In the Court of Appeal of the Cook Islands
Held at Rarotonga **CA No 2/ & 3/2017**

IN THE MATTER	**of an appeal against convictions and sentence under section 67 of the Judicature Amendment Act 2011**
BETWEEN	**NGATAMARIKI KATUKE**
	First Appellant
AND	**TOUMITI KATUKE**
	Second Appellant
AND	**The Crown**
	Respondent

Coram: Williams P
Barker JA
White JA

Hearing: 14 and 15 June 2017
Judgment: 6th July 2017
Counsel: Mr N George for both Appellants
Ms A Mills for the Crown

JUDGMENT OF THE COURT

Solicitors: Norman George PC for Appellants
Crown Law Office for Respondent

A 1. The appeal against conviction of Ngatamariki Katuke is dismissed.

2. The appeal against conviction of Toumiti Katukio is dismissed.

A. The appeal against sentence by Ngatamariki Katuke is dismissed.

B. The appeal against sentence by Toumiti Katuke is dismissed.

Introduction

[1] On 5 May 2017 both appellants were found guilty by a jury after a five-day trial in the High Court at Rarotonga.

[2] The appellant Ngatamariki Katuke ("Ngatamariki") was found guilty on

a) one charge of injuring Miimetua Katuke ("Mii") by assaulting him around the head with intent to injure;

b) one charge of injuring Mii with intent to injure by kicking him; and

c) one count of injuring Mii with intent to injure by hitting him with a bush knife.

[3] The second appellant Toumiti Katuke ("Toumiti"), wife of Ngatamariki, was found guilty on one charge of injuring Mii with intent to injure by assaulting him around the head. This and the similar charge against Ngatamariki were representative charges.

[4] On 12 May 2017, Potter J, the trial judge, sentenced Ngatamariki to 4 years 6 months imprisonment and sentenced Toumiti to 4 years imprisonment plus an uplift of another 3 months for an earlier charge of common assault on Mii for which offence Toumiti had pleaded guilty

before the trial, thus leading to a total sentence length of 4 years 3 months imprisonment.

[5] Both appellants appeal against conviction and sentence. Prior to the appeal hearing, Barker JA, sitting as a single Court of Appeal judge, had on 7 May 2017 dismissed applications by both appellants for bail and for leave to call further evidence on appeal. The request of counsel for the appellants that they be allowed to attend the appeal hearing was granted by the President. An interpreter was provided to translate the appeal proceedings into Maori for the appellants.

[6] The conviction of Toumiti was a unanimous verdict of the jury. The convictions of Ngatamariki were the result of majority verdicts delivered in accordance with the relevant legislation.

Crown case

[7] The Crown case was that Mii, the 34 year old nephew of Ngatamariki, had been living with the appellants in Atiu since 2010 after the death of his grandmother. Mii was described as 'slow' or 'mentally retarded'. He received a pension and was dependant on the appellants for his care. The Nurse in Charge at Atiu Hospital lived in the same village as Mi'i. She saw him in September 2015 and said that he was walking normally and that his eyesight was "fine".

[8] It was alleged that both appellants, over a period from November 2015 to 4 February 2016, repeatedly assaulted Mii by assaulting him around the head, face, and eyes at various locations near their home in Atiu and that Ngatamariki also kicked him and hit him with a bush knife. Mii suffered physical injuries of various sorts as a result of the assaults but, most importantly, he was rendered almost totally blind by a traumatic blow or blows to the head. He was limping and had a number of healing scars. Medical evidence was given confirming that the injuries noted on the victim varied in age from one or two days to six weeks. In the un-

contradicted view of an experienced ophthalmologist who gave evidence for the prosecution, Mii's blindness could only have been caused by blows to the head. The charge faced by both appellants was a representative one and encompassed the assault(s) which caused the blindness.

[9] Evidence of the assaults was necessarily limited because of Mii's limited mental capacity, and his limited ability to recall. Evidence of Mii's interviews by the Police was given to the jury. A relative of the appellants and of Mii, Raivaru Katuke, claimed to have been an eyewitness to one assault. Two nurses on Atiu – both of whom know Mii – gave evidence of having observed bruises, abrasions, etc on Mii and, in particular, his swollen eye.

[10] Other witnesses from Atiu spoke of their knowledge of Mii and of his medical and social history. Importantly, the nurse in charge of the Atiu hospital said that in September 2015, Mii had been walking normally and that his eyesight was fine. She reported on her full body examination of Mii on 4 February 2016.

