

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

CR NO'S 934/12 & 177/13

POLICE

v

LEROY ROBINSON

Hearing: 6 December 2013
Counsel: Ms King for the Crown
Mr Rasmussen for the Defendant
Sentence: 6 December 2013

SENTENCING NOTES OF GRICE J

[FTR 11:53:37]

[1] Mr Robinson you are appearing on two charges today. They are both serious but one is particularly serious and that is the charge of injuring with intent. It carries under the Crimes Act a maximum term of 5 years imprisonment. You are jointly charged on that particular offence with your co-offender Mr Kauvarevai.

[2] The second charge is common assault and that has a maximum term of imprisonment of one year - that was a different event, against Mr Samatua.

[3] The facts have been outlined by the Crown and they are in the Police Summary. You were with a group of your friends, including Mr Kauvarevai, and apparently you had quite a lot to drink. It was just before Christmas last year on the 21st December. The victim, who was an off-duty Police officer, approached your group thinking that you had moved, or someone in your group had moved, his motorcycle and he asked where they left it.

[4] Your co-offender denied moving the bike and he and the victim began to argue about it. It was you who then punched the victim on the side of his head with a closed fist causing the victim to fall to the ground. Mr Kaurvarevai then stomped on the victim's head twice. The victim was knocked unconscious as a result of the attack and he suffered serious lacerations and bruises to his head. The medical report and submissions show that he was in hospital for a day and a half, he had concussion, he suffered from amnesia and he has ongoing problems, headaches and other problems.

[5] The second charge, the common assault charge, relates to an incident that occurred five months later when you were hanging around with some friends outside the victim's shop. He asked you to leave and an argument broke out between you and Mr Samatua. It looks as though everybody got involved and the victim went away and came back with a stick which he waved. It is unclear about how things then developed but whatever happened there was an altercation, you picked up a stick and/or a pole and you hit Mr Samatua and he suffered lacerations. I accept your counsel's submissions on your behalf that this is in a different category to the other offence but nevertheless there is a pattern developing here which is not good.

[6] The Crown have referred me to the principles of sentencing and your counsel has also picked up the principles and the principles I should consider. Both the Crown and your counsel are agreed that deterrence is an important one. While in the Cook Islands the relevant legislation does not provide for sentencing principles, the principles are codified in New Zealand. It is now generally accepted that those principles in the Sentencing Act 2002 are readily applicable in the Cook Islands. There are five principles of which punishment, deterrence and prevention are the first three, and then rehabilitation and, finally, restoration or repair of the damage that is done, if possible.

[7] I need to consider what does apply in this case. The injury with intent the Crown submits is the main or lead charge which the Crown described as an event of street thuggery. This is not good for the Cook Islands community. It causes fear in the community that people cannot go about their ordinary business without being attacked. It also affects tourism in the Cook Islands. It cannot be tolerated.

[8] As I have said in the case of the injuring with intent, substantial damage occurred, the victim has had to take time off work and suffers ongoing problems.

[9] The Crown referred me to the case of *R v Taueki* [2005] 3 NZLR 372 (CA) which dealt with principles to apply in sentencing in cases of grievous bodily harm. That kind of case is more serious than this but nevertheless the bands of categorisation for sentencing have some general relevance. The first band is impulsive violence or violence at the lower end of the category. This would include, for instance, an unprovoked attack on a member of the public. More serious violence, for instance a street attack or on a police officer which would attract 5 to 10 years. The third category would include premeditated attacks with weapons would attract 9 to 14 years. Those relate to grievous bodily harm which carry more greater maximum penalties than are applicable here but nevertheless there is a general applicability.

[10] The Crown also referred me to a number of decisions - particular the case of the sentencing of your co-accused or your co-offender Mr Kauvarevai. He was appearing for sentencing on a number of charges. The Chief Justice sentenced him to a term in total of 3 years imprisonment. He mentioned in his sentencing that for the assault he would have been looking in the vicinity of 2 years imprisonment, taking into account the guilty plea.

