

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

CR NO 439/11

POLICE

v

JAPHET IAVETA MANUEL

Hearing: 22 June 2012
Counsel: Ms C King for the Crown
Ms L Rokoika for the Defendant
Sentence: 22 June 2012

SENTENCING NOTES OF WILLIAMS J

[1] Japhet Iaveta Manuel, you are here today for sentence on one charge of indecent assault on a woman just on a year ago, 16 June 2011.

[2] You originally pleaded not guilty to the charge but changed that on 7 June 2012, earlier this month, to guilty and were remanded for sentence here today.

[3] The facts of the matter are that you went to a resort on 16 June 2011, pushed open a sliding door and entered the bedroom of the woman whom you assaulted. You started touching her hip, then her breasts, and then her shoulder. She woke up,

screamed and you ran outside and got away. According to counsel's submissions, you said you were "just investigating" when you did what you did.

[4] You have a reasonably significant list of previous convictions going back to a conviction for common assault in 2004, four or five convictions for burglary, contempt, possession of cannabis and utensils in October 2010, and unlawfully found in February 2011, and again in May 2011, a breach of probation that same month and then, of some importance in this matter, you were on 4 April 2012 sentenced to six months imprisonment plus 12 months probation by three Justices of the Peace for a burglary which was the unlawful entering of the unit of the resort on the night when you committed this indecent assault.

[5] The Probation Service tells me that you are, of course, in jail, you are "just coping" they say. You will need to continue doing that for at least the balance of your sentence.

[6] The Crown makes the point that there are no tariff sentences for indecent assault because the circumstances of the offences vary so widely but suggests you should be sentenced to 9 to 12 months imprisonment and that it should be cumulative on your present term. As I said to Ms King in submissions, in my view, although the two offences that you committed on the night of 16 June are quite separate in character they derive out of the same incident and it would be wrong to impose a cumulative sentence.

[7] Ms Rokoika addressed the circumstances of your activities that night. She points to the fact that you are still reasonably young, 27, that you co-operated with the Police and the fact that you saved the country some resources by pleading guilty results in your appearing here today.

[8] There is a seven year maximum imprisonment for this offence. Making it worse for you is the fact that, as I said you have a lengthy list of previous convictions, and that this attack was on a tourist. Attacks on tourists are cowardly attacks by people such as you because offenders know that quite often, by the time the matter comes to trial, the victim will have gone back to her own country and be

disinclined to return here. So it is difficult to get convictions on those charges against vulnerable women, and this is a serious case there is no doubt about that. On the other side, she did suffer considerable fright, but in this case there was not any injury and there was no threat by you which is sometimes a feature of indecent assault cases.

[9] But, although you pleaded guilty, it is only after a year and although you had no previous sexual convictions there was intrusion into the tourist's private space at the time. You have been to jail before.

[10] The difficulty in sentencing you is one I have discussed with counsel. It is what the lawyers call the totality question which is, how long in all you should spend in jail particularly given the fact that you are serving a term of imprisonment imposed a couple of months ago in another Court for part of the same incident.

[11] In my view, the appropriate sentence to impose upon you is one of 12 months imprisonment. That will run from today until your current term expires. The two sentences will run alongside each other. Thereafter you will serve your 12 months and will be in prison on this indecent assault case.

[12] The Probationary supervision imposed on you in April this year will also remain in force.

A handwritten signature in black ink, appearing to read 'H Williams', written in a cursive style. The signature is positioned above a horizontal line.

Hugh Williams J