

IN THE HIGH COURT OF THE COOK ISLANDS CR NO'S: 5/14 & OTHERS
HELD AT RAROTONGA
(CRIMINAL DIVISION)

POLICE

v

MATAUTI TAORO

Date: 28 November 2014
Counsel: Ms C King for the Police
 Mr B Mason for the Defendant

DECISION OF THE HONOURABLE JUSTICE CHRISTINE GRICE

[1] Mr Taoro, you appear today before me for sentencing on a number of charges which all relate to alcohol and caused by alcohol abuse. The first set of charges relate to an incident resulting in an assault on a Constable. This charge has a maximum penalty of two years imprisonment and \$15,000 fine. Related to that, was a charge driving under the influence of alcohol which has a maximum penalty of 12 months imprisonment and \$1,000 fine; driving while disqualified which has a maximum penalty of one year imprisonment and a \$200 fine and contempt of Court, where you were in breach of a Court Order that said you were not to consume alcohol and that has a maximum penalty of six months imprisonment or \$100 fine.

[2] The second lot of charges are possibly more serious with longer terms of imprisonment. The first one is unlawful taking of a motor vehicle which carries a maximum penalty of five years imprisonment. The second is driving while disqualified which has a maximum of one year imprisonment and a \$200 fine. A breach of probation, as one of the

probation conditions was not to consume alcohol. That has a maximum penalty of three months imprisonment or a \$40 fine. As well is a charge excess breath alcohol which has a penalty of 12 months imprisonment and a \$1,000 fine.

[3] Finally you were seen purchasing alcohol or about to, and for that incident there is a series of charges including contempt of Court, for failing to report in on your probation, which carries a maximum penalty of six months imprisonment or \$100; contempt of a Court Order for failing to report, again, a maximum of six months imprisonment or a \$100 and there is another for failing to report, a maximum penalty of six months or \$100.

[4] Mr Taoro, these series of offences occurred earlier this year. The first set of incidents relating to the assault on the Police Officer occurred when the Police officer saw you erratically standing in the middle of the road with your motorcycle at about 2.15pm in the afternoon. The policeman went up to you, noticed that you showed signs of intoxication, you became aggressive and hit the officer and altercation followed leading to the Police officer having to be treated for injuries to his face and abrasion.

[5] The next incident was in July 2014. This resulted in a crash. You had drunk a bottle of vodka and fallen asleep. Then you went to the airport and stole a car. You drove it and crashed it into a tree, resulting in you suffering injuries. Luckily no one else was involved. In that event, a blood test was taken with a result of 220 mg of alcohol per 100 ml of blood where the legal limit is 80 mg of alcohol. This was approximately two and a half times the legal limit.

[6] The next series of offences occurred when you were sighted in a Bar and you fled. You were found to be intoxicated and you were later picked up and cautioned over various breaches of Orders.

[7] Mr Taoro, luckily no one involved in the motor vehicle accident.

[8] The Police Officer suffered injuries. It is very serious to assault a Police Officer in the course of their duty.

[9] I am also told that you have previous offences of a similar nature in relation to cannabis and alcohol.

[10] The Crown has submitted that in this case, this is serious. This is due to the nature of the offences including the assault and the fact that the alcohol abuse has been going on despite you being sentenced for that abuse in the past.

[11] Your defence Counsel has candidly accepted the facts outlined by the Crown the factual outline provided by the Crown. But he urges some particular issues relating to your medical condition as well the family support that is being offered. I will talk about in more detail in a moment. I see that your mother is in Court, in the back of the Court here supporting you.

[12] As to the offence itself, as I have said that is serious on a number of counts. I accept the Crown's submission in that regard. Assaults on Police Officers cannot be tolerated and must be taken seriously, particularly in a case like this where the officer in charge was attempting to get you off the road and protect the public. But no one was injured in either of the incidents. That no one was injured driving another vehicle nor crossing the road is a miracle. But your breath alcohol was very high, two and a half times the limit.

[13] I weigh that in the mix. As well with this regard you have already been warned to the provision about about using alcohol and driving. This is evidence of your disregard of the various orders in place and the fact that you have previous offences of a criminal nature. I weigh against this the early guilty plea.

