

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

**CR NO 9/13**

**POLICE**

v

**BEN ROBIN TUAKANA**

Hearing: 15 March 2013  
Counsel: Ms C King for the Crown  
Mr W Rasmussen for the Defendant  
Sentence: 15 March 2013

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**SENTENCING NOTES OF HUGH WILLIAMS J**

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[FTR 10:23:46]

[1] Ben Robin Tuakana, you are here for sentence today on one charge of unlawfully entering a dwelling house with intent to commit a crime. That took place on 5 January 2013, and you pleaded guilty to the charge at the end of the month, on 31 January 2013.

[2] You have been on bail since. Technically you face a possible jail term of up to five years.

[3] The circumstance of the offence are that about 10.30 a.m. in the morning you were cutting grass near the Complainant's house, he left his phone in one room in the

house, he went to another room to watch videos, you saw your opportunity, entered the house, pinched the phone and took off with it. Fortunately, the phone was later recovered when the Police interviewed you about the crime.

[4] There is no Probation Report because one was not ordered by the Justices of the Peace but the Crown makes the point that this was an opportunistic offence – you simply took advantage of seeing the phone there – and there is a need to deter people such as yourself from committing crimes like this which are all too prevalent here in the Cook Islands.

[5] The Crown also makes the point, which is a perfectly valid one, that you invaded the phone owner's right to privacy.

[6] Mr Rasmussen said that there are circumstances in your background which may have affected the fact that you committed this offence. He makes the point that your previous employer supports you and both he and the Crown concur that the sentence should be one of probation and community service.

[7] This was a nasty opportunistic crime of a type all too common here in the Cook Islands. If somebody entered your property and took your phone or your property you would be outraged, and the property owner here is entitled to feel the same way.

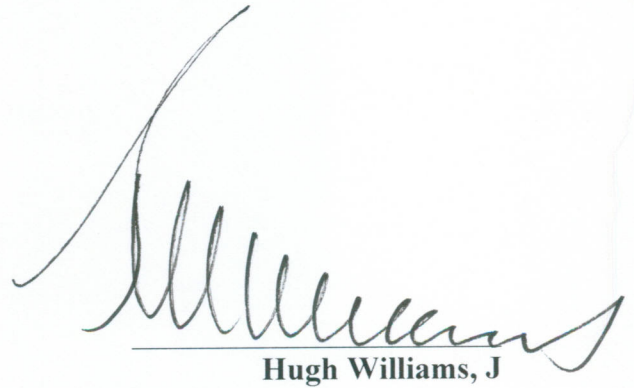
[8] But, to your credit, you admitted the crime, you have pleaded guilty to it – very soon after you were charged – and the telephone was returned to the owner.

[9] If you had a previous conviction or more than one for offences of dishonesty the appropriate sentence to impose on you to try and stop people in the Cook Islands doing crimes like this, would have been a period in jail.

[10] But I am told your only previous conviction was a couple of years ago and for possession of cannabis, not for dishonesty. You have no convictions for dishonesty.

[11] In view of that and the other factors that I have mentioned, I agree with the lawyers. You will be sentenced to 12 months Probation and the first 6 months of that will be on Community Service.

[12] In addition there will be Court costs of \$30. Thank you. Stand down.



**Hugh Williams, J**