IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CRIMINAL DIVISION) **CR NO. 294/2018**

POLICE

v

NGAA TARIA (AKA PUREARIKI)

Date: 21 November 2018

Counsel: Ms K Bell for the Crown
Mr M Short for the Defendant

SENTENCING NOTES OF THE HONOURABLE JUSTICE PATRICK KEANE

[9:55:39]

[1] Ngaa Taria, you appear for sentence for the manslaughter on 16 May 2018 at Aitutaki of your grandson Scorpfield Anthony, aged 9, who in December 2017 came with you from New Zealand to live with you and your family at Aitutaki.

[2] On the morning of Wednesday 16 May 2018 he went with you to the Pacific Resort. While there he defecated in his pants. When you returned home you yelled at him. You slapped him multiple times on his bottom with a stick. The force of the assault was such that he fell to the ground.

[3] Later that afternoon he wet his pants and you again gave him a hiding. This time you smacked him multiple times on his thigh with a stick.

[4] The following day he again wet his pants, this time you struck him across his hands. The day after that, the Friday he was seen by a visitor to your home to have swollen hands. There was also a bruise to the side of his head.

[5] On Saturday, 19 May, he complained of feeling hot. He was put in the shade, you put some ice on his chest. In the afternoon he went with you to the beach. He was left to hang off the back of a truck and he fell off. It was travelling slowly and his fall was onto grass. You told him he was fine.

[6] That evening he began to show respiratory problems. He was taken to hospital. He was pronounced dead at close to midnight. While the cause of Scorpfield's death was unable to be determined on post-mortem, what it did reveal were a number of injuries:

(a) multiple bruises, abrasions and superficial lacerations to his face;

(b) multiple bruises on the skin and subcutaneous tissue of his torso;

(c) bruising to his right shoulder and upper arm, bruising to both forearms, both subcutaneous and intramuscular;

(d) multiple abrasions to his fingers and nail bed, bruising to his left index finger;

(e) significant bruising to and extensive subcutaneous fragmentation in his buttock;

(f) significant bruising and swelling with underlying subcutaneous fragmentation to his left thigh;

(g) blisters consistent with being struck by a firm and straight object.

[7] Due to resource and clinical constraints, and decomposition, no definitive cause of death was identified. Biochemical analysis of the pre-mortem blood sample was limited. It suggested there had been muscular breakdown, leading renal failure, and that this was most likely the cause of his death. His death resulted from complications to his cumulative injuries.

[8] I have also heard of the effect of his death on his mother whose stepbrother read out the victim impact statement which I need not elaborate. Her grief is profound.

Pre-sentence report

[9] Your pre-sentence report describes you as a highly successful businessman on Aitutaki. You have been the source of many creative ventures. The tourist industry has been dependent on you. You run a hydroponic lettuce garden and supply resorts. You have several workers dependent on you.

[10] You have a family. There, after a marriage of 20 years, you have two children – one 16 and one 12 – both living on Aitutaki.

[11] You did not, when interviewed, dispute the Crown summary. You said your intent was not to harm your grandson but to discipline him. You were shocked by the result of the post-mortem. You confirm you had failed to care for him as you had undertaken to do. You take full responsibility and you feel considerable remorse.

[12] Your pre-sentence report recommends, as it must, a sentence of imprisonment.

Sentencing principles

[13] Your offence, manslaughter, attracts a maximum penalty of imprisonment for life. There is and can be no tariff for manslaughter. Circumstances differ so widely, even where the manslaughter of a child is an issue. Here in the Cook Islands, as was confirmed in *R v Williams* [2010], comparable New Zealand cases are referred to.

[14] The most extreme cases of manslaughter of a child in New Zealand are those which have resulted from sustained and systematic torture. They attract sentences of life imprisonment or close to it. *R v Witika* [1993] NZLR 424(CA); *Shailer v R* [2017] 2 NZLR 629 (CA).

[15] Your offence, although obviously very serious, is not at that extreme level as the Crown rightly recognises. It was one of excessive punishment and perhaps also a failure to recognise the effect of what you were doing and to obtain medical help earlier.

[16] There is one broadly comparable Cook Islands case to which the Crown rightly referred me, *Police v Samuel* [2008], which involved the death of a small child. As the Crown says, the sentence imposed sits well below the order of sentence required for this form of offending. It was imposed without reference to the cases to which I have been referred.

[17] The starting point that I must take in your case derives rather, to my mind, from the decision of the Full Court of the New Zealand Court of Appeal in *R v Leuta* [2002] (CA 79/01, 19 September 2001); and the reasons for it bear repeating.

[18] The Court of Appeal said, in summary:

(a) Violence inflicted on a child is worse than that directed at another adult. The defencelessness and vulnerability of the child are significant features, as is the abuse of a position of power and responsibility. The fragility of young children is frequently referred to but too often overlooked.

