

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

**CR NO'S 93/18  
136-137/18**

**CROWN**

v

**CHRISTIAN GOODWIN**

Date: 23 November 2018

Counsel: Mr S Baker for the Crown  
Mr W Rasmussen for the Defendant

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**SENTENCING NOTES OF THE HONOURABLE JUSTICE PATRICK KEANE**

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[9:49:31]

[1] Christian Goodwin, you appear for sentence for three serious violent offences at about 2 am on 10 February 2018 outside the Rehab bar in Avarua just before it closed.

[2] You wounded Tefaatau Ataera with intent to cause him grievous bodily harm. You wounded Jarrod Tangaroa with intent to injure him. You wounded Al Jermaine Epati with reckless disregard for the safety of others.

[3] In sentencing you for these offences I must first resolve issues of fact arising on the diametrically opposed cases of the Crown and defence at trial.

[4] The Crown's case was that you attacked all three with a knife with the intents necessary. Your case was that you acted in self-defence, eventually using the knife. But that was a matter of reflex and not intent.

[5] The jury's verdict makes clear that you did not act in self-defence, in its view. Either you intended the injuries when you used the knife or, if you intended to act in self-defence, you went too far. That is what I have to resolve.

### **Crown case**

[6] At trial the Crown's case was that you came out of the Rehab nightclub just before it closed at 2 am.

[7] There had been a standoff inside between your friend, now living in Australia, Teina Tane, and Mr Epati, perhaps 30 or 40 minutes before. Security had ejected Mr Tane. He was still at the door at closing, or shortly before, when Mr Epati left. His wife, and you and your wife, were still in the club.

[8] There was another standoff between the two on the Crown's case, which came to a head at a bus stop a short distance away. Mr Tane challenged Mr Epati who was initially reluctant. There was an exchange of blows. Mr Tane threw a punch at Mr Epati and missed. Mr Epati responded, felling Mr Tane.

[9] The Crown's case was that, before that happened, if only very shortly before, you already had the knife. You were there at this exchange. And, though the evidence is less than explicit, you must then and there have used the knife on Mr Epati. He suffered a significant lateral cut to his nose of which he was first unaware. He remained aggressive.

[10] The Crown's case was that Mr Ataera, who, on his evidence, was standing across the road at the T-shirt Factory, entered the fray to protect Mr Epati whom he said was on the ground, with Mr Tane, and you presumably, standing over him. He said he attempted to extract Mr Epati, and punched one or both of you.

[11] Then, he became aware of severe pain to the back of his neck and a cut to his arm, the effect of which was that he ceased to be able to use it. It soon became apparent that he had suffered four knife wounds to which I will return later.

[12] Mr Tangaroa, the third of the three whom you wounded, said he witnessed what had happened to Mr Ataera. He felt he had to do what he could to protect him, even

though he could see that you had a knife. He suffered a shoulder wound and ran away to the food stall from which you had taken the knife. He was surprised find himself standing next to you.

[13] Soon after, the Crown's case was, you left on the back of a friend's motorcycle intending to go home. But you felt responsible and went to the police station in the early hours of the morning. You were interviewed and made admissions which the Crown says are consistent with its case.

### **Defence case**

[14] Your case at trial was that you made that statement within an hour of an extremely violent and exceptional incident. You had thrown the knife away , but told the police where it was. You had no instinct to conceal it. You just did not want to carry it.

[15] You were in shock, as you had been seen to be at the incident itself. And your statement, you said, was incompletely and incorrectly taken down. Your evidence was very contrasting.

[16] In the nightclub, you said, you had tried to make peace between Mr Epati and Mr Tane, but you too were singled out. You were told to watch your back. You also feared, after Mr Tane was ejected by security, that he would remain at risk.

[17] When you went outside you were behind Mr Epati and others in his group. Mr Tane, you said, was very drunk, still standing there, waiting for you and his wife. He was a natural target. He was taunted and lured to the bus stop. He was set upon by at least three; a number that soon grew.. He was put to the ground and suffered a mounting assault from hit and run assailants.

[18] Your first instinct, you said, was to get security. But people coming out of the nightclub prevented you. You grabbed the knife from the food stall near the nightclub. You were looking to grab anything defensive. It happened to be a knife. You said you put it in your pocket.

[19] By the time you got to the bus stop, you said, Mr Tane was already on the ground being assaulted by Mr Epati and two others you could not identify. You tried to pull him out. You became a target yourself. You were forced into a squat. It was only then that you produced the knife.

[20] You began to punch your way upwards using both fists and holding the knife laterally within your right fist. Once you got back to your feet you waved it at those surrounding you, hoping to deter them. They were not deterred. They took you to the ground.

[21] That, you say, must have been when you used the knife. You cannot explain how the three suffered their wounds. But you acted in self-defence and their wounds were an inadvertent result.

### **Jury's verdict**

[22] By its verdict the jury clearly accepted that you did wound two of the three intentionally and one recklessly. The jury clearly found that the Crown had negated your claim of self-defence to the point where it was sure.

