

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

CR NO 461/12

POLICE

v

BISHOP BAILEY

Hearing: 9 November 2012
Counsel: Mr N Ngatokorua for the Crown
Mr N George for the Defendant
Sentence: 9 November 2012

SENTENCING NOTES OF GRICE J

[1] Mr Bailey you appear before me today for sentence on some serious charges; two charges of burglary and one for receiving, and I have just sentenced your co-offender Mr Joseph to jail. The burglary charges each have a maximum period of 10 years imprisonment. The receiving charge has a maximum of 2 years imprisonment and/or a \$5,000 fine. You also face a contempt of Court charge, for breaching your bail conditions, leaving your parents home and going to the National Auditorium.

[2] A serious aspect of this is that these offences took place while you were on probation for similar offences.

[3] The burglary of the Cook Islands Pharmacy was premeditated, carried out with your co-offenders. You broke in, you took a number of items, and the Crown

has listed those as varied as a Toshiba laptop, stud earrings, Nordic Blonding Highlights, a list of assorted sunglasses and oils all totalling \$2,500. Your share is a third of that but how will you ever pay that back? You hid the property and when you returned to get it someone else had stolen it.

[4] The next burglary on the 23rd May 2012 was of a private residence. You saw an open window, climbed in, went into the bedroom and took some shotguns from a wardrobe, canned food, jewellery and coins, then walked out. Fortunately the shotguns were recovered but nothing else was.

[5] Then you were involved in receiving. You ordered a laptop and some of your mates stole it for you. At least you admitted your role freely.

[6] The Crown has urged me to consider the principles of sentencing: to take into account that you must be held accountable for these actions; the sentence must be deterrence to others and it must send a message to others. Burglaries are becoming an increasing problem in the Cook Islands. We have heard that time and time again. The security and safety of Cook Islanders and their tourists is crucial. I must reflect that consideration in the sentence.

[7] Earlier in the day counsel referred to the Cook Islands being awash with burglaries. That does not seem to be putting too fine a point on it. The Crown submitted that I must take into account the increasing concern being expressed about these burglaries. The Court referred to the issue recently in the case of *R v Maka* (CR 43, 134-135, 778/11, 45/12). In that case the Judge said there was such a prevalence of burglary on the island that the Court should consider as a starting point a term of imprisonment.

[8] Your situation is worse because it is a series of burglaries committed while you were on probation for other burglaries and theft.

[9] The Chief Justice gave you a chance, he sentenced you in March 2012 on four charges; burglary, theft, and cannabis offences. He was concerned because of the sequence of offences. He noted the problem with burglary and that many people went to prison on that charge. He did consider sending you to prison but gave you a

chance; he gave you the benefit of the doubt and sentenced you to 12 months probation.

[10] You did not take advantage of that opportunity other than to do some more burglaries.

[11] I have heard from your counsel, Mr George has urged on me on your behalf. Your mother in the Court is distraught and upset that it has come to this.

[12] You are a part of a group of offenders I am told, one of them has just been sentenced - you are one of the intelligent ones. You are a thinker – so why are you wasting your talents?

[13] As your counsel said you pleaded guilty early but you did not learn any lessons from the previous sentence. Your mother wants you to go to Manihiki to live with her sister who will look after you, get you work, keep you busy away from your mates. He submits probation would enable you to do that but with custody until you get there. He mentioned you had apologised for the offences.

[14] The Probation report also says that you are missing a good male role model at home, but you acknowledge the support that your mother has always given you. You said she was there for you always, financially supports you and you can only feel shame that you have let her down so badly.

[15] Both your parents seek leniency although they are aware realistically that custody is probably the only option. Your mother is concerned that imprisonment may do you more harm than good and that is a concern but I have few options here.

[16] In your favour, you readily admitted the offences and what happened and you entered early guilty pleas. You said you did not have money and that peer pressure was a motive. You also said you were not the instigator of the Pharmacy offending, I particularly note your age, you are only aged 17 and you are unemployed.

[17] The Crown submits that a short term of imprisonment is inevitable here. Counsel urges me just a short period of custody while you get to Manihiki and the probation.

[18] I do not have any option given the abuse of trust that you committed by offending when you were on probation but to sentence you to imprisonment, sadly that is inevitable. The aggravating factors in this case are that it is a series of offences, immediately after an earlier series of offences for which you were sentenced to probation. Taking into account those aggravating factors into account I would add a month to my starting point of 5 months to make it 6 months. Though in mitigation I take into account your youth, your early guilty plea, the support of your mother and family, and what your counsel has said.

[19] Having taken those into account as mitigation factors, I deduct a third from the sentence of 6 months to make 4 months. You have already been in custody since 7 September, which is almost two months, and I accept the submission that that should be taken into account in your sentence. Accordingly, taking that into account, I propose sentencing you to imprisonment for 2 months.

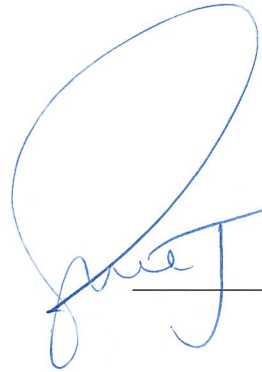
[20] Looking at the totality of the offending, as you are facing not one burglary charge but two and one for receiving and one for contempt, I have come to the view that in the circumstances you should serve your sentences concurrently, so I sentence you on each of the burglary charges to 2 months imprisonment to be served concurrently. On the receiving charge, I sentence you to 1 month imprisonment to be served concurrently with the burglary sentences. On the charge of contempt, given the scheme of offences and the sentencing, I propose convicting and discharging you.

[21] This is consistent with the sentence which I have just imposed, on Mr Joseph. He was facing more burglary charges but in balance you are also facing a receiving charge and you were more the thinker in these escapades than Mr Joseph. So I see no reason to deal with you differently in the circumstances and given your previous offending.

Restitution

[22] The Crown has sought various amounts of restitution totalling in the vicinity of \$3,700. Counsel submitted it was hopeless, there is no way you could repay that – you are employed, you have been in jail, you are about to go back to jail. Hopefully then you will go to Manihiki and earn yourself some money that you can put to making a decent life for yourself, make your mother proud of you. I do not want you coming out of jail with the money hanging over your head. The same applies to the Court costs, so I do not propose making any orders for reparation, and I just hope that your mother can get you to Manihiki after you have served this term of imprisonment and you would get out of this lifestyle because it is only one way to go and it is all down.

[23] I direct that the Probation Service arrange for you to serve the balance term of your probation in Manihiki subject to payment of the airfares, as is usual. That arrangement can be made with your mother.

A handwritten signature in blue ink, appearing to be 'Justice Grice', written over a horizontal line.

Justice Grice