

POLICE

v

DANIEL AKAMA

Date: 25 September 2015

Counsel: Mrs P Dengate Thrush for the Police
Mr N George for Defendant

SENTENCING NOTES OF THE HONOURABLE CHIEF JUSTICE TOM WESTON

[1] Mr Akama you appear for sentence today having pleaded guilty to quite a number of offences. Indeed there are ten of them. They include Indecent Assault, Burglary, Theft, being unlawfully found, Escape from lawful custody and various Contempt of Court charges.

[2] Many of these offences arise from essentially the one incident when you unlawfully entered a house in June of 2015. At that time you sat beside the victim who was sleeping. You cut her clothing and when eventually she awoke, she effectively discovered herself to be naked. This would have been a frightening experience for her. Following that, you also stole various items. Reparation is sought for those items but there's no realistic prospect of you making Reparation and I will not make any Reparation Orders.

[3] The Crown submits that the Indecent Assault charge is the lead charge and indecent assault is regarded as a very serious crime. The maximum term of imprisonment is seven years. In this case, the conduct which led to you being charged is bizarre. It did not involve many of the aspect of indecent assault that one will commonly see. It does not seem that there was any touching involved other than you cutting the clothes.

[4] The Crown has submitted that the use of scissors is a slightly concerning aspect of the offence and I agree with that.

[5] The Crown has submitted that the relevant principles of sentencing involve, amongst other things, denouncement of your conduct. The Crown has also referred to the fact that at the time these offences occurred, you were on Probation for other offences. I've been given a copy of your record and it is both a sad and troubling one. It started in 2012 when you were sentenced to six months imprisonment followed by twelve months Probation for a raft of offences including Burglary.

[6] There have followed from that numerous other occasions in which you have appeared in this Court. You have been sentenced to other terms of imprisonment. Most recently you have been sentenced for Contempt for which you were discharged without conviction.

[7] Taking everything into account, the Crown submitted that you should have a term of imprisonment falling somewhere between three and three and a half years. This ultimate sentence would take account of the aggravating features here which amongst other things included you entering the house at night but would also allow an appropriate discount for your guilty plea.

[8] Mr George has emphasised your troubled youth, the difficulties you have had. Once you returned to the Cook Islands from Australia that you have been passed around your relatives. You had hoped to go back to Penrhyn at the outset but that did not work out. Mr George explained to the Court that he has tried to work with you since 2014 but, to his sadness as well, you do not seem to be able to help yourself and keep getting into trouble. He speaks of you being a quiet and polite man. He says that you speak well and that seems to be the case because I have spoken to you about your offending and you answered intelligently and well. Mr George says that violence has not been a feature of your criminality despite the more recent Indecent Assault charge. Mr George says that that Indecent Assault charge is more bizarre than indecent and there's much truth in what he says.

[9] Mr George accepts that imprisonment is inevitable for what you have done. He asked, however, if in the course of giving the sentencing remarks I could note the possibility that, at an appropriate point in your sentence, Probation might consider the possibility of you

transferring to Penrhyn. Of course, there is no possibility of you serving a term of imprisonment in Penrhyn and such a transfer could only occur if you achieve parole. That would be available to you during the course of your sentence but so long as you perform well in prison and undertake the duties that you are required to and otherwise comply with directions. Parole is a privilege rather than an entitlement.

[10] However, if the opportunity to move to Penrhyn is available then I urge Probation to see what can be done about that. Mr George has said that we would work with you and Probation if that would assist making that proposal work. Mr George noted that you have already served five months and that needs to be taken into account in your sentence. Mr George also explained that he still has hope for you and that is a good thing because, Mr Akama, without hope, there is no way of getting yourself out of this mess. You are in the position that sadly, many young men find themselves in. They get into trouble because they can't help it, because they get tied in with other people who get them into trouble. At some point, many boys grow out of that, they get a bit of wisdom and they learn that they can't keep behaving in that silly way because it's just a waste of their life. You've got a life to lead Mr Akama and unless you have hope, you will never make anything of that. But I would like to think that Mr George's suggestion about the possibility of a future in Penrhyn might work for you and might give you some hope. So while shortly, I will sentence you to a term of imprisonment, I do that sadly. There is no pleasure in that but it has to be done to mark the Cook Island's denouncement of your conduct.

[11] So what should be that sentence Mr Akama? I believe the Crown suggestion of three to three and a half years would be too high. There needs to be some scope for you to think that there is a future in this as well. I have taken account of the aggravating features in this case and in particular the Indecent Assault charge and the concern that that might indicate an escalation by you of your offending. I have also taken account of the fact that you had pleaded guilty and you have not put the victim to the trauma of having to give evidence about this case.

[12] I believe that an appropriate sentence of imprisonment for you on the Indecent Assault charge would be two years imprisonment and I sentence you to that. That sentence takes account of the history of offending that you have. It also takes account of the numerous charges for which you also appear for sentence today. On all those other charges I formally

enter a conviction but there is no stand-alone sentence that needs to be given in respect of all those other offences.

[13] So Mr Akama you are sentenced to a term of two year in prison. I hope that you do learn something from that and I hope that the option of going to Penrhyn might become available and might assist you to get out of this pattern of conduct.

[14] Take the prisoner down.

A handwritten signature in blue ink, appearing to read 'Weston CJ', is written above a horizontal line.

Weston CJ