

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

**CR NO'S 612 & 918/12
90, 103 & 105/13**

POLICE

v

ALBERTA ORDAIN TUTAKIAO

Hearing: 10 May 2013

Counsel: Mr T Manavaroa for the Crown
Mr W Rasmussen for the Defendant

Sentence: 10 May 2013

SENTENCING NOTES OF THE HON. JUSTICE DAME JUDITH POTTER

[FTR 11:30:00]

[1] Ordain Tutakiao you have pleaded guilty to a number of charges that bring you before the Court today for sentencing: four burglary charges, a charge of being in possession of a firearm and a charge of being unlawfully found on someone else's property.

[2] The burglary charges carry a maximum term of imprisonment of 10 years. The firearms charge carries a maximum penalty of 3 months or a fine not exceeding \$100, and the unlawfully being found on premises charge also carries a maximum sentence of 3 months imprisonment and in that case a fine not exceeding \$40.

[3] The burglaries were part of a string of burglaries which you committed between August 2012 and December 2012 after you had been very recently released from prison where you had served a term for similar offending.

[4] On the 9th August 2012 you burgled the Anchorage Rest accommodation in Betela. You took a video camera and a wallet from the dining room, then you rummaged through a suitcase at the foot of a bed where a lady was sleeping. Naturally she was terrified when she woke up to find you there.

[5] On the 23rd December 2012 you burgled a dwelling house in Matavera occupied by the Eggletons. You went in through the laundry door with a spare key you happened to find, you went into the kitchen, you stole some alcohol, you took an iphone and you were seen by the complainant's daughter leaving the premises.

[6] On the 8th March 2013 you were found unlawfully at Tarani Ocean View Villa. Fortunately someone was alerted by your presence and you were able to do no more than cause surprise and concern to the person you disturbed.

[7] On the 6th September 2012 you burgled the Sila's dwelling house. You went into the complainant's bedroom and took a safe containing a gold chain pendant, a pair of pearl earrings, a pair of ear studs, some CD games, a games console and about \$1000 in cash.

[8] And on the 21st September 2012 you again burgled the Sila's dwelling house. You forced open the western side door and entered that property and took a portable Playstation, some CD games, a 12-gauge shotgun, some rounds of ammunition and cartridges for the rifle.

[9] The Police recovered a number of these items including the shotgun, I understand, when they searched your premises and some of the property has been able to be returned to the owners. That does not get over the enormous distress and concern you caused them by entering upon premises where you have no right to be.

[10] You entered very early guilty pleas to these various offences, but it is a seriously aggravating factor of your offending that there are so many offences committed within such a short space of time and that this offending follows on similar burglary offending for which you were sentenced on the 4th November 2009 to 2 ½ years imprisonment. Clearly you have not got the message, and today I have

no alternative, as Mr Rasmussen on your behalf accepts, to send you back to prison for a considerable period. It does appear that when you are out in the community you are a menace. You are a recidivist burglar interfering adversely with the lives of normal decent citizens trying to go about their daily activities.

[11] The Crown has identified as the applicable principles of sentencing, with which Mr Rasmussen takes no issue, that you must be deterred as must others, from this type of offending, your offending must be denounced and you must be held accountable for it.

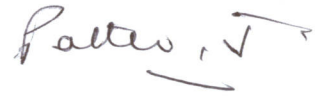
[12] Mr Manavaroa referred to the recent decision, as recent as November 2012, in *Kakino Kakino*¹ where Grice J reflected that burglary is becoming a major problem on the island, that it undermines the security of the community and the security of the tourism industry and that those who burgle other premises will face a prison sentence. As in that case there is no alternative but a significant prison sentence for you, because of your persistent criminal offending by way of burglary.

[13] I take a starting point, treating the offending in its totality because it is linked both in time and nature, of 4 ½ years. I increase that by an uplift of 6 months to 5 years because this offending follows so swiftly on release from prison for previous similar offending. I allow a reduction of 25 percent or 15 months for the early guilty pleas.

[14] The end sentence is therefore 3 years 9 months imprisonment. That is the sentence imposed on each of the burglary charges. The sentence for unlawfully being on premises is 2 months imprisonment. The sentence for being in possession of a shotgun and ammunition is 2 months imprisonment. All those sentences are to be served concurrently.

¹ *Police v Kakino Kakino* [2012] CKHC 38, CR 310-312 of 12 (8 November 2012)

[15] Please stand down.

Handwritten signature in cursive script, appearing to read "Potter, J".

Judith Potter, J