[11] Dr Susan Ormonde, was the consultant ophthalmologist from Auckland who gave evidence that the only possible cause to explain the loss of Mii's eyesight was repetitive trauma or assaults to the head.

[12] The defence advanced a number of diffuse explanations for Mii's condition including self-inflicted injuries, malnutrition, unhygienic lifestyle, food poisoning, Mii's alleged history of stumbling and falling and skin problems.

[13] The jury may well have been confused by this scatter-gun approach. Some of the alleged causes had no evidentiary foundation and were dismissed as being causative of the blindness by Dr Ormonde. Evidence of falls was contained in the appellants' evidence but cannot have been accepted by the jury as a cause of this serious injury.

Grounds of appeal against conviction

[14] Counsel for the appellants advanced six different grounds of appeal against conviction which we now consider.

a) There was a duplication of charges relating to the same set of facts. These should have been a single representative charge.

b) The Judge's summing up was 'unfair' and did not adequately address the defence case.

c) The failure of the police investigation of the offending and the lack of site plans and scene photographs.

d) The failure of the Judge to direct about the necessity of corroboration of the witness Raivaru Katuka.

e) The direction of the Judge on the use of evidence of previous convictions was inadequate. (Note: evidence of previous convictions of the appellants of assaults on Mii was admitted in a pre-trial ruling of Hugh Williams CJ. This decision was not appealed)

f) There was a substantial miscarriage of justice.

First Ground of Appeal: Duplication of Charges

[15] The first appellant alleged there was a duplication of charges. Reference was made to the Criminal Procedure Act 1981 which in Section 15 provides as follows:

> "15. Information to be for one offence only – (1) Except where it is otherwise provided by any enactment, every information shall be for one offence only:
>
> Provided that an information may charge in the alternative several different matters, acts, or omissions,

> if these are stated in the alternative in the enactment ender which the charge is brought.
>
> (2) The defendant may, at any time during the hearing of any information which is framed in the alternative, apply to the Court to amend or divide the information on the grounds that it is so framed as to embarrass him in him in his defence.
>
> (3) The Court may, if satisfied that the defendant will be so embarrassed in his defence, either direct the informant to elect between the alternatives charged in the information, in which accordingly and the hearing shall proceed as if the information had been originally framed in the amended form, or direct that the information be divided into two or more charges, in which case the hearing shall proceed as if an information had been laid for each charge.
>
> (4) Where on any information framed in the alternative the defendant is convicted, the Court may, and shall, if so requested by the defendant, limit the conviction to one of the alternative charges."

[16] The Crown accepted that as a general principle a charge must relate to a single offence which should be sufficiently particularised to ensure that the accused knows with what he or she has been charged. The Crown also acknowledged that in *Mason v R* [2010] NZSC 129, [2011] 1 NZLR 296, the New Zealand Supreme Court held that distinctly identifiable acts of alleged offending should be the subject of separate charges.

> "25 In *Mason* the accused was charged with assaulting "a child under the age of 14 years by *pulling his ear and punching him*". The Supreme Court was critical of the charge stating that "Division into two counts was the only proper course because the two acts of assault were of a different character and seriousness."
>
> 26 The Supreme Court also confirmed the dicta in *R v Qui* stating:
> "The Court endorsed the practice of not charging as separate offences a continuing course of conduct which it would be artificial to characterise as separate offences. But the Court said that it was another thing to charge as a single count repetitive acts which can be distinguished from each other in a meaningful way, even if they relate to more than one act of a certain class or character."

> The Court added something which the present case vividly illustrates:
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> "Separate counts facilitate fairness in the conduct of the trial by focusing attention on matters of fact and law which can and need to be distinguished for the purposes of different counts. In the event of conviction, they assist the sentencing Judge by indicating the extent of culpability."
>
> 27 In *Mason* the Supreme Court also noted at [9] that overly complex counts may prejudice the defence, make it difficult for the judge to frame fair and accurate directions to the jury, and create a risk that the jury may return a verdict which is not truly agreed."

[17] This Court upholds the Crown's submission that it was entirely proper for the prosecution to identify, to the extent possible, the different allegations made by the Claimant and to particularise the charges accordingly. As the Crown submitted before us it was entirely open for the jury to have accepted that there was sufficient evidence of assaults to the head for example, but not to the use of the bush knife, which was in the possession of Ngatamarike, or to kicking. As the Crown pointed out, this separation of allegations was particularly appropriate in this case where the loss of eyesight and the related evidence of Dr Ormonde concerned primarily the assaults to the head not other allegations.

