IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CRI-2008-004-20749
CRI-2007-063-4441
CRI-2007-004-23066
CRI-2007-085-7843

THE QUEEN

v

TAME WAIRERE ITI
TE RANGIKAIWHIRIA KEMARA
URS PETER SIGNER
EMILY FELICITY BAILEY

Hearing: 24 May 2012

Counsel: AR Burns, E Finlayson-Davies and DM Robinson for Crown
R Fairbrother and GM Fairbrother for Tame Iti
JH Bioletti, CB Hirschfeld and NJB Taylor for Te Rangikaiwhiria Kemara
CWJ Stevenson and EA Hall for Urs Singer
VC Nisbet and CAJ Fewkes for Emily Baker

Sentence: 24 May 2012

SENTENCING NOTES OF RODNEY HANSEN J

Solicitors:
Crown Solicitor, Auckland ross.burns@meredithconnell.co.nz and emma.finlayson-davis@meredithconnell.co.nz
V C Nisbet, val.nisbet@xtra.co.nz
R Fairbrother Russell@fairbrother.net.nz
C Stevenson cstevenson@xtra.co.nz
J N Bioletti, acquit@xtra.co.nz

Introduction

[1] Mr Iti, Mr Kemara, Mr Signer and Ms Bailey, you appear for sentence having been found guilty by a jury of charges of unlawful possession of firearms and a restricted weapon. Each of you were found to be in unlawful possession of firearms at military-style camps in the Urewera Ranges in January, September and October 2007 and, with the exception of Mr Signer, at a camp in June of that year. You were also found to be in possession of a restricted weapon, namely Molotov cocktails, at the September camp and to be in possession of firearms when the police operation terminated on 15 October 2007.

[2] You were found not guilty on four charges relating to camps in November 2006 and April and August 2007. The jury was unable to reach a verdict on a charge of participating in an organised criminal group. On the application of the Crown, a stay of proceedings has since been entered on that charge.

Application to discharge

[3] It is appropriate that I first rule on the applications made to discharge you without conviction. Those applications are advanced under s 347(3) of the Crimes Act 1961 and s 106 of the Sentencing Act 2002.

Section 347(3)

[4] The first obstacle to the applications for a discharge under s 347 is a jurisdictional one. In *Attorney General v District Court at Auckland & Fong*,[1] a Full Court held that the entry of a conviction extinguishes the jurisdiction to discharge an accused under s 347(3). Convictions were entered following the verdicts of guilty in this case. There would appear therefore to be no jurisdiction to grant the applications.

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1 *Attorney General v District Court at Auckland & Fong* HC Auckland CIV-2006-404-5460, 2 April 2007 at [28].

[5] I will, however, proceed to consider (briefly, given the context in which this ruling is being given) whether even if there was jurisdiction, the application could succeed either by a discharge under s 347 or by way of a stay of proceedings under the Court's inherent power to control its processes.

[6] The applications stem from the decision of the Supreme Court in *Hamed v R*[2] which ruled surveillance evidence admissible against the four accused who faced charges under the Arms Act 1983 and a charge under s 98A of the Crimes Act but not against their co-accused who were charged only with offences under the Arms Act. The decision led to the Crown electing not to proceed with charges against the co-accused. The decision is said to result in unfairness to the four prisoners who were subsequently found guilty on the Arms Act charges only as, following the jury's inability to agree on verdicts on the s 98A charge, the Crown sought a stay of proceedings.

[7] It is submitted that the unfairness arises because evidence that was ruled inadmissible against those facing only Arms Act charges was used as the basis for convicting the applicants on those charges alone. This has led to an apparent disparity in the way in which the two groups have been treated.

[8] For Mr Signer, Mr Stevenson further submits that convictions which plainly relied on the surveillance evidence ought not to be sustained in circumstances where, to use his words, the seriousness of the actions founding the charge of participating in a criminal group was "recalibrated and downgraded" by the Crown at trial. Instead of a case which Blanchard J had said involved the planning of an "armed uprising", the Crown said the primary objective of the group was to achieve peaceful resolution of Tuhoe grievances with serious violent offences contemplated in the event peaceful resolution could not be achieved.

