

**POLICE**

v

**TRAVEL TUAPUTA**

Sentence: 8 December 2017

Counsel: Ms A Herman for the Crown  
Mr M Short for the Defendant

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**SENTENCING NOTES OF THE HONOURABLE JUSTICE CHRISTINE GRICE**

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[9:48:50]

[1] Mr Tuaputa, you appear for sentence today on 13 charges. There are two clusters of burglary charges which are serious. In total you face 8 charges of burglary and each of those charges carries a maximum term of imprisonment of 10 years.

[2] In addition you were caught with a bong for smoking cannabis and you also had failed to meet your conditions of bail in that you did not turn up. You are here for sentence on four charges of contempt of Court which each carry a maximum penalty of 6 months imprisonment. The offence relating to the bong carries a maximum penalty of 5 years imprisonment.

[3] You did admit the summaries of the facts when the Police put them to you.

[4] The burglaries appear to be in two clusters. The Crown described them as two "burglary sprees".

[5] The first set of burglaries took place in the first half of 2017. They include breaking into one person's house three times in a short period of time and taking hard drives, his television and cash. Reparation of \$420 is sought on those charges.

[6] The second spree occurred later and while you were on bail for charges relating to the first spree. So you did not learn much from being bailed.

[7] In the second spree you had some associates with you. You all broke into two businesses, a supermarket and a shop, as well as tourist accommodation. In the course of these you took alcohol, cigarettes, groceries as well as some personal items from the tourist accommodation. Reparation is sought by the supermarket and the shop of \$1,259.40 in one case, \$310.00 in relation to the tourist accommodation and various other amounts bringing a total reparation sought of somewhere in the vicinity of \$3,000.

[8] The second cluster of burglaries was premeditated. In at least one burglary you had a lookout. You broke into a premises and used weapons in attempting to break into a safe. You had planned this with your associates carefully.

[9] Apart from these burglary sprees, on 18 August following a search of your premises the Police found a bong for smoking cannabis. You admitted it was yours.

[10] There are also a number of other offences on which I must sentence you. These relate to contempt charges for failing to turn up to Court and breaching your bail conditions curfew.

[11] To your credit you admitted the charges and co-operated with the Police when they located you and spoke to you. You entered early guilty pleas for which you were entitled to a credit.

[12] Your associates, some of whom have been sentenced to probation largely because of their youth (one of them was only 16) and personal circumstances. You were one of the leaders in the group and much older than the 16 year old. Some of the others are yet to enter pleas.

[13] There are quite a few victims of your offending. I have victim impact statements from a number of them.

[14] The people that you stole items from when you entered the private tourist accommodation and the private homes now fear for their safety.

[15] The two tourists were severely affected. They indicated they have been thinking about retiring to Rarotonga because they loved it so much. They had been to the Cook Islands on many occasions. However, they were upset and traumatised by the burglary. At the moment they say they never want to come back here.

[16] This is the type of offending that hangs like a cloud over the Cook Islands reputation. It has a reputation of being a friendly and safe place to come to holiday. If burglaries like this continue it will get a bad reputation. Much of the economy and local people's wages and salaries depend on the island's reputation, both as to tourism and as a safe place to do business. It is a well-regarded country seen as safe and welcoming. Its reputation earned by the hard work of the community and its leaders. Offending like this taints it.

[17] If this type of offending continues and gets publicity it will have a bad effect on the economy of the Cook Islands.

[18] The Crown reminded me of the things I need to bear in mind when I am sentencing you. I must hold you accountable for the harm you do, there are no free lunches here. You have been chances.

[19] I must promote a sense of responsibility and acknowledgement of the offending, consider the interest of the victims and consider reparation as well as denounce the conduct that you have been involved in. I must consider deterrence of both you and others in the community who might think it is a good idea to commit burglaries.

[20] At the same time I have to consider your future rehabilitation. As Mr Short has said on your behalf it is a shame that you are wasting your youth on things like burglaries. I also must consider what is the least restrictive sentence that I can impose on you in the circumstances. You are still very young with your life ahead of you.

[21] When I turn to considering the offences I must assess the seriousness or the gravity of them, as well as your involvement in them or your culpability as it is called. I must compare what I impose on you with other sentences for similar offences in the Cook Islands but adjust it for your circumstances.

[22] In this case the Crown says that these are serious burglaries. There are eight burglaries committed over a period of 8 months including four of them within 2 weeks. They took place at tourist accommodations, private homes and businesses. In some cases when the people were not there in some cases, they were. The burglaries involved planning. You did not just happen to find an open door and go in but planned it with your associates. In at least one instance you used a lookout and implements to try and get into places you thought there were money.

[23] The second cluster of offending occurred while you were on bail for the first, so you were still committing burglaries when you had already been brought up before the Court.

[24] The Crown indicated you had previous convictions including one set of joint burglaries. The Crown does accept your guilty plea warrants a discount.

[25] I was referred to a number of cases that involved burglary and I must consider what sentences were imposed in those. In *Police v Kakino*<sup>1</sup> the Court said "...burglary is a major problem in the Cook Islands and it undermines the security of the community and the tourist industry." The Judge warned that people committing burglaries can expect to go to jail. In that case there were five burglary charges and eleven charges in total. A starting point in that case was taken of 4 years imprisonment with an end sentence of 3 years and 3 months. It was imposed after considering the factors in that case including Mr Kakino's circumstances.

