

IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CRIMINAL DIVISION)

CR NO. 339/09,389/09

POLICE

V

FELIX WILLIE TUA

Defendant

Ms Martha Henry for Police

Mr A Brown for the Defendant

Date: 10 July 2009

SENTENCE OF GRICE J

Mr Tua you have entered a plea of guilty and been convicted of first a charge of intent to commit an offence did cause grievous bodily harm to Metuamouari Marsters and secondly a charge of escaping from lawful custody. This occurred when you were here to appear on the first charge.

I have before me the probation report, the Crown's submissions and submissions from Mr Brown your counsel, putting forward mitigations on your behalf. And I also have before me two medical reports from Dr Fariu, the first one is the 28th of May and the second is the 9th of July. Those medical reports say that you do not suffer a mental disorder so you understand what the offending is about. Mr Brown indeed has made submissions supporting that.

Mr Tua you attacked Mrs Marsters by creeping up behind her and attacking her by hitting her over the head with a coconut husk. She fell to the ground and you continued to hit her with a coconut husk. It was not small, it was 92

centimetres in length and 4 centimetres in diameter. You said you did this because you wanted to get money to buy cigarettes off her.

This offence is very serious. Mrs Marsters suffered quite serious injuries. She suffered head injuries which involved deep gashes to her head and bruises to her head and that required treatment both in Rarotonga and in New Zealand. Not only that, but she suffered broken ribs, the details of which I will go into. She had 15 stitches and several staples. She broke her arm as well. She has provided input into a Victim Impact Report which I will refer to later.

The second charge relates to escaping from custody. That arose when the Police brought you here to face the first charge. You went downstairs and you took off. You were found later when your aunty rang for the Police and told them to come and pick you up.

Mr Tua, you are only 18 years old and this is your first offence. I have read the Probation Report in some detail, and I am assisted by Mr Brown's submissions.

You grew up and lived on Mauke until this happened. You are described by relatives as a good person and until the offence happened you helped your grandparents with chores and other things on the island.

Your uncle says you are a good person but some times you have mental problems and that affects your behaviour. Your relatives say you are not usually aggressive and this has brought shame on your family doing this and on the island of Mauke, you have not got a job at the moment.

As I said earlier there are two medical reports on you and those reports indicate you do not have a mental disorder but you are impulsive and you act without thinking and you may suffer from an anti-social personality disorder. Dr Fariu is of the view that you may well offend in similar situations and he thinks you will benefit from the rehabilitation program. From both my enquiries those sorts of programs do not seem to be available here.

Mrs Marsters has filled out a Victim Impact report which tells us about what this offence has meant to her life. She has had six weeks with her arm in plaster cast, another three weeks with the cast on her arm until a plate was inserted in an operation. She had four weeks of chest pain and she has attended numerous medical appointments both here and in Auckland and Wellington. She has long term physical consequences. Her head shakes which she cannot control. She also needs a further operation.

This attack has changed Mrs Marsters life. Before, she was enjoying a peaceful life in retirement on Mauke. She is suffering emotionally, is fearful and gets down. She has to stay with her children in New Zealand at the moment. She is fearful that she could have died in that attack. She says Mauke is her home and hopes to return one day if she can.

Turning to the sentencing, I am grateful for the assistance of the Crown and provision of the cases and Mr Brown's submissions. Recent cases from New Zealand and here are particularly relevant to this offence. In 2005 a New Zealand Court of Appeal decision in Turkey indicates as Ms Henry has said, the starting point in New Zealand would probably be around 5 years.

This Court, in Kakino, took into account that general deterrence does not seem to apply to the extent in the Cook Islands. Nevertheless this is a serious offence. Paterson J in Kakino imposed a sentence for a similar sort of attack. In that attack the victim was attacked in a home invasion and suffered head injuries and emotional trauma. His starting point was 2½ years and after taking into account mitigating factors he imposed a sentence of 1 year and 3 months plus reparation.

The factors which point to the seriousness of this offence are that it was unprovoked violence and it continued after Mrs Marsters fell to the ground. There was pre-meditation: you wanted to get money, you were watching her and then you attacked.

Mrs Marsters' injuries are moderately serious that they will have a lasting effect on her. In my view they were if anything, they were more serious than the victim in the Kakingo case. As I have said the attack came about because you wanted to steal money off her.

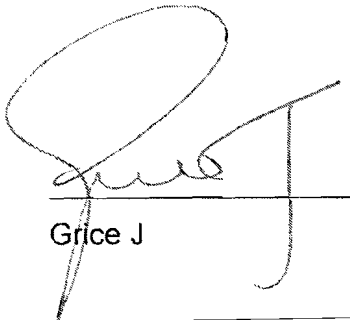
I have got to take into account the usual sentencing factors: the denunciation, punishment, deterrence and rehabilitation. I assess this case as having a starting point of 2½ years imprisonment.

The mitigating factors in this case are your age, (you are only aged 18), that it was a first offence, you are a hard worker and you helped and supported your grand parents. You also pleaded guilty to the charge.

Taking all those factors into account I must sentence you and perhaps I should correct myself, I take as a starting point 2 years 9 months, not 2½ years. So taking all those matters into account, you are sentenced to a term of imprisonment of 1 year and 9 months and taking into account the 3 month period you have been in custody, this is in effect a sentence of 1 year 6 months.

I sentence you to a period of 1 year and 9 months imprisonment on the burglary charge, taking into account the 3 months you have already been in custody, that is in effect a sentence of 1 year and 6 months.

For the charge escaping from lawful custody charge, I sentence you to a period of imprisonment of two months to be served concurrently with the burglary imprisonment.



Grice J