but of course their value to New Zealand is far greater than that and cannot be measured in monetary terms.

[9] I cannot overlook that there were serious threats that these medals would be destroyed or disposed of overseas if you were not paid and if it was not for Lord Ashcroft and Mr Tom Sturgess, who made generous contributions, who knows what might have happened.

[10] Taking these medals Mr Kapa was clearly a gross miscalculation on your part and I believe that all New Zealanders resent it and of course it is part of the Court's job to discourage assaults on our cultural heritage.

[11] What you did is you and Mr Van Wakeren set off to Waiouru in a carefully planned burglary. You were photographed on the way down there getting fuel. You were picked up with a traffic ticket and that was recorded.

[12] You first attempted to break in at the back of the premises but that door would not yield so you very quickly found your way in through another method. In a quite sophisticated operation, you then stole the medals leaving little or nothing in the way of clues behind but causing nearly \$24,000 worth of damage to the museum.

[13] Of the 96 medals stolen, as has been mentioned, eight of them were VCs, there were George medals and Colonel Seymour has today outlined the precise value and reason for the granting of those medals. What he did not say, (and I mention this because Sir Charles Upham's daughter has appeared before the Court today and obviously feels particular chagrin at what has occurred), Sir Charles Upham was the only combat soldier ever to have received a VC and Bar. Others have received it but they were not combat soldiers. So we have something in his particular medal that was of particular significance to New Zealanders and we all like to identify ourselves

with the courage behind that. Fortunately, that and the other medals have been returned.

[14] So my job today is of course to impose a sentence in terms of the Sentencing Act s 7 and 8. So I have got to hold you accountable for the harm you have done, take into account the victims' interests, (and you have heard their feelings expressed today in Court,) and I must impose a sentence which hopefully encourages you to a sense of responsibility. High on the priorities is an issue of deterrence against persons who meddle with New Zealand icons.

[15] I am obliged to impose a sentence which denounces this sort of conduct and deters others although I bear in mind rehabilitation and integration back into society must also be taken into account. It is not the task of the Court to impose a weightier sentence than that is such that might cause you to give up all hope. It is not my job to be vindictive, it is my job simply to apply the law.

[16] So in terms of the Act, I have got to take into account the gravity of your offending and your degree of culpability and I believe that there were others of you involved than yourself and Mr Van Wakeren. Somehow, your share of the reward has disappeared. The only statement I have from Mr Bioletti and from you is that that is irretrievable and you cannot get the money back.

[17] Inferences I could draw from that are that you have gang associations but you of course deny that. Another possible inference is that you have decided to take the whole burden of the matter on your shoulders whilst your family benefits with the \$100,000. Whatever that situation, because I have no reasons given why that money could not be given back as Mr Van Wakeren gave his back, I do intend to impose a reparation order against you at the end of this sentencing requiring you to repay \$100,000.

[18] I did not order reparation against Mr Van Wakeren in respect of the damage to the museum because it is unlikely he would ever repay it. The reason I would impose reparation in your case of \$100,000 is because the money is still out there

somewhere and I have been given no satisfactory reason at all why it should not be given back.

[19] So my sentencing task today is not just to take into account an appropriate sentence for Operation Valour. I have got to take into account the totality of your criminality over the last six to seven years and as I have said, you are already serving sentences with the last one being for five and a half years with a minimum term of two and a half years.

[20] The aggravating features of your offending of course is the planning that went into it, the extent of loss and damage which is over \$150,000. There is no offer to refund any of that. I cannot take into account your prior criminal history because that has already been done in the sentencing in the other matters.

[21] You have 179 proved criminal charges against you in the past. It is perhaps refreshing to note however, that none of those include violence or use of drugs or excess of alcohol. Like Mr Van Wakeren, you appear to have intelligence and all the seeds of a very good citizen. Mr Van Wakeren had an excellent upbringing.

[22] You had what is unfortunately quite a common upbringing amongst your Maori people. That is, you did not know your father and your mother left very early in your life when you were still a child and you were brought up by your grandmother. Even then, you managed to get your School Certificate and you have declared an intention to pursue tertiary education whilst in prison and I have no doubt that you will come out the other end with that degree because you do have the intelligence.

[23] You have no involvement with drugs that I can see. Alcohol is not a problem, you are not a gambler. You do not get involved in violence. You have an excellent family, a partner who has supported you for many years and you have two young children with her and she obviously speaks of you very highly as a father.

[24] All of this and yet you have 179 convictions for dishonesty which have reflected on many New Zealanders and now you are faced with this very serious matter of Operation Valour.

[25] I have mentioned in the past cases which involve icons and the theft of the Tissot at the art gallery by a chap who called himself Ricardo Genovese, who of course was a leader of the mafia, he adopted that surname, and Potter J sentenced him to 13 years' imprisonment. That is a fair signal of what New Zealanders expect of people who meddle with our icons. Mr McEwen, who stole all the treasures from the Kelly Tarlton Museum up in the Bay of Islands, has not returned many of them. He was sentenced to seven and a half years for that.

[26] So two things feature in your case Mr Kapa. One in particular is I must sentence you with a measure of parity with your co-offender Mr Van Wakeren. Secondly, I must take into account the totality of your offending.

[27] In the end, I have concluded that the Crown are not far wrong in the submissions they have made. In my judgement, a term of six years' imprisonment is inevitable in your case. I have taken a start point of nine years and as with Mr Van Wakeren, I am allowing for a reduction less than in his case because you have pleaded later and I have taken into account the totality of your offending when I arrive at that figure of six years. That will be cumulative on the sentence imposed by Judge Joyce of five and a half years and I am going to order that you serve a minimum term of four years' imprisonment, cumulative also on Judge Joyce's sentence. That concludes the necessary elements of the sentencing.

[28] I am also ordering you to pay reparation of \$100,000. There may be no prospect of that ever being paid but it is still out there somewhere. So if it does happen to come back into your hands, we would expect it to be repaid.

[29] There is this subsidiary issue of the application by the prosecution to obtain a permanent suppression order in respect of the contents of the return of the medals agreement and the reparation schedule. I have considered submissions of counsel on

both sides. Mr Bioletti quite rightly speaks of the need for openness in all matters but there are other considerations in relation to the return of the medals agreement.

[30] Money was donated by third parties. Their interests have to be taken into account. There was a methodology of negotiation adopted by the police that it is in the interests of the community at large that that not be made public. So I am going to make permanent orders for non-publication of the return of the medals agreement, which is a written agreement I gather, and also of the reparation schedule. Other than that, there can be no suppression of any issues.

G V Hubble
District Court Judge