[14] I now turn to the issues that Counsel for defence Mr Mason has raised. There is no doubt that you have a problem with alcohol and you have an underlying medical condition as is outlined in the report from Dr Fariu. It appears that you have an acute psychosis which will get worse if you are not medicated. The psychosis is serious in that you hear voices but the doctor says that you have a reasonable insight as to the issue.

[15] It is not clear how this has been exacerbated by the alcohol abuse and whether one leads to the other. Mr Mason tells me there is a family history.

[16] You are living with your mother who is very supportive of you. Mr Mason also tells me that the family has rallied around you. The family in New Zealand offer to take you and try and put some support in place to attempt to treat your psychosis and your medical problems.

[17] I note that the family has also offered to pay the reparation or make arrangements to the reparation. I also note from the emails produced by Mr Mason that the family acknowledge that you have suffered from years of substance abuse, you dropped out of school, you have been unable to keep a job and that there has been no medical support or mental health support for you here. So the family are very realistic about the situation.

[18] The Crown has urged on me a starting point of five to six months imprisonment. The Crown was mindful of the medical issues and Ms King referred those in her submissions as well as the lack of assistance available in the Cook Islands community, for those mental health issues and also the lack of assistance in jail for prisoners with these types of problems. She did point out this is not the first offence and that you have already had warnings in the form of probation and indeed a period of imprisonment for previous offences. I must take those factors into account.

[19] Your youth and your medical history and the problems associated with this weigh heavily. In this sentencing, there are a few options available in the Cook Islands that would really go toward trying to obtain a positive outcome for you. Counsel also submitted that you had attempted suicide four times and suffered from depression.

[20] Mr Mason submitted that a suspended sentence would be appropriate with mechanisms put in place to enable you to get assistance for your condition in New Zealand with your family and they would arrange the payment of the reparations. He pointed out that even now the family involvement may have made a difference to the offending and kept you out of trouble for a while.

[21] Mr Taoro, the Judge is bound by what Parliament says should be the punishment for these type of offences; the Cook Islands community requires that these type of offences be dealt with properly and denounced. I have got to place a sentence which not only punishes you but also to deter others from similar offending and protect the public.

[22] The sentence has to reflect the gravity, the seriousness of the offence and hold you accountable. I must also take into account the effect of any victim, in this case the Police Officer. But as I have said, of particular significance in this case, is the background, the medical issues, the family and whanau support that are offered. I must impose the least restrictive sentence which is appropriate and consider whether there is an option to rehabilitate you.

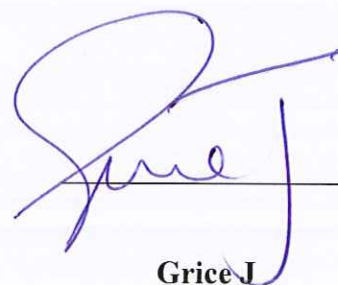
[23] While I weighed out all those factors I am faced with a very difficult decision. I am satisfied that for the purpose of this sentencing they can only be achieved by a sentence of imprisonment in this case. As I said I am troubled by the surrounding psychiatric report evidence and the nature of the offences and I am acutely aware that the treatment in jail may not be of great assistance. I am now going to sentence you and the sentences are to run concurrently.

[24] The Crown suggested a starting point of five to six months imprisonment which I accept. You have previous convictions and I take into account the facts which I have already listed including the early guilty plea and your youth.

[25] I have concluded that the appropriate sentence:

- a) on the assault charge is five months imprisonment following 12 months Probation on the statutory conditions, this is with the direction that if possible, you receive the medication you need and what treatment that can be arranged for your medical conditions.
- b) I also disqualify you from driving or obtaining a driver's licence from two years from your release from prison.
- c) I do not propose to make an Order for reparation because it would only be your family that have to find that money and it would be a sentence on them not you.
- d) On the charges of excess blood alcohol charges, I sentence you to the same as above

- e) On the other charges I impose no penalty.
- f) The sentences are to be served concurrently.

A handwritten signature in blue ink, appearing to be 'Grice J', written over a horizontal line.

Grice J