[9] Mr Nisbet, for Ms Bailey, also relies on a change in the way in which the Crown case was advanced. He points out that Blanchard J inferred that there was no evidence linking those charged only with Arms Act offences to the criminal group, whereas at trial the Crown made clear in closing that its case was that the jury could

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2 *Hamed v R* (2011) 25 CRNZ 326.

find anyone was a member of the group. He submits that the four prisoners were "singled out" as representatives of the group, but not exclusive members as initially contended by the Crown and interpreted by the Supreme Court. He says the treatment of the prisoners is "manifestly unfair" in comparison to their former co-accused.

[10] As the Crown has demonstrated in its analysis of the Supreme Court judgments, it is potentially misleading to focus on the judgment of Blanchard J. He was the only judge to find the distinction between the two classes of accused a decisive consideration. However, as his judgment is the source of the complaints that the Crown case was misunderstood or mischaracterised, I will briefly address those complaints.

[11] I am satisfied that the Crown advanced its case against the applicants at trial on substantially the same basis as anticipated by the Supreme Court. The applicants were alleged to have as their objective the commission of further serious offences of violence.[3] Although the term "armed uprising" may not have been used, the gist of the Crown case was not materially different. Mr Burns said in opening:[4]

> The training exercises the Crown says is to equip them to do such things as kidnap people, to commit acts of sabotage and commit basically armed combat. For want of a better word, to commit guerrilla warfare.

A finding that the commission of further serious offences of violence was indeed the overall objective was open to the jury on the evidence.

[12] It is the case, as Mr Nisbet points out, that in assessing the seriousness of the offending, Blanchard J inferred that there was no evidence linking those charged only with Arms Act offences to the alleged organised criminal group even as prospective members,[5] whereas the Crown case was presented at trial on the basis that all involved could have been members of the criminal group.

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3 At [199].
4 At [17] of the transcript.
5 At [200].

[13] That does not, however, affect the Supreme Court's assessment of the seriousness of the charges against those facing a charge under s 98A in addition to Arms Act charges. The critical distinction identified by Blanchard J was that, unlike the co-accused, the four were charged with an offence going beyond the criminal offending which they allegedly committed by the use of weapons during the training camps. [6] That is why the Court concluded that there was "a very real public interest" in having the truth or otherwise of the allegations resolved by trial.[7]

[14] I do not accept that there is any unfairness or impropriety about the use of the surveillance evidence by virtue of its having been ruled inadmissible against the remaining co-accused. The fact that the co-accused were not required to face trial on the charges against them is self-evidently to their advantage but is not thereby a source of unfairness to those who were convicted at trial. The fact that the jury was unable to agree on the s 98A charge does not retrospectively affect the analysis which led to the evidence being admitted in the first place. As submitted by the Crown, the issue of admissibility is one which is made pre-trial having regard, among other things, to the seriousness of the offending alleged. It is not a matter to be examined post-trial in the light of the way in which the trial ultimately concluded.

[15] In any event, if the jury's verdict is to be revisited, it cannot be by way of an application to discharge. The appropriate remedy, if grounds are thought to be available, is to appeal to the Court of Appeal under s 385 of the Crimes Act on the ground that the verdicts involved a miscarriage of justice.[8]

Section 106

[16] Under ss 106 and 107 of the Sentencing Act, a Court may discharge without conviction if "the direct and indirect consequences of a conviction would be out of all proportion to the gravity of the offence." A discharge on the grounds that convictions are unfair, having regard to the way in which the charges against co-accused were disposed of, would run counter to the clear direction given in *R v*

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6 At [206].
7 At [206].
8 *R v Jeffs* [1978] 1 NZLR 441 at 443 cited in *Fong v Attorney-General* [2008] NZCA 425 at [32].

Shaheed[9] and endorsed in *Hamed*[10] that a reduced sentence on conviction is not available to remedy a breach of the Bill of Rights Act 1990 which has led to the exclusion of evidence.

[17] I will proceed then to sentence on the basis that the consequences of the decision in *Hamed* ruling the surveillance evidence admissible only against the applicants is not a relevant consideration on sentence.

Factual background

[18] The circumstances in which the offending occurred are of paramount importance for sentencing purposes. To help set the scene, I will first outline what I consider to be incontrovertible and largely uncontroversial facts.

