

**IN THE COURT OF APPEAL OF NEW ZEALAND**

**CA560/07  
CA561/07  
CA562/07  
CA563/07  
[2008] NZCA 28**

**THE QUEEN**

**v**

**GURNAM SINGH BUTTAR  
HARPAL SINGH NIJJAR  
GURPREET SINGH BUTTAR  
AMRIT SINGH**

Hearing: 20 February 2008  
Court: Robertson, Randerson, and Ronald Young JJ  
Counsel: L B Cordwell for Appellants  
M D Downs for Respondent  
Judgment: 26 February 2008 at 10.30 am

---

**JUDGMENT OF THE COURT**

---

**The appeals against sentence by all appellants are dismissed.**

---

**REASONS OF THE COURT**

(Given by Randerson J)

[1] On 14 September 2007, the appellants were sentenced by Judge McElrea in the District Court to terms of imprisonment on a joint charge of wounding with intent to cause grievous bodily harm, to which they had eventually entered guilty pleas.

[2] It is not in dispute that Gurnam Singh Buttar was the principal offender. He was sentenced to three and a half years' imprisonment. The other three appellants were each sentenced to two and a half years' imprisonment.

[3] They appeal against their sentences on the basis that the starting point adopted by the Judge was too high, and that insufficient allowance was made for mitigating factors.

[4] At the hearing, Mr Cordwell for the appellants withdrew an application for leave to submit an affidavit intended to address a suggestion that the victim had provoked the assault. Mr Cordwell also expressly abandoned a submission that the Judge had wrongly accepted that there was no provocation offered by the victim.

### **The sentencing process**

[5] The events leading to the sentence were unusual. The offending occurred on 18 November 2005 and involved a violent attack by five members of the Sikh community in Auckland on another member of that community. Four days later, the offenders presented themselves to the police and, on 15 December 2005, they were charged. All pleaded not guilty and were committed for trial on 17 May 2006. Their trial was to commence on 23 July 2007 but, approximately one week beforehand, a sentence indication hearing was held before Judge McElrea. The sentence indications given at that time were slightly higher than those ultimately imposed.

[6] On the same day as the sentence indication hearing, a Panchayati conference was held. We were told this is a traditional Sikh process aimed at resolving conflict. The conference was attended by the offenders and by elders from the Sikh community.

[7] The following day, the appellants entered pleas of guilty.

[8] This was followed on 10 September 2007 by a restorative justice conference directed by the Court and attended by the offenders, the victim and members of the Sikh community. These processes had successful outcomes in that the offenders apologised to the victim, agreed to undertake some community work for the Sikh community, and it was agreed that total reparation of \$40,000 would be paid. The victim was satisfied with the outcome but made it clear that he still expected the offenders to be dealt with by the Court. He stated however that he did not wish the Court to impose a sentence of imprisonment.

### **The Judge's sentencing notes**

[9] The sentencing remarks of the Judge are extensive and demonstrate the great care he took in what was clearly a lengthy sentencing process. He had before him not only the usual pre-sentence reports but also reports from the two conferences mentioned. He also received written material from five senior members of the New Zealand Sikh Society in Auckland describing the efforts that had been made to resolve the issues arising from the offending. As well, the Judge heard from a cultural spokesman from the Sikh community. Finally, the Judge had a victim impact statement and heard from the victim himself, in Court.

[10] There is no dispute about the facts as described by the Judge. At about 7.40 pm on 18 November 2005, the appellant Gurnam Buttar was driving along Mt Albert Road in the vicinity of Mt Roskill in the company of his nephew Gurpreet Buttar, the other two appellants and the man not yet dealt with. The victim was driving another motor vehicle in the same direction. His vehicle was overtaken by the vehicle driven by Gurnam Buttar. The Judge's description of the facts then continues:

[5] Upon overtaking the victim's vehicle Mr Buttar senior stopped his vehicle in front of the other, causing it to stop and causing a backlog of traffic. The accused got out of their vehicle and approached the victim who was still seated in his. The accused Gurnam Buttar was armed with a traditional sword, and the accused Gurpreet Buttar was armed with a metal rod.

[6] The accused immediately attacked the victim's vehicle using the weapons, smashing the windscreen and chopping at pillars around the driver's door. The group pulled the victim from his vehicle and began to strike him numerous times about his head and body using the weapons. Those not armed physically detained him, by holding him, allowing those with weapons to strike him. During the attack he was able to break free and run a short distance from the group but was quickly caught and was again attacked a second time in a similar fashion. Throughout the attack the victim was repeatedly struck with punches and kicks by all of the accused.

[7] As members of the public began to intervene the accused ran back to their vehicle but Gurnam Buttar stopped just prior to entering the vehicle and raised the sword used in the attack above his head in a victory type salute to those looking on.

[8] As a result of the attack the victim received injuries that necessitated his hospitalisation because there were serious lacerations or cuts to his head and body, and bruising to his head and body. Two of the lacerations had underlying skull fractures. His right arm was fractured under a laceration that required surgery to repair, and the victim also received lacerations to his hands where he attempted to hold the blade of the sword used in the attack.

[11] The victim impact statement shows that the attack was both frightening and painful for the victim resulting in a loss of consciousness for a period and requiring his hospitalisation for several days. Although the Judge noted that the victim appeared to have fully recovered from the physical effects of the attack, the victim stated that he continues to have headaches.

