

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

CR NO 373/11

POLICE

v

SAMUEL MUNOKOA MORRIS

Hearing: 9 November 2012
Counsel: Ms Henry for the Crown
Mr Rasmussen for the Defendant
Sentence: 9 November 2012

SENTENCING NOTES OF GRICE J

[1] Mr Morris you are here today facing two serious charges.

[2] I know your Counsel has spoken to you at length about these charges; the first one, male assaults female, has a maximum penalty of two years imprisonment attached to it. The second, the threatening to kill, has a maximum penalty of seven years attached to it. You can see they are serious offences.

[3] I have been greatly assisted by the submissions from Mr Rasmussen and the Crown.

[4] These events arose out of a domestic dispute. Unfortunately 18 months ago, and it has been hanging over everyone for a long time.

[5] Today your partner is here with the children and your father is also here supporting you.

[6] The Crown submitted that these domestic assaults can no longer be treated lightly. Mr Rasmussen quite candidly put in mitigation an array of issues but at the end of the day he accepted that the principles of deterrence and responsibility apply.

[7] The facts of the incident have already been canvassed. They arose out of an incident which apparently was triggered by a dispute about your partner sitting down for breakfast. Mr Rasmussen says it is not clear what had happened before that, but that was the trigger.

[8] The Crown say, and Mr Rasmussen, that your partner was punched by you, slapped, dragged out of the house and kicked, and verbally abused – a situation which left her traumatised and I will refer to that shortly.

[9] On the second charge, the threatening to kill, it arose because your partner sought help from the neighbour next door, Mr Morgan. He went back to try and help her and was met by you, who, by that stage, had the baby in one arm and a knife in the other.

[10] Mr Rasmussen suggests or submits that you were not waving the knife about and threatening Mr Morgan, but accepts that you threatened to kill him verbally.

[11] Mr Rasmussen explains the situation. He says in fact you had the baby and you were going to get some coconut juice for the baby. You told that to the Police right at the start. He accepts that it does not make the threat any better, but it is an explanation for the knife.

[12] The Crown submits that domestic violence and assaults on women are serious, Mr Rasmussen does not dispute that.

[13] Ms Henry said that to date the sentences on domestic violence have been very light. These have been imposed by the Justices and routinely are suspended sentences. She submits that cannot go on. These cannot be dealt with lightly; they

cannot be dealt with as just saying it is just another domestic incident, girlfriend/boyfriend, husband and wife.

[14] These offences affect not only the victim - in this case your partner - the children, in this case the baby, was there but also the extended family. I can imagine the stress and the shame that particularly your parents have felt about this, but it also affects the wider community. If this type of thing is deemed acceptable, no family is safe, the community is not secure, and the reputation of the Cook Islands in the eyes of the world is also tarnished.

[15] In this case we have a victim impact report and your partner is here, with your new baby. That victim impact report said that your partner would not allow a medical examination but there were no apparent injuries, fortunately for all concerned. She was traumatised and this has hung over your relationship and the family for a long time. She was shocked, she was concerned about the safety of the children, but, and to her credit, she went through with this not only with a view to making things better for your family, your children, but also because this cannot be tolerated; that shows real courage. She does not want her children to enter the cycle of violence that they will then pass on to their children.

[16] The Probation report summarises your situation, says that you are very remorseful, that you have now reconciled with your partner and have a new baby. Your other little girl is now about 18 months. You have been very helpful, minding the children when your partner went to work, and taken a lot more responsibility around the home, are more supportive as your partner told Probation Service.

[17] In this case it seems that anger triggered this assault, it wasn't alcohol, but your wife is concerned about your alcohol consumption and she would like to see this curbed for the sake of your future, the family and the children.

[18] You want to get on with your lives and that was accepted by the Crown, a comment by Probation, Mr Rasmussen strongly urged this be dealt with it in light of the fact this is an old incident and you have stepped up to the mark since.

[19] The Crown rightly submitted the previous offences are unrelated and not relevant to this matter. The Crown submitted deterrence was very important in this case, both general and in relation to you. The Crown suggested that periods of imprisonment should be considered for these types of offending but recognised, in the circumstances, with time passing, it was inappropriate here.

[20] Mr Rasmussen, in a very full submission, explained your background and what had happened since the incident as well as the circumstances of the incident. He noted your early guilty plea, the caring family you have, and as I said I acknowledge that your father is here today supporting you. He has a leadership role in the community, a responsible job and is a Leader and Pastor. The family is a hub of the Fijian community, that is, the environment in which you have been raised.

[21] Mr Rasmussen says that you have been to counselling, you acknowledge the anger problem and know it must be remedied, it must be dealt too. He says that you appreciate that violence against women or anyone is not acceptable. You do not condone it, nor do you say that it is appropriate. He says you are in a very strong family, you and your partner have two children whom you love and are bringing up. You have set goals that will direct you for your future. He also says you are gifted and versatile with things mechanical, you have been able to turn your hand to many things and he hopes that you will take a skills course to give you some skills to enable you to get better jobs and do things for your family.

[22] In this case I did consider imprisonment. These cases cannot be tolerated and I accept what the Crown has said about the time having come for drawing a line in the sand about domestic violence in the islands.

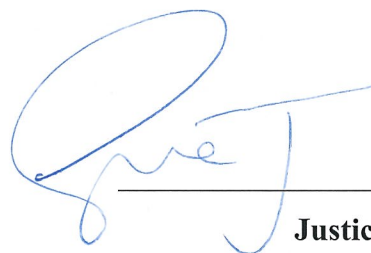
[23] However, I have heard the Crown submission and the submissions of Mr Rasmussen about how far you have come since then, about the support of your family, the support of your partner and the need to get past this.

[24] Accordingly, I propose to accept those submissions and impose a term of 12 months probation with the first 6 months on community service, with the special condition that you do not consume alcohol. Although I will not make it a condition,

but would note that continuation of your anger management counselling and dealing with is important.

[25] On that basis the last thing I say to you is, if this occurs again you will be treated far more severely. You have been given a chance to go back to your family, build your life and contribute to the world as best you can.

[26] I also impose Court costs of \$30, I anticipate that the Probation Service will want to see you before you leave today or at least shortly after.



Justice Grice