

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

CR 191/11

POLICE

-v-

CHARLIE TEINA

Counsel: Ms C Evans for Informant
No legal representation on behalf of Offender

Date: 27 May 2011

SENTENCING NOTES OF HON HUGH WILLIAMS J

[1] Charlie Teina, because you only have limited intelligence, brain power, you probably will not understand everything I have to say about your case but Mr Akanoa will explain it to you afterwards, I am sure of that, and a lot of what I have to say has to be said in any case even if the person being sentenced does not fully understand it.

[2] Charlie Teina, at the age of 44 you come before the Court to be sentenced on one charge, that you committed rape on 22 January this year on Aitutaki

where you live. You pleaded guilty to that charge about a month later, 24 February.

- [3] The facts of the matter are that on that night you drank about a dozen Woodstocks, bourbon and coca cola, at a friend's place then went to a bar where you drank some more and made a nuisance of yourself asking women for sex. Later on, drunk, probably very drunk, you went around the island searching for somewhere where a woman lived where you could have sex. Having identified this lady's house, you took off all your clothes and went into the house and searched through it until you found her in bed asleep. She awoke to find you on top of her, naked of course. She tried to push you away and struggled with you, and in fact she says she thinks it was only because she was strong that she was not worse harmed than she was. You kept on, indeed it seems you kept on for about half an hour doing what we call "digital penetration", you put your hand inside her, and then you had sex with her which she found very painful and which also went on for quite a long time. You then left.
- [4] One of the reasons you could not be sentenced in April this year was that on the file there seemed to be some doubt as to whether you had in fact what we call "penetrated" the woman, but that has been cleared up in the weeks since then, and it now seems clear that you did in fact get inside her and that any doubts she might have expressed earlier on were because of her embarrassment as to what occurred. So, it seems clear that you properly pleaded guilty to rape and not just attempted rape.
- [5] You have been before the Court on at least three previous occasions. In January 2005 you were convicted of assault with intent to injure and sentenced to five months imprisonment, serving that sentence working on the roads in Aitutaki, a sentence which is possible under s.13 of the Prisons Act. It is important to note that and the later sentences I am just about to mention

because the recommendation from the Probation Service includes a suggestion you again be sentenced to work on the roads under s.13.

[6] In March 2009 you were convicted of theft and ordered to serve a three month sentence working on Aitutaki roads, and again in September 2009 you were convicted of burglary and sentenced to five months to be served by working on the roads in Aitutaki again.

[7] Now I know, from what Mr Nicholls has said on your behalf, that there are circumstances surrounding each of those previous convictions which might throw some doubt on whether you should have been convicted, but I have to proceed on the basis that you have been properly convicted and sentenced as I have mentioned, and of course served the sentence.

[8] In the victim impact statement one of the major features is that this woman, a woman about your age, is seriously disabled. It is not entirely clear from the material on the file whether, on the night you raped her, you actually knew she was seriously disabled and probably unable to defend herself to the full extent. In a tiny community like Aitutaki it would be surprising if you did not know this woman was seriously disabled and, to spare her the embarrassment, I will not detail the disablement. But, in view of the fact that it is not clearly established that you did know about her disability, I think it is only fair to you to sentence you on the basis that you may not, may not, have known she was disabled but, unsurprisingly, she has been thoroughly traumatised by what you did to her that night. She has had to alter her lifestyle in a major way, and it cannot be doubted that what you did to her that night brought about very serious consequences as far as she is concerned.

[9] The Probation Service's helpful report makes it clear that your family was poor, that you did not have a good education, and that for a number of years now you have lived without much in the way of family support. The really helpful part of the Probation Service's report is that they have put a psychiatric

and psychological assessment of you before the Court. It is unnecessary to detail that, but it certainly shows that you are a person of limited capacity, limited understanding, limited intelligence, and that is a factor that needs to be taken into account to decide what sentence should be imposed upon you.

[10] Ben Nicholls, supported by Mr Akanoa today, was here in April to speak for and support you and cannot be here today, but he has filed a lengthy and it is also a very helpful report setting out your personal history and the circumstances from your point of view surrounding your previous offending. It seems as though you have, in part, been the beneficiary of the Pakipakitai scheme designed to help people in your sort of situation - without much intelligence, without much ability to get a job and support yourself, without much other support in the community - and there is a suggestion in Mr Nicholls' report that somebody else might have abused your position. That is not something one can rule on at this point, but Mr Nicholls' statement does make it clear that for a number of years you lived a very isolated role in the Aitutaki community and you have taken to drink probably as a result. But Mr Nicholls tells me that you are a strong member of the local Mormon Church and you are fortunate that you do have a number of people in the community such as the folk with whom you have been living and Mr Nicholls to support you. Mr Akanoa is here to support you as well today.

