

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

CR NO 73/13

POLICE

v

TAI TEKOPUA

Hearing: 22 March 2013
Counsel: Ms M Henry for the Crown
Mr W Rasmussen for the Defendant
Sentence: 22 March 2013

SENTENCING NOTES OF HUGH WILLIAMS J

[FTR 10:52:24]

[1] Tai Tekopua, you pleaded guilty almost immediately following your being charged, to having sexual intercourse with a girl aged between 12 and 16 on 17 February 2013. You were 25, she is 14, so there was an 11 year gap between you both.

[2] You were transferred to Rarotonga almost immediately afterwards because the girl's family and others apparently enacted their own form of revenge on you.

[3] The facts were after playing Cricket - and your team was victorious - you went to a barbecue, you drank, and when that function finished you went somewhere

else. You carried on drinking. You drank all night and at about 5.00 a.m. in the morning, when walking home, you had some desire for sex. So you went into the Complainant's house, looked around to make sure all the adults were asleep, went into your niece's bedroom, asked her for sex, she refused after you woke her up by massaging her leg, she told you to leave and you refused, again. You asked to commit oral sex on her and she accepted that.

[4] You are lucky you are not facing a charge on doing an indecent act on this girl as a result of that because you could not possibly argue that her agreement was a genuine consent.

[5] And then becoming aroused you had intercourse with her.

[6] The victim impact report unsurprisingly shows that she was traumatised by what you did. It had a serious impact on her and particularly on her psychological and mental wellbeing.

[7] The Probation report and Mr Rasmussen's submissions make it pretty clear that you have had a somewhat unfortunate background: not much education, shunted between families, perhaps a degree of violence in your past, and you have been living a simple life on Aitutaki.

[8] You told Probation you want to return to the island but that is probably unrealistic at least at the present time.

[9] And you also told Probation that you are remorseful for what happened – it is a bit late for that. You want to apologise to the victim and the family and so you should.

[10] And the Probation Service points out on your behalf that this is your first appearance in Court and that you pleaded guilty at a very early stage of the matter. You could never have escaped conviction.

[11] Ms Henry for the Crown directs my attention to the decision of the Chief Justice in *Ioane* (HC CI CR 682-691/10 30 March 2012) about a year ago, where,

although the facts were rather different, he too was charged with the same offence you face and was sentenced to 2 ½ years imprisonment.

[12] She also makes the point that if you had been charged with rape, which might have been a possibility, you might be facing a sentence of 8 years imprisonment.

[13] Mr Rasmussen took me carefully through your background to suggest that that may be in some part the reason for you behaving as you did on this occasion.

[14] He also suggested that some days before this incident you noticed the Complainant had love bites on her. No-one else has suggested that. I am not prepared to accept it without something more to back it up and, in any case, even if it were true, that could not possibly explain or condone what you did to her on this occasion.

[15] This is a serious offence. The Court must start by thinking of a fairly lengthy jail term for you.

[16] The Court must try and set some sense of accountability in you for the harm you have done, not just to the girl but to her family, your family, and to the Aitutaki community; try and promote a sense of responsibility in you; of course denounce what you did; and try and deter other young men from behaving in a similar way.

[17] The factors that make this a more serious offence include the possibility of violence, if she had continued to refuse to let you do what you did. Then there is the fact that you came in to her house and her bedroom and abused her entitlement to privacy. Given that she was your niece, 11 years younger than you, she had an entitlement to be preserved from harm at the hands of an uncle and of course a young girl like this is vulnerable and the law is designed to try to protect young girls from behaviour of this sort by drunken young men especially those who are related to them.

[18] In my view the starting point for this offence is something like 3 to 4 years jail.

[19] You are entitled to a reduction in that term because you pleaded guilty at an early stage although, as I said, you could never have escaped conviction. And I am prepared, given your personal situation and what has happened to you since, coupled with the plea, to give you a significant reduction.

[20] In the event there will be an Order suppressing the name of the Complainant for what good that might do and as far as you are concerned, you are imprisoned for 2 years and 3 months. Stand down.



Hugh Williams, J