[19] The camps or rama, as they were called by participants, took place in three locations in the Ruatoki Valley near the township of Ruatoki in the Bay of Plenty region. Two of the sites were in bush-clad hills, the other in open riverside land on the outskirts of the town.

[20] The numbers attending the camps varied and could not be determined with precision. My impression is that they ranged from as few as 10 to as many as 30. Some of the participants lived locally. Others travelled from a distance to attend. They included Mr Kemara who drove with others, from Auckland and Ms Bailey and Mr Signer, who normally lived in Wellington. Mr Signer was, however, staying in Ruatoki when the October camp took place. Mr Iti resided in the area.

[21] There were firearms present and used at each of the four camps. They could not always be identified with precision but included semi-automatic weapons (capable of firing a round each time the trigger is pulled), sawn-off shotguns and .22 sporting rifles. The semi-automatic weapons, when fitted with a magazine of seven rounds or more, would qualify as a military-style semi-automatic weapon.

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9 *R v Shaheed* [2002] 2 NZLR 377.
10 *Hamed v R* at [202].

[22] There is evidence that each of you was in actual physical possession of a firearm on at least one occasion. In my view, on a realistic assessment of the evidence, the jury is also likely to have accepted the Crown case that you were jointly in possession of the firearms present at the camps you attended or that you encouraged and assisted those who had actual physical custody of the firearms. The camps were collaborative endeavours. The firearms were accessible to all present. It would be artificial to suggest that proof of actual physical custody on each occasion was required in order to establish possession. And, as Mr Burns pointed out in reply, guilty verdicts were returned on count 10 relating to the October camp though there was no evidence of three of the prisoners being in physical possession.

[23] The camps were primarily directed to training participants in military manoeuvres and exercises. This was clear from the surveillance footage and the evidence of the Army officer, which was not really challenged. There was also the evidence of the two brothers who were made to participate in a simulated ambush at the January camp.

[24] On occasions the exercises involved the discharge of the firearms. Gunshots were heard or recorded in January, June and October and empty shells were found at the location of the later camps.

[25] Molotov cocktails were made and thrown at the September camp. None of you was identified as one of those using the weapons but Mr Signer, you were seen on the surveillance footage passing a Molotov cocktail to one of your former co-accused, Trudi Paraha. The verdict on this count also confirms that the jury did not rely on evidence of an individual having physical custody of a weapon.

[26] When the police operation was terminated, you were all found in possession of firearms. Under a tarpaulin at your house in Ruatoki, Mr Iti, three rifles were found, two of them semi-automatic. Two of those weapons had been bought by Mr Kemara from an arms dealer.

[27] Mr Kemara, four rifles and a semi-automatic shotgun were found in your possession. Four were in the boot of your car. One was in a caravan that you occupied.

[28] Mr Signer and Ms Bailey, you were found to be in joint possession of a .22 calibre rifle. It is known as a takedown rifle as it can be taken apart for ease of carriage. It was found a backpack at a campsite you occupied in Wellington.

[29] Possession of firearms and restricted weapons is not unlawful if the possession is for a lawful, proper and sufficient purpose. The person in possession is required to prove the legitimate purpose. Through your counsel, you suggested several possible explanations for the military camps and the use of firearms. One was that they were undertaken for the purpose of teaching bushcraft and survival skills. Another was that they provided training for employment in the security industry, either locally or overseas.

[30] It came as no surprise that the jury rejected these explanations. In my view, they were utterly implausible. There was evidence of some activities at the camps which were not inconsistent with these theories – a discussion on health issues at the January camp and the instructions given by Rau Hunt to the larger group at the October camp – but the inference to be drawn from the evidence overall points irresistibly to the camps having been planned and conducted for the purpose of providing military-style training. I will say something more about this evidence later in my remarks.

Maximum sentence

[31] The offence of unlawful possession of firearms and/or a restricted weapon carries a maximum sentence of four years imprisonment. The Crown says that because there was multiple offending over a period of almost a year and serious aggravating features, a longer sentence is required in order to appropriately reflect the overall criminality involved. I acknowledge that I am not limited to a sentence of four years if I consider the gravity of the offending to warrant a longer term.