[23] What remains unclear, naturally enough on the jury's verdict, is why it rejected your defence. That could have been because it was convinced that you wounded intentionally or recklessly. Or because it accepted you acted in defence of yourself and Mr Tane, but went too far.

[24] I find on the evidence that it is more likely that you set out to defend Mr Tane, and then yourself, by recourse to the knife. But I also find you had it beforehand and that the group, as and when you began to deploy it, was, as on the Crown evidence, still confined.

[25] The fact that the three actively involved did suffer their injuries suggests that when you were waving the knife around, the group was still confined. Equally, the fact that Mr Tane suffered relatively slight injuries, and you no apparent injuries, suggests that he and you were not subject to any sustained and mounting assault.

[26] Also, I am unable to accept that you could have put that knife in your pocket after you got it from the food stall. It was too large and it was razor sharp. You could have done yourself severe injury.

[27] So I accept your defence to the extent that I think your intent was to defend Mr Tane and yourself. I think you did have genuine fear that there could be an enlarging attack on him, not just confined to those whom you wounded. But I find that, at the time you intervened, it was when the group was equally confined.

[28] That, to my mind, also, is confirmed by your statement on the night. There may have been aspects of the statement, which were incomplete or incorrect. But there is no suggestion in that statement, which you signed, that you had been subject to a mounting or phased attack.

[29] It seems to me that, in all likelihood, when the enormity of what happened came home to you afterwards, that was the way in which you came to explain to yourself what you had done, and to explain it to others.

[30] May I add, when I now speak about those factors which aggravate your offending, that is an exercise in retrospect. I accept this was in the heat of the moment, as the Crown says; and that everything happened quickly. That reality has to inform sentencing.

### **Sentencing principles**

[31] In sentencing you I take account of the principles, which always apply on sentence, and which both the Crown counsel and your own have identified to me.

[32] Essentially what I must do is impose a sentence on you which protects the community, holds you accountable for your offending, and deters others. I must also, to the extent that I can, impose a sentence which enables you to rehabilitate and reintegrate with your family as soon as that may be practicable.

[33] In your case, however, the balance that has to be struck derives from the seriousness of your offending and in the maximum sentences capable of being imposed.

[34] Wounding with intent to cause grievous bodily harm attracts a maximum penalty of 14 years. Wounding with intent to injure, and wounding with reckless disregard, attract maximum penalties of 7 years. And there are these three offences to consider together, set against the principle of totality.

[35] These offences replicate those in the Crimes Act 1961 (New Zealand) and I rely on two guideline judgments of the Court of Appeal of New Zealand.

[36] In *R v Taueki* (2005) 21 CRNZ 769 (CA), the Court set guidelines for offences involving the infliction of grievous bodily harm. That, of course, is your offence in respect of Mr Ataera. The Court set starting points for sentence in three bands. Band 1: 3-6 years. Band 2: 5-10 years. Band 3: 9-14 years.

[37] Which of those bands is to apply, the Court said, will depend on the presence or absence of identified aggravating features. They include those which are relevant in your case: (i) premeditation, or the lack of it; (ii), serious injury; (iii) use of a weapon: (iv) attacks to the head.

[38] In the *R v Nuku*, [2012] NZCA 584, the Court of Appeal, working by analogy, set equivalent bands for wounding with intent to injure. The critical distinction between offences involving grievous bodily harm and those involving injury is that in the former the intent may be inferred from the injury, whereas in the latter the injury may not be a safe basis for inferring intent. It may be greater than was intended.

[39] In Band 1 *Nuku*, the least serious band, a sentence short of imprisonment can apply. In Band 2, a starting point of up to 3 years. In Band 3, a starting point between 2-7 years.

[40] Finally, in *Taueki* the Court of Appeal said that, when the bands are applied, that must be in an evaluative way. They are not rigid. And if for example there is provocation or excessive self-defence they cannot apply literally. Lower starting points will apply.

**Ataera offence**

[41] In sentencing you for your most serious offence, wounding Mr Ataera with intent to cause him grievous bodily harm, your lead offence for the purpose of sentence, I take four factors into account.

[42] The first is that whatever your intent, and I accept it was defensive, you picked up a weapon. It was a sharp knife of some size, and clearly from the wounds that resulted a dangerous weapon. I do not accept you picked it up inadvertently. You picked it up to rely on it. I do not accept you had it in your pocket.

[43] Second, to that extent I find that you had it consciously. But not, I find, in a detached premeditated way. You picked it up on the spur of the moment, in a state of fear. Everything was happening very fast. But you did pick it up knowing what it was and knowing what it could do.

[44] Third, the wounds you inflicted on Mr Ataera, four wounds, were very significant and life threatening; (i) a 13 centimetre long full thickness wound to the lower back of his head; (ii) a 12-15 centimetre long and deep wound to his left arm; (iii) a 5 centimetre long and deep wound to the left base of his neck, just short of major blood vessels; (iv) a 4 centimetre long and deep laceration to the front of his right shoulder.