[11] Ms Evans for the Crown says that I should send you to jail. She points me to the Court of Appeal decision here in the Cook Islands which she has read, and I will read again in a moment, to say that you should go to jail, that four years is the starting point plus what we call "aggravated" features; that is to say, made worse by the fact that there was some premeditation in this case. That means that you propositioned, you asked women in the bar for sex before you went looking for the woman in this case and you went into her home, which should be a place of safety, in order to commit the offence. They rely on the fact that she was vulnerable. Whether or not you knew she was disabled, she

was certainly in a vulnerable position, and you were fuelled by alcohol. Against that, the sentence should be reduced because you have pleaded guilty.

[12] The sentence that has to be imposed is one which should try to instil a sense of what we call accountability for you, the fact that you are responsible for doing this, provide as far as possible for the woman's interests, denounce your conduct of course, and try to deter others from being involved in actions of this sort.

[13] The aggravating features, those as I said, which make it worse, are certainly the fact that you went into the woman's home and that what you did to her that night was lengthy and persistent and has brought all sorts of serious consequences for her.

[14] In the case Ms Evans referred to, *Katuke* in the Cook Islands Court of Appeal¹, the Court looked at a number of rape cases over a lengthy period going as far back as 1983 and said, as Ms Evans quoted:

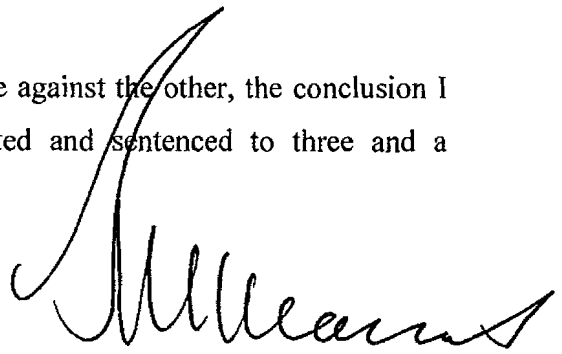
"We are of the view that the appropriate starting point in a non-contested rape case with no aggravating feature is four years imprisonment."

[15] So, given the recommendation of the Probation Service which Mr Nicholls supports - and he is a former very experienced Probation Officer - it needs to be said that the suggestion that you again be sentenced to work on the roads in Aitutaki under s.13 is unrealistic.

[16] Rapists in the Cook Islands go to jail, just as rapists in any other civilised country in the world go to jail, any country that respects the rights of all its citizens, particularly women and children.

¹ *R v Katuke* [2008] CKCA 9 at [30]

- [17] In this case *Katuke* tells me that I need to start with four years imprisonment for you. That four year term has to be increased because, as I said, you went into the woman's home determined to do to her what you did, you were drunk, you were stripped off, you were asking other women for sex, and it is made worse by the fact that you carried on despite her efforts to stop you for half an hour plus. As I have said, she was severely disabled but I will give you the benefit of the doubt that you may not have known that at the time. Ms Evans suggests that those factors should increase the four year starting point by about 18 months. In your particular circumstances I think that is a little much, a little high, and I would increase the four year starting point by a year.
- [18] It needs to be reduced to a degree by your limited capacity, intelligence and understanding, by the remorse you have shown and by the testimonials and your religious attitudes, matters of that sort, but matters like that really have very little part to play in sentencing for rape.
- [19] The major reason to reduce the sentence for you is your plea of guilty at a very early stage in the process. That can be seen as an acceptance by you of responsibility, but in any case there is no doubt you would have been convicted. She knew you and recognised you after the rape, there is no doubt that the rape had been committed, that is clear now, and so, although you accepted your guilt and pleaded guilty about a month after the rape, the amount of reduction in your sentence is reduced by the fact that conviction was inevitable.
- [20] In the end, balancing all those factors one against the other, the conclusion I come to is that you should be convicted and sentenced to three and a half years imprisonment for the rape.



Hon Hugh Williams J