[32] In order to assess the overall criminality of the offending, it is necessary first to examine the aggravating features of the offending and the role that you each played. But before I do so, it is appropriate for me to say something about the purpose of sentencing in a case such as this.

Purpose of sentence

[33] The unlawful possession of firearms is rightly regarded as serious offending. It will normally attract a prison sentence. The reasons were well put in the following passage from the English Court of Appeal:[11]

> The unlawful possession and use of firearms is generally recognised as a grave source of danger to society. The reasons are obvious. Firearms may be used to take life or cause serious injuries. They are used to further the commission of other serious offences. Often victims will be those charged with the enforcement of the law or the protection of persons or property.

The New Zealand courts have made comments to similar effect. The possession and use of lethal weapons has been described as "utterly unacceptable" and to be discouraged. In the absence of special circumstances, possession of dangerous firearms will normally lead to the imposition of a prison sentence.[12]

[34] By reference to the purposes of sentencing identified in the Sentencing Act 2002, there is a need to both denounce such offending and deter like offending. Society, through the courts, shows its abhorrence of such crimes, by the sentences passed.[13] It is the means by which society's condemnation of the indiscriminate use of firearms is made manifest.

[35] The issue of whether the offending caused harm to the community is controversial. There is no evidence that the use of weapons at the camps risked harm to anyone other than the participants, although the [two] brothers had a frightening experience when they became unwitting actors in a simulated ambush at the January camp. But the Crown says there was harm to the local community who were divided over what happened.

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11 *R v Avis* [1998] 1 CrAppR 420 at 423.
12 *R v Corner* CA 291/87, 17 March 1988.
13 *R v Sargeant* (1974) 60 CRAppR 74 at 77.

[36] There is some support for that in the quoted remarks of a Tuhoe kaumatua who spoke at an earlier hearing of the concern of the "old people" about what happened. I am cautioned against accepting what he said but it is not inconsistent with Mr Tamati Kruger's evidence at trial. He said that some people in the Taneatua and Ruatoki communities may have been "disagreeable" with what was happening while others thought no ill and some were very supportive. And he accepted that training with Molotov cocktails was utterly unacceptable and that the use of military patrols was not part of Tuhoe's plans.

[37] I would not presume to venture an assessment of the range of opinions held by Tuhoe but I do not doubt that your activities engendered or exacerbated divisions among Tuhoe (as they have done in the wider community) and were damaging to what the Crown described as the "growing but fragile trust" between Tuhoe and the Crown.

[38] There has been focus on the damage said to have been done by the police operation. That should not divert attention from the unlawful activities which necessitated the investigation in the first place. They are the root cause of the dissension and consternation that accompanied and followed disclosure both locally and nationally. I consider harm has been done to the community for which you should be held accountable and which must be appropriately reflected in the sentences I impose.

Aggravating factors

[39] Within those broad parameters, I come now to make an assessment of the seriousness of the offending and the culpability of each of you. That will enable me to fix a starting point for sentence before considering factors personal to each of you. This assessment requires first a consideration of the aggravating features of the offending.

[40] The first is the lengthy period spanned by the offending and its repetitive nature. This was not the sort of one-off incident which commonly confronts the Court in sentencing for the unlawful possession of firearms. Nor was it the

opportunistic offending often encountered in firearms charges. The offending in this case was characterised by premeditation and careful planning.

[41] There were multiple weapons involved. Eleven weapons were located when the operation was terminated. It was not always easy to identify separately the weapons in use at the camps, but it appears that nine firearms were available at the September camp and eight in January. As I have said, a number of weapons were semi-automatic, capable of being fitted with magazines which would create military-style firearms, requiring a special licence. We know that some were bought at considerable cost. There was evidence of Mr Kemara paying sums of $399, $1,400 and $950 for individual firearms. This reflects the considerable resources in time and money devoted to the enterprise.

[42] The particular characteristics of a Molotov cocktail is highly relevant. While firearms training can be undertaken for legitimate purposes, the same cannot be said of exercises involving Molotov cocktails. Defence witnesses, including Mr Kruger, acknowledged that training in the manufacture and use of Molotov cocktails could not be reconciled with the peaceful purposes relied on by the defence to explain what happened at the camps.