[18] Indeed we consider, as suggested by the Crown, that the particularisation of the charges was in fact likely to be beneficial to the Appellant as the Crown was then required to prove beyond reasonable doubt each specific act referred to in each charge.

[19] This Court is unconvinced that the charges as laid amounted to double-jeopardy. The Crown was required to prove the separate facts and in the particular circumstances of this case the separate charges were entirely appropriate. Nothing in the actions of the Crown in this area would be inconsistent with the Supreme Court dicta in the *Mason* case.

Second Ground: Alleged Unfair Summing Up and Alleged Failure to Address Adequately the Defence Case

[20] The key point in our view is that there were particular circumstances here which justified the Judge in undertaking a relatively compact but nevertheless complete summing-up. The circumstances were that the summing-up came after the Crown closing and immediately after the Defence closing. With those two addresses, obviously recalled by the jury because of their immediacy, it was permissible for the summing-up to be a relatively concise summing up of the competing cases and for Her Honour to begin by making the following statement:

> "I want, if I can, to put this case in a nutshell for you. It is clear from the evidence that Mii was seriously injured. The issue for you is did the defendants … cause the injuries to Mii or were they self-inflicted or caused by accidents or food poisoning or something similar."

[21] Having read the summing up carefully it is quite clearly shows that it adequately referred to the main points of the defence. The essential points of the defence were articulated quite clearly by Her Honour including the following:

- Those involved had jumped to conclusions based on emotions, anger and other feelings;
- Poor police investigation;
- Mii had lied during the interviews with the police and in cross examination;
- Mii was under undue influence of the medical worker and was coached;
- Aspects of Dr Ormonde's evidence that Mr George said was helpful to the defence and that "she was not god";

- The need to exercise caution with the evidence of Raivaru Katuke's evidence due to family relationships;

- The plan drawn by Toumiti which questioned the proximity of Raivaru's house to the appellants

[22] Whilst Her Honour did not go into the details of the evidence, she specifically referred the jury to the evidence of the first appellant noting:

> "He [Mr George] referred particularly to the evidence of Nga Katuke and that this was direct evidence, not speculation, in contrast to what he described as systematic ganging up against the defendants."

[23] This Court finds no deficiencies in the summing-up which was perfectly appropriate for the relatively straightforward issues involved in the case. The faint suggestion by Mr George that the jury would struggle to understand the summing up has no merit. Members of the jury who were bi-lingual, being the majority of the jury, listened to it twice, once in English and then in Maori.

[24] Finally, it was asserted by Mr George that Her Honour had not given the jury a clear warning that they were the deciders of the facts. This is quite untenable since Her Honour stated:

> "On the other hand the sole responsibility for deciding questions of fact is yours – that is the task of the jury. All decisions on the facts are entirely for you, not for me or anyone else. It is hard to imagine how the points could have been made any clearer."

Third Ground: Defence Criticism of the Police Conduct

[25] In this regard, Her Honour said in her summing up:

> "Now as I have just said to you and I explained to you at the start of the trial you must consider only the evidence put before you in this Court. That must be your sole and whole focus.

> In his closing address Mr George criticised police practices and in particular Constable Rakei's conduct in this matter. This is a criminal trial, not an investigation of police practices or an investigation of what other or additional evidence might or could have been obtained.
>
> Your focus must be the evidence put before you in this Court. You must not speculate or guess. You will consider the whole of the evidence including the evidence which was read to you, Mii's two interviews with the Police. You will consider the exhibits which you will have with you in the jury room. In weighing the evidence you will have in mind the submissions that counsel have made to you and you will reach your verdict applying the law as I direct you upon it.
>
> Mr George in his closing spoke at length about police failing. His cross-examination and criticism was directed at Constable Rakei, the Constable from Atiu, rather than Detective Sergeant Johnny George the officer in charge of the case."

[26] We see no merit in the contention that this instruction was impermissible. Indeed, Mr George used the alleged police failings to good effect in cross-examination and in his closing submissions where he endeavoured to point out gaps in the Crown case.

