

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

**CR NO'S 359-360/17
371-373/17
576-579/17
543-544/17
630/17**

POLICE

v

VAIKALOA TAUFACHEMA

Date: 21 March 2018
Counsel: Ms K Bell for Crown
Mr W Rasmussen for Defendant

**SENTENCING NOTES
OF THE HONOURABLE JUSTICE DAME JUDITH POTTER**

[8:55:40]

[1] Mr Taufahema you are before the Court for sentence on a number of offences – five charges of theft, each carrying a maximum penalty of 5 years imprisonment; five charges of burglary and one of attempted burglary – the burglary charges carrying a maximum penalty of 10 years imprisonment and the attempted burglary charge carrying a maximum of 5 years imprisonment. And thirdly, one charge of burglary which involved the theft and on-sale of a firearm. That offence carries a maximum penalty of 10 years imprisonment.

[2] It will be apparent to you that those maximum terms of imprisonment indicate that parliament and the community view very seriously this type of offending.

[3] Briefly stated, the facts are these. The theft charges which occurred in the period 11 to 19 June 2017 arose from the theft of a handbag from a 69 year old woman who had been your host for a drink at her home. The handbag you stole contained an ATM card and you

used it to make four withdrawals amounting to \$420 – a considerable sum of money for the poor woman whose handbag you stole.

[4] The burglary charges and the attempted burglary charge arise from a burglary spree in the early hours of the morning of 14 October 2017 between 1am and 3am. You broke into five commercial premises and attempted to break into a sixth – Koco's Chinese Takeaways. You used a strong iron tool to break locks and to gain entry. This was very deliberate offending.

[5] The offence of burglary which involved the theft and on-sale of a firearm occurred sometime in the month before 3 November 2017. The theft of the firearm was from your father-in-law. You on-sold it, my information is, for \$500. The firearm has not been recovered and it is a matter of concern that it is at large in the community, but you have not been willing to disclose details of the person or persons to whom you on-sold it.

[6] I have received and read a probation report in respect of you. It recommends, as it only can, a sentence of imprisonment. It records your offending history which dates back to the time when you were 14 years old. It records that you have been before the Court on seven occasions for criminal offending and that you have served at least two terms of imprisonment as a result of previous offending.

[7] I have also received victim impact statements from the lady whose handbag you stole and from the owners or managers of the commercial premises into which you broke on your burglary spree. The victim impact statements reflect that burglary undermines the security of the community on Rarotonga, the security of business owners and the security of the tourist industry, which is very important in this jurisdiction. Burglary, as the submissions for the Crown record, is a nefarious offence.

[8] There are many aggravating factors of this offending. In the case of the thefts, the breach of trust in respect of the lady who had been hospitable to you and your friend. That the theft was from her home, and that you used the bankcard in her handbag on no less than four occasions to withdraw funds from the bank. I have already mentioned that the amount stolen through this means was \$420, a considerable sum.

[9] In relation to the burglary offending, there were six businesses affected by your activities. You took coins, clothing and assorted alcohol. Those were later recovered by the police but not the hard drives which you also took.

[10] In relation to the firearm burglary, there was also a breach of trust involved as you are related in some way to the victim. And it is very serious that what you stole was a firearm, that you on-sold it, that it has not been able to be recovered and you have not been prepared to assist in its recovery.

[11] I further note that you would have been already before the Court on the theft charges when the burglaries occurred.

[12] Further, your list of previous convictions is an aggravating factor.

[13] In mitigation of your offending are your guilty pleas. Perhaps inevitable, given the clear evidence of your offending.

[14] The sentencing principles I take into account are to hold you accountable for your offending, to denounce your conduct, to deter others and you from this type of offending and to consider the protection of the community.

[15] I turn to sentence you. As your counsel accepts, it is inevitable that a custodial sentence be imposed. All other kinds of penalty have been tried but you have not been responsive.

[16] You say you do not want to be imprisoned, but clearly Mr Taufahema, if you continue to behave in this way, at the age of 23 years you are looking at a long time in jail. And what you have got to remember is that while I as the judge must impose on you a sentence of imprisonment, it is you who are responsible for this. You caused the necessity that you are taken out of the community, because of your offensive behaviour.

[17] On each of the theft charges, and there are five of them, the sentence is 1 year imprisonment to be served concurrently.

[18] On the burglary charges, the sentence is 3 years imprisonment on each of the five burglary charges and 2 years on the attempted burglary charge, those sentences to be served concurrently.

[19] On the burglary charge relating to the firearm, the sentence is 3 years imprisonment.

[20] Those sentences are cumulative. While each group of sentences are linked in time and nature, there are three separate groups of offending which must be reflected in the overall sentence. That is 7 years imprisonment.

[21] You are entitled to a discount for your guilty plea which I assess at 25 percent or 1 year and 9 months, giving an end sentence of 5 years and 3 months imprisonment.

[22] I am informed that you have been on remand for a considerable period. It is likely to have run from June 2017 when you were first apprehended for the theft offending but I do not have precise details. I request that they be provided to me. You will be given credit for the time spent in prison on remand, against the sentence which I have now imposed of 5 years and 3 months imprisonment.

[23] The Crown seeks reparation but in the circumstances of the lengthy custodial sentence imposed, it is unrealistic to order any reparation and I do not do so.

[24] Please stand down.



Judith Potter, J