(b) A factor considerably aggravating the seriousness of violence against children is the use of a weapon. (In ordinary terms a stick.) There can be no blurring of the line between lawful and reasonable reprimand on the one hand and a criminal beating on the other. The Courts must clearly draw the line between the two.

(c) Even where the violence is of a lower order it is aggravated by a failure to alleviate pain and discomfort.

[19] In short, the Court of Appeal said at para [80] "violent, cruel and brutal treatment of a defenceless and vulnerable child to whom there are duties of trust and

responsibility constitutes conduct of grave criminality and where death ensues the sentencing task is in respect of a very serious crime."

[20] In that case, where the manslaughter of a child resulted from excessive discipline inflicted by a mother in a single incident, and multiple injuries resulted, the Court of Appeal took a starting point of 10 years. On a Crown appeal the Court increased a 6 year sentence to 7 years but held, that even allowing for plea, a proper sentence there could have been 8 years.

[21] The Court of Appeal decision reflected a different regime for credit for plea and remorse than that applying in the Cook Islands. I use it only as a point of reference.

Crown submissions

[22] The Crown contends that in your case, and for the reasons I have just outlined, I should take a starting point of 10 years.

[23] The Crown identifies as factors aggravating your offending:

(a) Scorpfield's vulnerability aged 9;

(b) a breach of trust on your part because he was in your care;

(c) the repetitive nature of the assaults, over a matter of 3 or 4 days;

(d) the extent of his cumulative injuries;

(e) the use of a weapon – the stick.

[24] The Crown accepts that you should receive a full one-third credit for plea, which is a higher credit than is open these days in New Zealand. Also credits for your lack of previous convictions and your obvious good character.

Defence submissions

[25] Your counsel, in his very helpful submission, says that you will accept whatever sentence is imposed by the Court. But he invites me to take full account of how it came to be that you punished your grandson as extremely as you did. Also how out of character it was.

[26] He has supplied me with many letters from the people of Aitutaki and Rarotonga who have worked with you in various capacities. Your contribution to the life of Aitutaki, tourist industry, and its culture and history, have clearly been remarkable. You are essential to the economic life of Aitutaki as became evident even prior to your plea.

[27] Your contribution to the life of Aitutaki has also included work at a primary school and coaching young boys rugby. All who write to support you say, if only by inference, that your offence is completely out of character.

[28] You took responsibility for your grandson, your counsel submits, because, although he was deeply loved by his mother, life for her and for him at that time was proving very difficult. Her housing was transient, money was tight.

[29] You understood, when you assumed responsibility for him, that in a what hopefully was a safer and less complicated world in Aitutaki you could help him to mature. You could make a man of him.

[30] A psychologist's assessment, your counsel obtained, to review how you came to discipline him as you did, raises the possibility, that when he came into your care he was already traumatised. His repeated soiling, which you attempted to bring to an end by disciplining him, could, the psychologist suggests, have more fundamental causes than you could have begun to realise.

[31] You saw it more simply. You disciplined him as you had been disciplined yourself as a boy. As well, your counsel says, you were running a series of

businesses. He was clearly complicating your ability to do it. You could well have felt mounting frustration. Certainly you were not coping.

[32] He says that you have enrolled in a counselling program devised just for you, regardless of whatever sentence must be imposed.

Conclusion

[33] Ngaa Taria, you may well have found yourself with a very difficult responsibility when you assumed the care of your grandson. It certainly proved far more difficult than you anticipated.

[34] There has also to be a question whether you assumed too much when you had him engaging with you in your various business activities and looked to him to contribute. That might be the usual way. But your businesses were too considerable and demanding.

[35] Ultimately you must be sentenced for the way in which you disciplined him. And it may be that you did not understand how excessively you did so until you learned of the contents of the post-mortem report. What that report discloses is that you were extremely violent to him. Even if your motive was to discipline him, the level of violence was completely unjustifiable.

[36] It was frank and sustained violence and the effect on him was extreme. He was a 9 year old boy. His body was unable to withstand the level of discipline. It may not be possible to say, definitively, what was the cause of his death. Renal failure appears to have been the proximate cause. But it followed three or four days of sustained violence for which you must accept responsibility.

[37] The Crown is right I consider to equate your case with the *Leuta* precedent. There, although there was a single incident, the injuries were of much the same order. The fact that they were inflicted in one incident and you inflicted those Scorpfield suffered over three or four days is incidental.

[38] There has also to be a question why, as you offended over three or four days, you failed to recognise day by day the extent of your grandson's injuries. They must have been becoming evident. You sought hospital care for him the day he died. If you had sought care earlier this whole tragic episode might have been brought to a better end.

[39] I take a starting point for your offence of 10 years. I allow you a full credit for your plea, which is one-third here in the Cook Islands, and that brings your sentence to 6 years, 8 months.

[40] I accept you are entitled to a credit for your otherwise outstandingly good character and the fact that this offence is altogether out of character. I will reduce your sentence by a further 8 months, to 6 years. You are sentenced to 6 years imprisonment.

Patrick Keane, J