

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

**CR NO'S 385, 386, 434,436, 437, 444-446/11
14, 15, 154, 155, 310-313/12**

POLICE

v

KAKINO KAKINO JUNIOR

Hearing: 8 November 2012
Counsel: Mr Manavaroa for the Crown
Mr George for the Defendant
Sentence: 8 November 2012

SENTENCING NOTES OF GRICE J

[1] Mr Kakino you are charged with offences; five burglary charges, three charges of contempt, a charge of assault on a female, threatening to kill, and being unlawfully found on a property.

[2] The burglaries happened as follows:

- In relation to the Ocean View burglary, you went to a friend's place who lived next door to the Ocean View Villa. You decided you were hungry and then the two of you walked to Ocean View Villa, broke in by forcing the door open, took some food and alcohol and consumed it.

- In December you did a number of burglaries. On the 23rd December you broke into the International Backpackers by ripping off the mosquito screen and removing louvers and getting through the windows. You took clothing and jewellery and then left through the front door. On the same day at Puaikura Reef Lodges you took a mosquito screen off a window next to a side door, removed a louver and unlocked the door through the window and took some clothing.
- On the next day a security guard at Puaikura Reef Lodges saw you in the yard. You walked to back to one of the units and checked the door knob to see if it was open, then moved to the windows and started peeping inside when you were approached by the officer.

[3] The next series of incidents do you no credit either. These are, as Mr George put it, domestic violence. Domestic violence should not be tolerated in any form.

[4] These occurred over the 27th and 28th June when you visited your girlfriend at her flat. You had an argument; you pushed her to the ground and held your hand over her mouth and grabbed her. She managed to scream for help. Luckily she was not hurt but she did receive a scratch. The flatmate intervened – told you to stop and let go of the victim. You did that.

[5] The flatmate rang your girlfriend's father who came and took them both to the safety of his house to spend the night.

[6] The next day, early in the morning, you went to that residence and broke in – a burglary. You broke in through a window into the bedroom and an occupant woke up and recognised you. You fled.

[7] On the same day you rang Mr Morgan, your girlfriend's father, and said; "I've got a 12-gauge gun, I've already been to your house, you don't know who you're messing with. I'm going to kill you, I will see you in hell."

[8] As a result of that threatening call Mr Morgan and the family were forced to leave the house for their own safety.

[9] The series of offences relating to contempt of Court are for breaches of conditions of curfew. They relate to breach in curfew as well as failing to reside at a nominated abode twice. Mr George says the Police were hyper vigilant with you which is why these offences were discovered. It was clear why the Police were hyper vigilant – they had every right to be.

[10] You are currently on remand, in custody for these charges. You have made many appearances before this Court – back to 1996 when you were 16 years old. The latest was your last appearance on the 19th October 2010 for five charges of burglary and one escape from lawful custody. You were then sentenced to one year and one month imprisonment. You were released on the 7th April 2011 for parole for 12 months on probationary supervision. This expired on the 7th April 2012. These offences started occurring only a month after you were released from jail. You have been sentenced on over 20 dishonesty and mainly burglary related offences and been to prison on five occasions.

[11] Burglary is becoming a major problem on the island. It undermines the security of the community and the security of the tourism industry. This Court has warned that charges of burglary can expect to attract a prison sentence. Certainly with a series of burglary of this nature and your history there is no doubt that a reasonable term of custody is appropriate.

[12] The security of the community, your persistent offending; the fact that is a course of conduct which you undertook; and the danger to the public – burglaries often go wrong – together with the prevalence of this offence are all aggravating factors.

[13] You have shown little remorse. The Probation report indicated you continue to feel you are treated unfairly. Mr George says that was earlier, the report was confused and you have confirmed to him that it is not now the position. You now accept your guilt.

[14] The maximum penalty for the burglary offences is 10 years imprisonment each. You face five charges of burglary. The other offences also carry maximum penalties of imprisonment including:

- threatening to kill – 7 years imprisonment
- unlawfully found on property – \$40 fine and 3 years imprisonment
- contempt of Court (4) – \$100 fine and 6 months imprisonment
- assault of a female – 2 years imprisonment

[15] The starting point for your offending on the burglary charges is 4 years imprisonment. You have already served terms of imprisonment ranging from 3 years to 13 months on burglary charges.

[16] From that starting point, because of the aggravating factors: the persistent offending and the breaking into occupied places at night; that they occurred while on parole and bail, I add 6 months to that sentence making it 4 years 6 months.

[17] There are few mitigating factors that weigh in the balance; a late guilty plea and little remorse. But I will take into account your counsel's submission as to the time you have been in jail on remand.

[18] Accordingly on each of the five burglary charges I impose a term of 4 years 6 months less 15 months in custody served on remand, leaving a total of 3 years 3 months.

[19] On the incident relating to the assault on a female and threatening to kill the Crown referred me to two cases. The circumstances are always varied. The sentence is very dependent on the circumstances. In this case the aggravating factors are that it involved violence, albeit at a low level, your girlfriend was scratched and while minor it could have been more serious; and you threatened to kill. After the assault on your girlfriend you followed her to her father's house, broke in and cleared off when you were seen. You then phoned Mr Morgan and made serious threats.

[20] Domestic violence in any shape or form is unacceptable. Mr George submitted that it was a normal girlfriend/boyfriend situation and now the two of you have broken up. I do not accept that domestic violence of any kind is usual. The community has indicated that such violence is unacceptable. The island community itself is affected by this sort of violence; its security and sense of family wellbeing

are affected. This sentence must deter others from doing the same and mark the responsibility which you must take for this behaviour.

[21] On those charges I sentence you to:

- threatening to kill – 4 months imprisonment
- assault on a female – 5 months imprisonment
- unlawfully found – 6 months imprisonment

[22] On that charge of being unlawfully found on premises I sentence you to 6 months imprisonment.

[23] On the breach of contempt charges these relate to breach of curfew and failing to reside at the nominated residence. I sentence you to a term of 1 month's imprisonment on each of those charges (3).

[24] On those charges (excluding the burglary) I consider the starting point given the nature of the offences and in the circumstance the starting point is the appropriate sentence in this case weighing all things up.

[25] Standing back and looking at the totality of the offences I accept the Crown and Mr George's submissions that they should be served concurrently. The whole of this time, as Mr George puts it, you were out of control and running wild.

[26] You are sentenced to a total of 3 years 3 months to be served concurrently (having deducted the 15 months already in custody on remand) with the other charges.



Justice Grice