[11] The specific sentence reasoning is not developed to any great extent because of course the Chief Justice was looking at a number of offences and has to stand back and look at the whole. It provides an indication rather than any specific guideline in relation to the assault.

[12] In this case the Crown submit that the starting point should be something in the range of 2 years on the injuring charge because of the comments co-offender's Sentencing Notes.

[13] I have listened to the submissions of your counsel carefully. He submitted that perhaps, and this was as high as he would put it, the punch that you threw was not the one that caused the most damage to the victim but it was rather your co-offender's stomping. That is a submission I take very lightly. It was an attack by

you both. It does not matter who did what given what occurred: you started it, your friend weighed in on the injuries and next minute the victim was on the ground unconscious. You cannot segregate who did what in an incident like that, you have to wear what happened. It could have been a lot more serious. The Chief Justice described this as a significant assault and it is. This was an unprovoked attack precipitated by you, apparently under the effect of alcohol which is no excuse at all and cannot be tolerated.

[14] Either way you will not be able to escape imprisonment on this charge. I have listened carefully to the submissions of your counsel and take those into account in the ultimate sentence.

[15] I have also taken into account the victim impact report which has been produced and your counsel has had a look at which indicates the ongoing difficulties that the victim faces as a result of this attack.

[16] I do take into account the guilty plea and your counsel's explanation as to why that was not much earlier. He said he needed to investigate the facts, discuss the matter with the Police and obtain some more information. This was a backup trial so it is not the same type of situation as might be taken into account if this was a trial ready to start and there was a plea of guilty on the last day or the week before. So I will give you credit for that.

[17] Turning to your record. Your counsel urged me to treat this as if this is an aberration; that you got mixed up with bad friends and with alcohol and this happened. But I am looking here at a pattern of assault, whatever it is driven by it cannot be discounted as an aberration.

[18] Counsel also drew my attention to and I have taken into account the matters raised in your Probation report. The references provided make good reading. EXCIL Agency whom you worked for part-time, have said you were very good and you performed the tasks assigned to you well, that you were punctual and a good team worker. I have read your mother's note which makes very difficult reading and I hoped that you had seen that or somebody has read it to you because the effect of

what you have done has rippled widely and affected your mother greatly, you should feel ashamed.

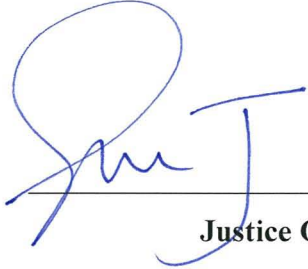
[19] I accept your counsel's submissions that you show remorse, that before this round of offending you had a good history, that you are a hard worker, that you are not usually aggressive, and that you have been helping your mother with her expenses. I will take those into account. But that does not take away from the facts and that you are going to have to face the consequences. I accept, as your counsel accepted, that denunciation is needed, punishment and accountability. While rehabilitation and restoration are important this offence calls for a term of imprisonment.

[20] Looking at the offence in the whole, and also bearing in mind that the Chief Justice was looking at this from a different point of view, I would take a starting point of 18 months. From that I will give you the credit of 3 months for your guilty plea, as I said some latitude is allowed around that type of discounting and that amounts to approximately 20 percent. And I give you the benefit of the doubt by allowing three months for your personal circumstances, for the remorse and for the other matters that were urged on me by your counsel. So that makes a total of 12 months imprisonment.

[21] I convict and sentence you to a term of 12 months imprisonment on the charge of injuring to intent. On the charge of common assault I will convict and discharge you but Order you to pay reparation of Mr Samatua's medical expenses of \$335.

[22] And I make an Order, as well as the imprisonment term on the first charge for reparation of medical expenses of \$335.

[23] Mr Robinson, I hope that this is a lesson and you take advantage of any help you can get so that you don't get yourself into the same situation ever again. You may stand down.



Justice Grice

(Note: typographical error in para [16] corrected and Notes re-issued on 9 January 2014)