[43] Your counsel have argued that because the jury was unable to agree on count 1, it is not open to me to make findings as to the purpose for which the weapons were held and used and that it is unnecessary for me to do so. I do not accept that. The question of whether the four of you participated in a criminal group, which had as its objective the commission of serious crimes of violence, is quite distinct from the issue of why you acquired the firearms and deployed them at the camps. Your intention in that latter sense is highly relevant to an assessment of your culpability[14] and there is sufficient evidence on that issue to satisfy me to the standard of beyond reasonable doubt.[15]

[44] The firearms were used to train participants in military-style exercises. The intention was to train participants in the use of weaponry with the potential to

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14 See *R v Avis* at 423; *R v MacDonald* CA108/00, 10 July 2000 and *R v Wright* (1991) 7 CRNZ 624.

15 As required by s 24 of the Sentencing Act 2002.

operate for paramilitary purposes. Although there were elements of Dad's Army in the group and some of the firearms drills attracted critical comment, the intent was serious. This was obvious from the surveillance footage itself and what was said in chat room conversations involving members of the leadership group:

- Mr Iti described the group as "a revolutionary military wing o Aotearoa".

- In conversation with Mr Iti, Mr Kemara referred to "planning the surrender of the Urewera".

- In another conversation with a third party Mr Iti referred to training "to smash the system".

- In conversation with Ms Paraha in response to a statement by her "I don't really want to kill if I can help it" Mr Kemara said, "No one wants to kill, we are training to kill because we will probably have to ... i.e. being attacked".

[45] These were not idle boasts. They reflect the tenor of conversations intercepted intermittently over a long period of time.

[46] There is other evidence to similar effect:

- One of the Carter brothers quoted Mr Iti as saying that the exercises were for "preparing troops for battle ... urban warfare".

- Tuhoe Lambert's diary referred to military manoeuvres and the "Scenarios" document, of which you, Mr Signer, was the author, detailed exercises which involved, among other things, "eliminating" a guard and blowing up a building, and kidnapping. Another scenario refers to "MT" and lists the ingredients of a Molotov cocktail.

[47] As I view the evidence, in effect, a private militia was being established. Whatever the justification, that is a frightening prospect in our society, undermining of our democratic institutions and anathema to our way of life.

[48] The training brought about the heightened risk of putting arms and know-how into the hands of individuals who could not be relied on to exercise the same restraint as you. I excluded from evidence alarming text messages from one former co-accused because they did not qualify for admission under the co-conspirators rule. They showed, however, that one at least of those involved in the camps held extreme anarchist views. Another of the participants, in conversation with Mr Kemara, spoke of experimenting with an explosive device that was capable of killing people if thrown into a room.

[49] Cumulatively these factors disclose much more serious offending than any of the cases referred to me in which sentences of up to three years imprisonment have been imposed for possession of firearms on a single occasion or during a short period. One of the most serious is *R v McDonald*;[16] where four weapons were found and sentences of three years imprisonment upheld. Another was *R v Wright*,[17] where sentences of between 24 months and 41 months were upheld in a case involving the possession of four weapons and ammunition, what was described as "nothing less than an arsenal of lethal weapons".

[50] Your counsel argue that your offending is not comparable to the possession and use of firearms by gangs as was the case in *McDonald* and *Wright* and many of the cases of unlawful possession of firearms which come before the Court. They point out that the Court of Appeal in *Wright* referred to as one of the "worst examples" of the offence the possession of an arsenal of lethal weapons for use in inter-gang conflict. In *McDonald*, where the facts were described as "strikingly comparable" to *Wright*,[18] the weapons were said to have been kept "readily available at [gang] headquarters for use in possible gang conflict".

Mitigating factors

[51] I accept that your offending has features which distinguish it from all of the cases I have been referred to and which make direct comparisons with other

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16 *R v McDonald.*
17 *R v Wright.*
18 *R v McDonald* at [20].

sentences unhelpful. The first of these features is that the ultimate goal to which possession of the weapons was directed was not a criminal one. That is not intended to convey any view on the charge of participating in a criminal group. It is simply to acknowledge what is common ground, namely, that your activities were directed to the objective, in a general sense, of redressing Tuhoe grievances and, more specifically, to achieving mana motuhake or a form of self government for Tuhoe. In contrast, the unlawful possession of firearms is invariably associated with other criminal activities, commonly drug-dealing and offences of violence.