Fourth Ground: Lack of Corroboration

[27] Mr George argued that the summing up was defective because Her Honour did not give a direction about the need for corroboration of Raivaru Tatuki's evidence. Before this Court, Crown Counsel noted that it is debatable whether such a direction is still required in the Cook Islands when reliance is being placed on the evidence of an accomplice. However, even if that direction were still required, the simple fact was that Mr Raivaru was not an accomplice but rather an independent eye witness. We consider that the issue of corroboration was therefore irrelevant.

Fifth Ground of Appeal: Direction Concerning Previous Conviction

[28] It is not clear what was the gist of Mr George's submission on this ground. The accused both had previous convictions. The ground of

appeal identified in the Notice of Appeal was the directions concerning the previous convictions not the admissibility of the convictions. The Crown accepted that it was necessary for Her Honour to give a direction on the use of previous convictions. Evidence of the previous convictions had been allowed to be given as a result of a pre-trial ruling which had not been appealed.

[29] Ms Mills referred to *Stewart v R* [2008] NZCA 429, [2010] 1 NZLR, 97 where the New Zealand Court of Appeal provided the following guidance in this matter:

> "60.1 State the purpose of the witness's evidence;
> 60.2 Explain what the propensity evidence is, including that "propensity" means "tendency";
> 60.3 Identify the factors relied on by the Crown and by the defence in relation to the purpose of the evidence;
> 60.4 Tell the jury that it is for them to decide whether the alleged propensity existed;
> 60.5 Explain that if the propensity exists it is circumstantial evidence to be considered with all the other evidence when assessing the issues, including the reliability and credibility of the complainant;"

[30] However counsel also pointed out that in *Mohamad v R* [2011] NZSC 52 at paragraphs 84 and 95, the New Zealand Supreme Court expressed reservations about the utility and content of these directions. Points that the Supreme Court made in *Mohamad* included the desirability of avoiding directing the jury on what are really the admissibility criteria for propensity evidence and the need to tailor directions to the particular pattern of behaviour or thinking which is an issue rather than on propensity as an abstract concept. For completeness, it is appropriate to set out the dicta of the Court in *Mohamad* to which Ms Mills referred in her written Submissions on Appeal. At para [95] of *Mohamed* the Court stated:

> "When giving a propensity evidence direction a judge should:
>
> (a) Identify the evidence in question and explain why it has been led and the legitimate respects in

> which it might be taken into account by the jury. We see no need for the judge to define 'propensity' (compare step (2) of *Stewart*). In cases in which a demonstrated propensity could legitimately be a stepping stone in the reasoning process of the jury, that should be identified using concrete language addressed not to 'propensity' as an abstract concept, but rather specifically to the particular pattern of behaviour or thinking which is in issue. In most cases, the legitimate reasoning available to the jury will be based around coincidence or probability. That should be explained to the jury in simple and direct language addressed to the particular facts and what is said to be the implausible coincidence or how the evidence otherwise bears on the probability of the defendant being guilty. This is likely to require a discussion of the similarities involved in the conduct alleged. Where there are factors which may explain the postulated coincidence (for example, suggested collusion between the witnesses) that too should be addressed. We see no need for the judge to otherwise go through the s.43(3) criteria (compare step (3) of *Stewart*). These criteria are addressed to the admissibility decision the judge must make and not the factual assessment which is for the jury.
>
> (b) Put the competing contentions of the parties.
>
> (c) Caution the jury against reasoning processes which carry the risk of unfair prejudice associated with the propensity evidence. This should usually be along the lines that the fact that the defendant has or may have offended on other occasions does not establish guilt and that the only legitimate reasoning process available to the jury is the one which has been outlined [in (a)]."

[31] Against that statement of principle this Court proceeds to consider Her Honour's full directions in this area which were as follows:

> "I need to direct you on what we call similar fact or propensity evidence. You heard evidence that Nga Katuke was convicted of an assault on Mii in 2013. You also heard evidence that Toumiti Katuke was convicted of an assault on Mii in 2015. They pleaded guilty to

> charges of assault in both cases. It does not need me to say to you very clearly, that because of those convictions there is not proof of the charges against the defendants in this trial. That evidence is allowed before you because of the similarities between that offending and the offending the Crown now alleges; similarities in the persons who carried out the assaults, in the manner of the assaults, in the physical injuries to Mii, in the location of the assaults – at the home, the reasons given for the assaults – that Mii did not listen and did not do what he was asked, and the proximity in time – 2013 and 2015, with the allegations relating to assaults in this trial being at the end of 2015 and beginning of 2016. It is for you to decide whether that evidence demonstrates a tendency in the behaviour of the defendants towards Mii. But if you do decide that they establish a tendency, it is only one item of evidence and you must consider very carefully all the evidence that relates to the charges in this trial. I must warn you to guard against deciding the case on prejudice because of what you have learned about the previous behaviour of the defendants towards Mii. You must reach your decision uninfluenced by prejudice or sympathy. Frequently feelings of sympathy or prejudice understandably arise in a criminal trial. But when you are considering your verdict you are the judges. No judge should ever allow a feeling or prejudice against or sympathy for any defendant to influence the decision at all."