[12] The Judge undertook a very thorough analysis of the factors identified by this Court in *R v Taueki* [2005] 3 NZLR 372. It was agreed before us that the case fell within Band 2 identified in *Taueki* which would warrant a starting point in the range of 5-10 years imprisonment. The Judge considered, properly in our view, that there was very considerable violence, although it did not reach an extreme level. He noted however that it was not prolonged.

[13] The Judge then examined the issue of premeditation, noting there had been "a history of bad feeling amounting to a feud which put both men and their families under very heavy and direct stress". He accepted a submission made by counsel that the stress on this particular day had caused Mr Gurnam Buttar to "snap". The Judge concluded that there was a moderate level of premeditation on the part of Mr Gurnam Buttar.

[14] In respect of the other appellants, the Judge accepted there was no advance planning and that they understood they were going to the movies. The Judge concluded that the level of premeditation on their part was “very low” and that they had become involved, at very short notice, once Gurnam Buttar got out of the car and “led the charge”.

[15] The Judge noted other aggravating factors, including the use of the weapons. He described the ceremonial sword as being sufficiently sharp to be able to inflict serious injuries, while the metal rod seemed to have been something that came to hand rather than being carried in the car for the purpose for which it was used. The fact that there were multiple attackers and that the victim was struck about the head were further aggravating factors.

[16] The Judge adopted a starting point of seven years’ imprisonment for Gurnam Buttar, and five years for the other three appellants.

[17] The Judge went on to consider the mitigating factors. He accepted that none of the appellants had previous convictions, all came with excellent references and their conduct was out of character for all of them. The appellants were young men aged in their 20s and 30s and most had family responsibilities. All would suffer from imprisonment in terms of loss of work. Gurnam Buttar and Harpal Nijjar had lost their taxi driver licences and were unlikely to recover them.

[18] The Judge also paid particular attention to the outcome of the restorative justice conferences, which he regarded as addressing many of the sentencing purposes identified in s 7 of the Sentencing Act 2002. The Judge also accepted that the offer of amends was significant and had been accepted by the victim as expiating or mitigating the wrong in terms of s 10.

[19] The Judge concluded that a discount of 50 percent from the starting point was required in respect of all appellants. This included an allowance of 15-20 percent for the pleas of guilty. Each of the four appellants was ordered to pay reparation of \$10,000. Those sums have been paid.

## **Grounds of appeal**

### *Starting Point*

[20] Mr Cordwell submitted that the sentencing Judge erred in his determination of the level of premeditation and that, in consequence, the starting point for the sentences was too high.

[21] It is common ground that there is no evidence of any pre-planning by the appellants to attack the victim. In that sense, premeditation may be a misnomer. But we are not persuaded that the sentencing Judge was led into any error in adopting the starting points of seven and five years respectively.

[22] The seven year starting point for Gurnam Buttar was slightly less than the middle of the range for Band 2 offending in terms of *Taueki*. In our view it was amply justified. Gurnam Buttar, for whatever reason, had the sword in his vehicle and, after deliberately overtaking and stopping the victim's vehicle on a busy roadway, led a violent attack on the victim and his car resulting in serious injury to the victim and damage to the vehicle. When the victim tried to escape, he was pursued again, caught and the attack continued. It concluded with the intervention of passers-by. By any measure, this was an appalling display of violence involving a concerted attack by multiple offenders on an unarmed victim who was powerless to defend himself.

[23] While the other three appellants were not pre-armed and may well have had no prior intimation of what was to occur, they all got out of the vehicle and joined in the attack in various ways. This included, in the case of Gurpreet Buttar, striking the victim with the metal bar. The others were involved in holding the victim while he was struck by the others as well as punching and kicking the victim. Their involvement cannot be described in any sense as peripheral, although we accept that their culpability was lower than that of Gurnam Buttar as the principal offender. It was not suggested there should be any differentiation as between Gurpreet Buttar and the other lesser offenders.

[24] We conclude that the starting points adopted by the Judge were well justified.

### *Discount*

[25] Mr Cordwell submitted that a greater discount should have been given for the mitigating factors. He accepted that the discount indicated by the Judge of 15 to 20 percent for the pleas of guilty was appropriate (given that the guilty pleas did not come until one week before trial) but he submitted that the other mitigating factors justified, by themselves, a further discount of the order of 50 percent.

[26] We cannot accept this submission and consider the appellants fortunate to have received a total discount as large as 50 percent. No doubt this reflected to some extent the Judge's view of the success of the restorative justice process, but we endorse the observation quite properly expressed by the Judge at [28] of the sentencing notes, that notwithstanding the victim's view as to an appropriate sentence:

The Court has a much wider mandate and must represent the interests of all concerned including society as a whole.

[27] While recognising the benefits associated with the restorative justice process, the Sentencing Act requires a firm response from the Court to incidents of serious violence, particularly those involving the use of weapons. In such circumstances, as the Judge recognised, the Court cannot lose sight of the significance of the statutory purposes of denunciation and deterrence.

### **Result**

[28] For the reasons given, the appeals against sentence are dismissed.

Solicitors:  
Crown Law Office, Wellington