[26] In *Mare*,<sup>2</sup> a case involving a large number of burglaries in fact 31 charges including 20 burglaries over 2 years. The Court took a starting point of 5 years imprisonment and the end point was 2 years imposed in relation to the burglary charges to be served concurrently. In that case the burglar was very young and which allowed a large discount. He also pleaded guilty.

[27] In *Tuotakiao*<sup>3</sup> the offender faced six charges including four burglary charges. The aggravating factors included the number of burglaries over a short time. He had already served 2 ½ years imprisonment for earlier burglaries. The starting point was taken as 4 ½ years which

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<sup>1</sup> *Police v Kakino* CKHC 8 November 2012, Grice J

<sup>2</sup> *Police v Mare* [2009] CKHC 38

<sup>3</sup> *Police v Tuotakiao* [2013] CKHC 13

was increased by 6 months to take into account re-offending. The end sentence was 3 years and 9 months after discount for the guilty pleas.

[28] There are a number of aggravating factors here. First is the number of burglaries.

[29] Secondly, burglaries are always invasive and in this case we know from the victim impact report the victims remain fearful for their safety. In some cases they were out but in some cases they were in their homes that is even more disturbing.

[30] A further factor is the premeditation which I have outlined - the fact that you planned these with your associates.

[31] Reparation is sought of \$3,415 while not a significant amount of money compared to some, it is very unlikely that you will be able to pay any of this so it is rather pointless even imposing it and your Counsel has confirmed that.

[32] In terms of personal circumstances, you already have one conviction for burglary. You committed some of the previous offences while you were on bail for the first lot of burglaries.

[33] Looking to the mitigation side, your Counsel submitted you readily admitted the charges. You will get a discount from the term of imprisonment for the guilty plea.

[34] Mr Short said you have had jobs which he found for you. You have lost them. You just do not really want to take your life seriously.

[35] Another mitigating factor is that when you realised that there were some photos of personal value on one of the laptops you took it back and that deserves a credit.

[36] The pre-sentence report sets out little else in your favour. Your family has been unable to control you. Your sister is willing to take you on but she realises the problem she has got with you continuing to offend. She despairs of you. You are not employed so you have got no money to make reparation, your attitude is bad and you have no intention of stopping this offending.

[37] I have little option but to sentence you to a reasonable term of imprisonment.

[38] On the first cluster of burglaries of which there are three charges, I start with 18 months imprisonment on each charge. To that, I add an uplift of 6 months for the aggravating factors that I have listed which makes a starting point of 2 years.

[39] However, in the case of the second cluster you committed these while you were on bail and you already had a conviction and were on probation for some earlier burglaries. That increases your culpability. For that I would add a further 6 months for that cluster of offences making the imprisonment on each of that set of burglaries to 2 years and 6 months.

[40] Off those starting points of 2 years for the first cluster and 2 years and 6 months on the second cluster I deduct a third for early guilty pleas and for your co-operation with the Police. There is little else that goes to mitigation here. While you are still young, only 21, you should be responsible enough to keep out of crime by now.

[41] Taking the discount for the guilty plea will bring the sentence on each of the first burglaries the first cluster of burglaries down to say 18 months from 2 years and on the second set of burglaries to about 2 years.

[42] I have to stand back and see what the sentence looks like as a whole. It is not a scientific process. I look at how long are you going to be in prison and what can I reasonably say should be the minimum appropriate period.

[43] In this case I sentence you to 18 months imprisonment on each of the first cluster of burglaries those to be served concurrently which means you only serve at total of 18 months for all of those.

[44] On the second cluster of burglaries I sentence you to 2 years on each of those charges. They are to be served concurrently. So adding the first and second lots of burglaries together that makes a total term of imprisonment of 3 ½ years.

[45] On the charge of possession of the bong I sentence you to a term of 1 month imprisonment. Drug offences are regarded seriously in the Cook Islands but you have not had any previous drug offences and I hope you stay away from drugs. You have got enough

problems as it is. That term of imprisonment will be served concurrently with the 2 years on each of the burglary charges so it would not increase the total.

[46] On the charges of contempt of Court which were related to the burglaries and happened at the same time I will sentence you to 2 months on each of those and that is to be served concurrently with the other terms of imprisonment.

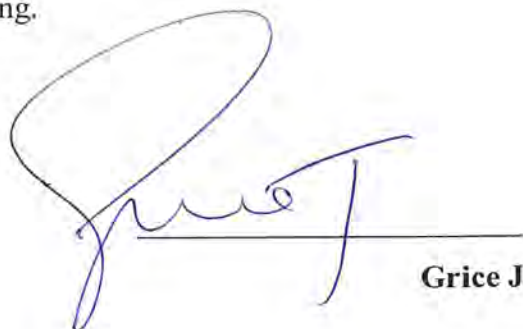
[47] That makes a total sentence of 3 ½ years. Off that must be taken the 3 months and 2 weeks remand period in which you have been in custody. This brings the term down to 3 years, 2 months and 2 weeks.

[48] I impose a sentence in total of 3 years, 2 months and 2 weeks imprisonment. I have considered this sentencing very seriously because I am aware what this is a reasonable term of imprisonment that I am imposing.

[49] The matter of rehabilitation is going to have to be left with the Parole Board but I hope that you find some help to keep you out of trouble when you come out of prison.

[50] There is also a of a non-payment of fine. I am going to convict you and discharge you on that charge. There is no prospect of you being able to pay any fines, I also make an Order remitting that fine (CRN 465). That will not be hanging over your head when you come out of jail. You will come out having served your time and that will be the end of it.

[51] I also make an Order for destruction of the bong.



Grice J