[45] These wounds, most especially the third, were life threatening. He suffered a 2 litre blood loss for which he required transfusions and his victim impact statement sets out the lasting consequences.

[46] He could not move his neck for a month, and he suffered severe headaches and tenderness. He had great difficulty sleeping in a natural posture. He was left with a large obvious scar on the back of his head.

[47] He was unable to return to school for another month or more. He suffered a variety of financial costs. His family suffered emotional distress. He lives, even now, with the fact that he almost lost his life.

[48] Those four factors combined, to my mind, place you for the purpose of sentence at the upper end of *Taueki* band 2, and on the cusp of band 3. They could justify a sentence with a starting point in the vicinity of 9-10 years imprisonment.

[49] Accepting as I do, however, that your initial intent was to act in self-defence and that everything got out of hand so very rapidly, I am going to take a starting point of 7 years for that offence.

[50] You also offended against two others for which you must be sentenced. And taking account of the totality principle, I intend to impose concurrent sentences, not cumulative sentences. But I intend to uplift my 7 year starting point for your offence against Mr Ataera to take account of them. I uplift it by one year, to 8 years.

### **Tangaroa and Epati offences**

[51] I have elected to impose concurrent sentences because, as I have said, the three offences happened within a very short time of each other as things were moving very rapidly. They were part of a single incident.

[52] But the wound you inflicted on Mr Tangaroa was serious. You stabbed him to the shoulder. The wound was 3 centimetres long and 7 centimetres deep. It was described by the treating doctor as both curved and deep.

[53] Once again it is a feature of that wound, like two of the wounds you inflicted on Mr Ataera, that it was to his back. And how that came to be has to be a matter for troubling inference.

[54] According to his victim impact statement he was affected for four months. He was not able to work. He was not able to further his interest in music or to play rugby. His motivation and drive were destroyed. He nevertheless hopes the best for you.

[55] Your offence against Mr Epati is not made less serious because it is pitched at the level of recklessness. His wound too speaks for itself. It was a significant cut across the bridge of his nose. The photographs show that it is disfiguring and the potential for it to have been much worse has to be very real.



[56] In his victim impact statement says “my nose was cut wide open and also quite deep” and he said also suffered migraine and concussion from being punched. He too has been troubled since by the concern that his life could so easily have been taken. He had to cut out rugby and training and any physical activity for two months.

[57] In the case of Mr Tangaroa, I see you at the cusp of bands 2 and 3. I take a starting point of 3 years. In the case of Mr Epati, the fact that you cut him to the face is, to my mind, a major aggravating feature. A starting point of 2 years will apply in his case.

### **Pre-sentence report**

[58] Your pre-sentence report recommends, as is inevitable, that you be sentenced to imprisonment. But it sets out much about you that satisfies me that this offence was out of character.

[59] You do have one previous conviction for fighting in a public place, not far from the point of this offending, but that was 5 years ago and you were convicted and discharged. I do not regard that as aggravating. Nor do I consider it means that you are not of good character. I regard this as an exceptional passage of offending.

[60] You have relied on a number of references from people who know you well, and from people in positions of responsibility. Three themes emerge from those references.

[61] Firstly, you are a creative man, of real talent. You are a graphic designer and a musician and you have contributed impressively to your community and church. Secondly, you are a responsible parent, very concerned now about your relationship with your two young daughters.

[62] Thirdly, and this is more topical, you are a loyal friend and very protective. And one of those who gave you a reference says that there was a time when he was drunk and you extracted him from an evolving assault. On that occasion nothing untoward happened.

**Defence submissions**

[63] Your counsel, against that background, after responsibly accepting that your sentence must reflect the seriousness of your offending and the need to hold you accountable and to protect the community, emphasises to me how exceptional it was.

[64] You accept responsibility for what you did, he says. You always have. That was evident in your statement to the police and remains so. But you acted in self-defence, however ill-advisedly, and you saw the threat more acutely than must have been accepted by the jury. You acted in the heat of the moment.

[65] You are, he says, only 28 years old. You are the father of two young children. You have a strong family base and support. You are remorseful, despite the conduct of your defence. There is a very high possibility you will not offend again. He ends, as he began, with the submission that the circumstances were exceptional.

**Conclusion**

[66] I accept, against that background, that you are entitled to discounts from your primary offence which will dictate your ultimate sentence. You are of good character, this offence apart. Your remorse, I accept, is real. You spent 49 days on remand for which you are entitled to a credit of say 2 months.

[67] I allow you those credits in the sentence I impose on you for your offence against Mr Ataera. I reduce the 8 year sentence I intended to impose on you for that offence by one year. You will be sentenced to 7 years imprisonment.

[68] For injuring with intent, Mr Tangaroa, I sentence you concurrently to 2 years imprisonment. And for wounding Mr Epati recklessly to 18 months imprisonment concurrently. Your effective sentence is 7 years imprisonment.



**Patrick Keane, J**