IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CRIMINAL DIVISION) **CR NO'S 600-601/16, 253/17**

CROWN

v

NGATAMARIKI KATUKE

Hearing date: 1 to 5 May 2017

Counsel: Messrs A Mills & T Koteka for the Crown
Mr N George for the Defendant

Sentence: 12 May 2017

SENTENCING NOTES OF THE HONOURABLE JUSTICE DAME JUDITH POTTER

[9:20:26]

[1] Ngatamariki Katuke, you have been found guilty following trial by jury of three charges of injuring with intent to injure under s 209(2) of the Crimes Act 1969.

[2] These charges all related to the victim, your nephew Miimetua Katuke. They are injuring with intent to injure by assaulting around the head which carries a maximum penalty of 5 years imprisonment; injuring with intent to injure by kicking which also carries a maximum penalty of 5 years imprisonment; and injuring with intent to injure by hitting with a bush knife with a maximum penalty of 5 years imprisonment.

[3] The first two of those charges were representative charges.

[4] The Crown alleged that the events happened a number of times but the jury had to find that they happened at least once.

[5] I take as the lead charge for sentencing the first of the three charges, injuring by assault to the head.

[6] The facts may be summarised quite briefly. The victim Miimetua Katuke was a 34 year old man at the time of the offending. He used to live with his grandparents in his grandparents' home on the island of Atiu. Sometime shortly after his grandmother died in 2012 you, Mr Katuke, and your wife, moved into the grandparents' home with the victim. The victim was mentally slow and due to this disability he was dependant on you and your wife while you were living with him.

[7] During the period 1 November 2015 to 4 February 2016 you and your wife repeatedly assaulted the victim by hitting him around the head, punching his eyes and kicking him. You kicked him and you hit him with a bush knife.

[8] As a result of these repeated assaults the victim suffered physical injuries including cuts on his nose, swollen eyes, damaged ears, and a number of other wounds. In addition, and very seriously, the victim suffered loss of his eyesight and vision. He is virtually completely blind.

[9] On 4 February 2016 the charge nurse at the Atiu Hospital was asked by your wife to visit the victim at home. Because she was busy the dental practitioner at Atiu went instead. When she arrived she found the victim badly injured, she transported the victim to hospital where he received treatment for his injuries. The victim told the police who attended that his injuries were the result of being assaulted by you and your wife.

[10] There is no victim impact statement but the following are clear from the evidence given at the trial. As a result of the assaults the victim is now permanently blind. He is totally dependent on his aunt and others in the community to care for him. He has had to move out of his childhood home where he was carefully cared for over a long period of time by his grandparents and his natural mother before she died. He has lost his ability to contribute to the community and to provide for himself, to fish, work on the plantations and do the simple chores he previously did. He has lost his ability to move freely around the village and participate in daily activities.

[11] The damage has impacted on the greater community of Atiu, placing stress and strain on those who must now care for the victim and strain on the medical staff and other services in Atiu. Your offending has also caused or exacerbated tension within the Atiu community and within the wider family.

[12] I note Mr Katuke that you have two previous convictions including an assault on the same victim in 2013 to which you plead guilty, and another conviction for common assault in 2014.

[13] Relevant to sentencing are a number of sentencing principles – to hold you accountable for harm you have done to the victim and the community; to promote in you a sense of responsibility and acknowledgment of your offending; to provide to the limited extent the Court can, for the interests of the victim; to denounce your conduct; to deter you and other persons from committing the same or similar offences; and to protect the community from you as an offender.

[14] The Court must take into account the gravity of the offending in this case, and the degree of culpability, and in the most serious cases must impose the maximum penalty for the offence unless circumstances personal to the offender dictate otherwise.

[15] I turn to consider aggravating factors – the seriousness of the assault; the substantial injuries sustained by the victim to which I have already referred; the degree of permanent harm, in this case permanent loss of eyesight.

[16] At trial, the Court heard detailed expert evidence from the ophthalmologist at Greenlane Hospital describing the extensive damage to the victim's eyes which she said could only have been caused by blunt force trauma. Extensive surgery by a team of experts in Auckland could not save his eyesight.

[17] I have referred to your two previous convictions, they are an aggravating factors. The actual use of a weapon – the bush knife. The repeated and sustained assaults over the period of about a month. The vulnerability of the victim with his mental and intellectual disabilities. Your breach of trust. The victim was under your care and supervision and reliant on you and your wife. The offending occurred at home where the victim was entitled to feel secure and safe. You delayed in seeking medical attention for the victim. By the time the victim was seen by hospital staff on 4 February 2016 his wounds had become infected. Some of the injuries were a month old and the victim was in pain and seriously injured.

[18] I turn to consider mitigating factors. Unfortunately there are none. There is no acceptance of the jury verdict or acknowledgment of the offending. No acceptance of responsibility for the harm done and no evidence of remorse.

[19] Mr George, in submissions this morning, has referred to "private remorse". But if that is so, there is no evidence of it, not even in the comprehensive Probation reports prepared for sentencing.

[20] The Crown have referred me to the New Zealand case of *R v Tauekei* [2005] 3 NZLR 372 (CA) which laid down bands of offending in more serious cases of causing grievous bodily harm with intent to cause grievous bodily harm, the maximum sentence for that offending being 14 years. Consequently, as the Crown acknowledged in submissions, the case of *Tauekei* can be a guideline only, albeit a helpful one.

[21] I take as a starting point for sentencing, 4 years imprisonment. I apply an uplift of 6 months imprisonment to reflect the aggravating factors of the two previous convictions and the two other charges for which you are to be sentenced in addition to the lead charge. That produces an end sentence of 4 ½ years.

[22] There are no mitigating factors which would warrant a discount from that sentence.

[23] So the sentence Mr Katuke is 4 ½ years.

[24] I impose concurrent sentences of 3 years each on each of the other two charges, CR 601/16 and CR 253/16. That means those sentences are to be served at the same time and along with the lead sentence of 4 ½ years imprisonment.

[25] You may stand down.

Potter, J

Judith Potter, J