[52] Except in rare cases (and this is not one of them), it is no defence to allegations of criminal offending that it took place in the pursuit of laudable objectives. As I said to the jury in summing up at the trial, a crime committed in pursuit of a noble ideal is as much a crime as a criminal act done for a base motive. The end does not justify the means. In 1998, Elias J (as she then was) made the same point when sentencing you, Mr Iti, on a charge of discharging a firearm and one of assault. She acknowledged that the offending constituted your way of disciplining young people in the Ruatoki community who were engaging in systematic criminal activity. She said:[19]

> I know that you are someone of standing in the community, but the authority that comes with that standing needs to be scrupulously exercised with careful self-control. We all think we act for the best. It is very easy to fall into the trap of thinking that the end justifies the means. That sort of thinking is ultimately destructive of communities, not supportive of them.

She went on to say:

> It is necessary to impose a penalty which deters others from having recourse of self help which crosses the line between what is permissible community resolution and what is illegitimate imposition of will.

The prison sentence she imposed was suspended, a sentencing option which is no longer available.

[53] While the fact that your offending occurred in pursuit of altruistic motives cannot excuse what has happened, it can be appropriately recognised on sentence. It is also highly relevant, in my view, that there was no immediate intention or

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[19] *R v Iti* HC Rotorua T119/97, 10 July 1998.

imminent prospect of violent offending. The Crown case was that the strategy was to realise Tuhoe aspirations by peaceful means if possible. If negotiations did not achieve those goals, violent means would be adopted. Negotiation was Plan A, force was Plan B. Mr Iti, you made that explicit in one of the chat room conversations.

[54] At trial the Court heard that there has been rapid and unprecedented progress over recent years towards achieving those objectives. The jury heard of the Waitangi Tribunal hearings in 2005, in the course of which the Crown made important concessions as to the wrongfulness of the nineteenth century confiscation of Tuhoe land, and of the political compact signed by the Crown last year which recognises Tuhoe's right to determine its own future in many areas. You were a lead claimant before the Tribunal, Mr Iti, and Mr Tamati Kruger described you as the "precursor" of the negotiations and instrumental in their coming sooner rather than later.

[55] In these circumstances, one of the enduring mysteries of this case, which the defence has done nothing to dispel, is that you saw it as necessary to have a Plan B at all, and devoted so much in time and money to develop some sort of military capability. There is nothing to show any real likelihood that Plan B would be implemented and that the possession and use of the weapons would have led to offences of violence against persons or property. That is a significant mitigating factor which should be reflected in final sentence.

Individual roles

[56] The Crown has argued that there is no basis on which to differentiate the culpability of the four of you in any meaningful way save to recognise the additional firearms possessed at termination.

[57] I do not accept that there is nothing else to distinguish between your roles. The intercepted communications confirm that Mr Iti was one of the instigators, if not the instigator of the offending and, Mr Iti, you certainly were the person mainly responsible for organising the camps. You settled on the dates. You were the decision maker. The intercepted communications show that you, Mr Kemara, liaised closely with Mr Iti about arrangements for the camps and were primarily responsible

for purchasing weapons and ammunition. In addition to the weapons the subject of the charges it is clear that you obtained explosive devices said to be capable, as I have said, of killing everyone if thrown into a room which were tested by another co-accused, Ira Bailey. In military terms, I see you as Mr Iti's lieutenant.

[58] I see nothing in the evidence to indicate that Ms Bailey and Mr Signer were involved in the development and planning of the project of which the individual camps were a part. In my assessment, what was described as an organising role in Wellington was primarily liaison with other participants. For example, Ms Bailey went to Mr Iti to obtain dates for the rama and a time and place for a meeting. There is nothing to suggest that she or Mr Signer were one of the directing minds of the operation.

[59] I consider your respective roles are substantially reflected in the weapons found in your possession at termination. Messrs Iti and Kemara held a number of the weapons used by the group, including military style semi-automatic weapons together with ammunition and magazines. Ms Bailey and Mr Signer were in joint possession of a rifle generally used for hunting small animals.