[32] We uphold the Crown's submissions and find that this direction was consistent with the guidelines established in *Mohamad v R*, other than the failure of the Judge to put the competing contentions of the parties on this point. We do not see this as a major omission on the facts of this case.

The Proviso: No Substantial Miscarriage of Justice

[33] Ms Mills submitted that should the Court on Appeal find any of the above in favour of the Appellants the Crown submitted there had been no miscarriage of justice and, contrary to the Appellant's suggestion that proviso in Section 69(1) should be applied.

[34] This Court finds no substantial defects have been established by the arguments on appeal and therefore there is no occasion to consider the application of the proviso. We are confident that there has been no

miscarriage of justice. Indeed, taking into account the compelling evidence of the ophthalmic surgeon the guilty verdict was virtually inevitable. There was no answer by counsel for Appellants as to uncontradicted expert evidence of Dr Ormonde as to the serious damage to both eyes of the complainant. The various falls, trips, self-inflicted injuries and other explanations advanced for the injuries could not in any possible way, no matter how viewed and construed, explain how the victim had lost sight in both eyes.

[35] Having read the evidence of Dr Ormonde it is clear that she was a most impressive witness and her explanation why falls, allergies and seafood poisoning could not have caused Mii to lose his eyesight were utterly convincing.

[36] The jury was entitled to find that the evidence and the explanations of the Appellants were implausible and inconsistent with the medical evidence not just of Dr Ormonde but both of the nurses who testified.

Appeals against sentence

Ngatamariki Katuke

[37] Potter J when sentencing this appellant regarded the count on which both he and his co-appellant had both been convicted as the 'lead charge'. This count dealt with the assault to the head of the victim which, in the opinion of the medical specialist, was likely to have caused the victim's blindness. The Judge then referred to the significant impact which the assault had on the victim and on the small island community of Atiu.

[38] The Judge applied the following sentencing principles:

a) The gravity of the offending, including the offender's capability and aggravating features

b) The requirement to impose the maximum penalty for the most serious of cases at the same time taking into account the offender's circumstances.

[39] Aggravating features included the effect on the victim ie. rendering him blind and the lack of remorse and acceptance of the jury's verdict by both appellants.

[40] The Judge sentenced this appellant to 4 ½ years imprisonment on this count. She took 4 years as the starting point and added 6 months because of the appellant's previous convictions for assault on the same victim. For the other two counts, a concurrent sentence of 3 years imprisonment was imposed.

[41] Counsel for the accused submitted that the 4 years starting point was too high because it ignored the "weaknesses" of the Crown case such as the evidence of previous convictions, medical conditions, accidental falls and infections to the eyes caused by scratching by the victim, unhygienic living conditions and the challenges of looking after a mentally-challenged person "who … keeps everything to himself who never makes a complaint but able to drink and smoke."

[42] We agree with the Crown's submission that the penalty imposed on this appellant was within the range and cannot be regarded as manifestly excessive. The principal charge involved a serious assault with devastating consequences on a vulnerable victim by his caregivers over a sustained period of time. The previous convictions for assault against the same victim and the appellant's lack of remorse or acceptance of the verdict were rightly regarded by the Judge as aggravating circumstances.

[43] Other pejorative circumstances included substantial injuries to various parts of the face of the victim which were the result of multiple attacks by two attackers and were not the consequence of one single assault. The fact that the assaults took place at the home where the appellants cared for

the victim was also relevant as was the delay by the appellants in seeking medical attention for the victim. The other two charges faced by this appellant were for relatively lesser assaults, although one of these involved the use of a weapon – a bush knife.

[44] The submissions of counsel for the appellant ignore the compelling evidence of Dr Ormonde, discussed earlier in this judgment. She had impressive qualifications and was quite clear in the view that the victim's blindness could only have been caused by a traumatic blow. The jury accepted her evidence and were fully justified in so doing. In cross-examination she rejected the rather fanciful suggestions of the cause of the blindness such as food poisoning.

