

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

**CR NO'S 834 & 835/12**

**POLICE**

v

**GRANT YOUNG**

Hearing: 29 November 2012  
Counsel: Mr T Manavaroa for the Crown  
Mr C Petero for the Defendant  
Sentence: 29 November 2012

---

**SENTENCING NOTES OF PATERSON J**

---

[1] Mr Young you have pleaded guilty charges of burglary, an offence under Section 263 of the Crimes Act. Burglary of course is merely breaking and entering a building with intent to commit a crime.

[2] Both your crimes were committed at the Daydreamer Apartments at Titikaveka. They were apartments owned by your family and run by your mother. The first, on the 29<sup>th</sup> November 2010, you entered while guests were away using a key taken from your mother's office. You found the safe key and took money from the safe which had cash. It seems as though there may be some uncertainty as to the amount of the money taken and the Crown is not seeking reparation for which you may be thankful.

[3] The second offence occurred in another unit, in the same Daydreamer Apartments, on the 31<sup>st</sup> October 2011. You had once again entered in a similar manner, while guests were out you rummaged through their belongings and took 100 Euros. Your explanation is that the money was taken for use of food, alcohol and cigarettes.

[4] I have read the report from the Probation Service and noticed that you are currently living away from your home, as your mother, in the terms of the Probation Officer, kicked you out, although you were still going back there for meals.

[5] You accept you have brought shame to both yourself, your mother and also tarnished the family name and this has been acknowledged again on your behalf in this Court this morning.

[6] You have been and are still participating with Rotaianga Mens Group. You have not had a full time job but had part time work, although you were dismissed from that work after failing to turn up.

[7] At 31, you do not have the benefit of having leniency because of your youth. The report notes that this is the second appearance before this Court on dishonesty charges. You faced 2 charges of theft in 2011, when you were convicted and ordered to come up for sentence if called upon in 6 months. The report notes that you say you are remorseful and as I have noted this has been accepted or at least repeated by your counsel.

[8] The report does not recommend a custodial sentence but recommends probation with terms and conditions.

[9] The Crown in its submissions refers to the normal sentencing principles of accountability, deterrence, accountability and the denunciation of your behaviour on behalf of the wider community. It does stress the matter I have asked counsel about, the fact that this was the targeting of tourists in tourist accommodation, and I will come back to this point. It accepts that you entered a guilty plea at the earliest opportunity and that you have made reparation for the latest offence. It seeks a short term of imprisonment, a sentence followed by probation with certain conditions.

[10] Mr Petero on your behalf has acknowledged this offence was committed while you were in a position of trust as an employee in the family business. He stresses your cooperation with the Police and your admission of the earlier offence. He suggests that the two cases relied upon by the Crown can be distinguished and should not be applied in this case. He points out in one of those cases a custodial sentence was not imposed and that that case appeared to be more serious. He submits on your behalf that the adequate deterrence and punishment, accountability and denunciation would come if you were given probation as you would be required to face up to your mother again. He supports the recommendation of the Probation Service.

[11] The purpose of sentencing is to punish, denounce the type of offending, deter you and others, and give you a chance to rehabilitate yourself. I stress, which was not stressed particularly in some of the cases, that this sentence also has to be deterrence to others, not just to you.

[12] Tourism, as counsel have acknowledged, is the backbone of the Cook Islands economy. You have not only damaged your family reputation but you have contributed to damaging the Cook Islands reputation as a tourist resort and of course you are only a small factor of perhaps many others that are doing that, but the Court has, on more than one occasion, referred to the need to deter others from doing that.

[13] The Crown in its submissions pointed to the fact that one of the main sources of revenue in the Cook Islands is tourism and that this type of offending is having a negative impact.

[14] Prevalence of burglary offending in Rarotonga has recently led to a hardening attitude by the Courts in sentencing. In one of the two cases referred to, *Kakino*, which I acknowledge was a far more serious case, the Judge said, "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 the series of burglaries of this nature and your history, there is no doubt a reasonable term of custody is appropriate." In that case a 4 year term of imprisonment was imposed for far more serious offending.

[15] There were similar comments in the previous case *Maka* where Justice Hugh Williams said, “There is also a prevalence of burglary on the island and in my view the Court should also consider a short term of imprisonment as a starting point for sentencing people who have committed those offences.”

[16] I take it from those cases that normally the starting point for burglary should be a custodial sentence. In your case that starting point is somewhere between 3 months and 6 months imprisonment.

[17] There are mitigating factors which I need to take into account but there are also aggravating factors. Apart from the tourism issue, which I have mentioned, the aggravating factors are the breach of trust and that this is the second time that you have appeared before this Court. You do not have youth as a mitigating factor. The mitigating factors are your early guilty plea and your cooperation in the second offence.

[18] The starting point in my view is somewhere between 3 and 6 months imprisonment. There are mitigating factors which make it necessary to consider whether a custodial sentence is necessary in your case. There are however the aggravating factors which do not assist you in this respect.

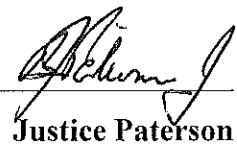
[19] The matter that I think tips the scales in this case is the need to deter others from targeting the tourism industry. It is necessary to send a message to deter others. I have no doubt that you will have your own personal deterrence as your counsel has submitted, but the purpose of this sentence is also in part to deter others.

[20] I do not accept that the *Maka* case is too dissimilar from this case as far as the offending were concerned. In that case a custodial sentence was not given for three reasons – firstly, the early plea of guilty; secondly, the age of Maka who was only 18; and thirdly, it was the first time he was before the Court. You cannot rely on two of those three factors.

[21] In the circumstances the appropriate sentence following the precedents is in my view, and I impose them. There will be a 3 months term of imprisonment followed by on your release probation for a period of one year as provided in Section

6 Subsection 3 of the Judicature Act 1967. I will impose the conditions suggested by the Probation Service namely:

- (a) you will abstain from the purchase or consumption of liquor or illicit drugs;
- (b) you will not enter a licensed premise without the approval of the Probation Officer; and
- (c) you will undertake such workshop or training programs as directed by the Probation Service.



---

**Justice Paterson**