Sentence

[60] That completes my review of the factors that I consider to be relevant to sentence, subject only to a consideration of personal circumstances. They establish, in my judgment, that a sentence of imprisonment is unavoidable. The alternatives suggested by counsel are simply inadequate to reflect the gravity of the offending. It is my responsibility to convey in unambiguous terms society's rejection of the possession and use of firearms and other weapons, other than for legitimate purposes, and to put paid to any notion that their use can be excused if the cause is right.

[61] That said, the term of imprisonment I impose should reflect the very significant mitigating factors I have identified as well as the differing individual levels of culpability. Were it not for these mitigating factors, I would have accepted that the starting point suggested by the Crown of 5 to 6 years was appropriate. But I

regard it as highly relevant that the offending was not gang-related or associated with what I might call "conventional" avenues of criminal activity. On the contrary, it occurred in pursuit of a worthy ideal and, perhaps most significantly, involved only a remote risk that it would lead to crimes of violence.

[62] In my view, those factors warrant a starting point for sentencing purposes of three years imprisonment for Mr Iti and Mr Kemara. That reflects the leading roles you each had in the offending, including your possession of multiple firearms at the termination of the operation.

[63] Some reduction in sentence is required to take account of the time you spent in custody on remand, the restrictive conditions of bail under which you have lived for a lengthy period and the fact that you have been living under a cloud of uncertainty for almost five years now. Mr Kemara, you are also entitled to credit for your previously unblemished record. Mr Iti, you have previous convictions, including the one I mentioned for a firearm offence. That was in 1998 and I do not think it calls for any uplift to your sentence. On the other hand, there is in your favour an outstanding record of service to your community. It is a sad duty indeed to impose a sentence that takes you out of the community to which you are contributing so much. Those factors justify a reduction in sentence of six months to one of two years and six months.

[64] Under the transitional provisions in force at the time of the offending,[20] there is jurisdiction to impose a sentence of home detention. Mr Iti, you have made it clear that that is not an option as far as you are concerned because of the continued disruption it would cause to your family. However, I do not regard it as an option for you and Mr Kemara in any event. Your roles in the offending and the importance of denunciation and deterrence excludes anything other than a full custodial sentence.

[65] Ms Bailey and Mr Signer, your position is materially different. You were followers, not leaders. You are both passionately committed to the pursuit of social justice. My sense is that your belief in the justice of the Tuhoe cause, espoused by a charismatic and dominating personality in Mr Iti, allowed you to be drawn into a

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[20] Sentencing Amendment Act 2007, s 57.

project without any clear understanding of what it involved and where it would lead. It engendered the sense of entitlement referred to as a factor contributing to the offending in several of the pre-sentence reports. Mr Signer, the evidence you called at trial and the testimonials you have tendered attest to your peace-loving character. They are impossible to reconcile with the man who was engaged with others in learning how to use Molotov cocktails and who authored training scenarios which at least simulated violence to persons and property. It is another of the contradictions in this case which I am at a loss to explain.

[66] I consider your roles in the offending warrant a much reduced starting point of two years imprisonment which I would reduce by six months to take account of your previous good character, the restrictive bail conditions, the uncertainty I have already referred to and your personal circumstances. I do not overlook, Mr Signer, the particular consequences of convictions for you, including the difficulties they may cause for your immigration status. They could be assisted only by discharges without conviction which could not possibly be countenanced.

[67] Having regard to the lesser role that you both had in the offending and your responsibilities to your infant son, I would be prepared to impose a sentence of nine months home detention if a suitable address were available. I have been told that it may be possible for you to serve a sentence of home detention at Parihaka. I propose to adjourn sentence to enable reports to be prepared on whether arrangements can be made for a sentence of home detention to be served at Parihaka or elsewhere.

Result

[68] Mr Iti and Mr Kemara, on each of the counts of which you were convicted, you are sentenced to concurrent terms of two and a half years imprisonment.

[69] Mr Signer and Ms Bailey, your sentences are adjourned to 21 June to enable the home detention reports to be prepared. In the meantime, you are remanded on bail on existing terms and conditions.

Mmaman J.