[45] Although the sentence was severe, the offending was serious and we see no reason to interfere with the sentence. The appeal against sentence by Ngatamariki Katuke is therefore dismissed.

Toumiti Katuke

[46] Potter J approached the sentencing of the appellant Toumiti Katuke on the basis that she, like her husband, had been found guilty of the principal offence and that both of them were equally responsible for the injuries to the victim's face and eyes as a result of repeated assaults over a period of six weeks.

[47] The Judge noted no mitigating factors in this appellant's offending as well as the lack of remorse and of acceptance of the verdict. This appellant had blamed family disputes for the changes she faced which showed a complete lack of reality.

[48] A sentence of 6 months imprisonment was imposed by Potter J to be served concurrently with the 4 years 3 months imposed for the sole count on which the jury had found this appellant guilty. The 4 years was the same starting point as that for the other appellant with a 3 month 'uplift'

for the common assault charge to which this appellant had pleaded guilty before trial. The appellant had acknowledged that she had hit Mii in retaliation for his allegedly smacking the appellant's 3 year old daughter.

[49] The principal submission in support of a lesser sentence for this appellant both before Potter J and before this Court related to the fact that she has two children aged 2 and 4. She had employment on Atiu as a fisheries officer and her husband, a fisherman, had care of the children when she was engaged in her employment. Counsel advised that the children are now in the care of relatives in Rarotonga.

[50] The judge acknowledged that a custodial sentence would impact on the children but noted legal authority to the effect that society cannot overlook serious offending by persons in order to save distress to their children. The Judge declined to make any allowance to this appellant on this ground. It should be noted that in the Probation Report there is no suggestion that she is other than a good mother to her children.

[51] Counsel for the Crown submitted that an allowance could not be made because of the children and that the mere fact that a female offender has young children is no reason not to impose a custodial sentence. Counsel emphasised the need for parity between co-offenders and the aggravating circumstances referred to for the co-offender which were the same.

[52] The Crown's submission as to the principle of sentencing female offenders who are either pregnant or the mother of young children ie. *R v Timoti* – sentence imposed by Hugh Williams J (as he then was) on 1 June 2016, CR 477/16 and the judgment of the New Zealand Court of Appeal in *R v Williams*, 15 March 2005, CA 23/05. At paragraph 20 of the *Williams* decision the Court said:

> "[20] The very sad consequences to dependent children of the imprisonment of their parents is always deeply troubling to a Court. This case is no exception. To separate a child at 21 months of age from a loving and accomplished parent is an emotional wrench which may

> affect such a child for a long period of time or even for life. When, to preserve the benefits of kinship, the child is placed with close family whose age and own circumstances carry their own difficulties, the scope for distress and disruption is obviously enlarged. But society cannot overlook serious offending by parents in order to save distress to their children. The principles of denunciation, deterrence and accountability cannot be ignored. This is not to say that mercy may not be prompted by domestic circumstances in certain cases. Ms Dyhrberg referred us, for example, to *R v Howard* CA 315/99, 2 December 1999 where this Court reduced a sentence of two and a half years imprisonment imposed in respect of conspiracy to supply cannabis to 18 months imprisonment."

[53] The *Howard* case involved drug offending and the strict line mentioned above about imprisoning women with children was emphasised. A sentence of two and half years imprisonment after a guilty plea had been imposed on a charge of conspiracy to supply a Class C drug. The appellant had been running a tinnie house with her partner. She had at the time of the appeal children aged one and four. The Court of Appeal accepted the recognised condition of "separation anxiety" and that the appellant had undergone residential treatment and an outreach program for her drug problems. Whilst emphasising that the paramount consideration on sentencing for drug offending for profit is deterrence and that personal circumstances of the offender are not given much recognition when sentencing for such offending. The Court however considered that a shorter sentence was appropriate given the offender's circumstances and substituted a sentence of 18 months' imprisonment.

[54] This Court does not have the benefit of the detailed information on the offenders that was given to the court in *Howard.* All it was told by counsel is that the children are now with relatives on Rarotonga. Consequently, there is no basis on which a reduction of sentence on the ground of effect on the children can be considered – let alone accepted.

[55] For all of these reasons the appeals against conviction and sentence are hereby dismissed.

Williams P
(Presiding)

Barker JA

White JA