

POLICE

v

NGATOKOTORU NICHOLAS

Date: 1 August 2018

Counsel: Ms J Epati for the Crown
Mr N George for the Defendant

SENTENCING NOTES OF DOHERTY J

[10:20:45]

[1] Ngatokotoru Nicholas, you at 19 years of age face sentence today for two charges of wounding with intent to injure. These were charges to which you pleaded guilty when they were reduced from more serious charges. That was on the 1st June of this year.

[2] The incident happened in February when on the 17th February you were involved in a couple of altercations with other people. Firstly, On The Rocks bar in Avarua, you and three other men were in a scuffle. You left the scene and moved down outside another nightclub in town, the Rehab Nightclub. You seem to have been standing outside the bar and then you got into trouble with the same group of men. You grabbed an empty beer bottle and smashed the bottom part of that and took the beer bottle into the fight.

[3] You cut one of the men several times and wounded him. He had cuts to his right shoulder and his left finger and he had a fractured finger.

[4] Another man attempted to stop you and you swung the bottle at him and caught him on the side of the face. He had lacerations to his face and his ear and also to his arm. In the course of the altercation you too suffered an injury, a cut to the hand. All three of you ended

up being treated in hospital. All three of you were either stitched up or cleaned up and sent home.

[5] Luckily neither of the two men that you attacked seemed to have suffered any significant long term physical or emotional injuries although one of them has been unable to work since February and he was off work until the 16th April, so about two months. He has lost wages of around \$800.

[6] The Crown seeks reparation of that amount and other costs and I think I will deal with that right now. In your situation it will be impossible for you to repay or pay that amount and I do not intend to make any order in respect of reparation.

[7] You seem to have gone off the rails since the death of your mother in 2015. Certainly since that time you have been before the Court on a number of matters. Burglary where you were sentenced to probation and you then breached that sentence. You were apprehended on another charge of burglary and you received probation and community service for that. And then a whole raft of traffic offences for which you were sentenced to 12 months imprisonment followed by probation in June 2016. That is confirmed by your counsel who says that you do seem to have gone off the rails and it was also confirmed by your father to an extent in the letter he has written to the Court in your support and seeking that you come home under effectively his support and hopefully that of the Probation Service.

[8] The Probation Service has given me a report. It says that you are remorseful and you plead for leniency. You still seem to be saying that you were acting self-defence. That would have given you a defence to this charge if you had taken up that opportunity. I have to deal with you on the fact that you accept your culpability for what you did.

[9] In positive light you have been in custody on remand in the local prison and have been undergoing the Spiritual Mentorship of the Te Rekareka Lighthouse Church mentoring scheme. And I have had a report from papa there who tells me that, that has been beneficial to you and you have responded well.

[10] There have been a number of letters given to me in your support. Some read out by your counsel in open Court today. Particularly the one from dad who pleads for you because

he and his family, your siblings, your brothers and sisters need your support both financially and in physical terms. You are described as being a good worker.

[11] Mr George has implored me to remember Article 46 of the Constitution Act. And that is really to say that too much heed should not be placed on New Zealand Law, particularly when it comes to sentencing. Certainly law since the mid-1980s. That is because the Crown remind me that the purposes and principles of sentencing have been put in legislation or put in law in New Zealand.

[12] But what that New Zealand law does is no more than codify or put in one place the sorts of principles that sentence in Courts have been using forever. Not just in New Zealand but here in the Cook Islands. And the purpose of sentencing you today has got several parts to it. It is to make you accountable for what you did. It is to make you responsible for what you did. It is to denounce your conduct, to say that it is not right. It is to deter you from acting this way in the future. And just as importantly or even more importantly in your case to deter the wider community.

[13] I am told by the Crown in their submissions that this sort of behaviour is escalating on the Island. I do not know about that and if the Crown is going to want the Court to take cognisance of it, it should put evidence before the Court and show how much more of this is happening. But what I can say is that in the two weeks that I am sitting in this Court on this Island, I have three or four sentencings like this where people have used weapons to cause serious violence.

[14] So, maybe deterrence and showing other people that they cannot do this without receiving a stern response from the Courts is probably one of the major factors of sentencing today. That is the purposes of sentencing.

[15] Generally the principles of sentencing work along the lines of “the worst crime gets the most time.” So the worse a crime is, the higher the response ought to be from the Court, and is from the Court.

[16] The Crown has referred me to a number of cases, some of those are persuasive New Zealand cases like *R v Tauaki* and *R v Nuku* where they set out various levels of response from the Courts in terms of imprisonment depending upon what has happened.

[17] The Crown also refers me to some decisions of this Court and in particular *Police v Maxwell* and *Police v Labaibure*. In those cases which related to the use of weapons and domestic violence and other situations, terms of imprisonment were imposed. Those cases also took some note of the New Zealand starting points.

[18] Those other cases say that the more of the aggravating features, the more of the bad features about someone's behaviour, then the higher the response from the Court ought to be. And there are a number of features like that in your case. One, the premeditation, seems from the Summary of Facts that you have pleaded guilty to that you waited outside and had some premeditation to take these people on again. I know you say you were defending yourself, but that is not what you pleaded guilty to.

[19] So you had premeditation to fight. You certainly had premeditation to use a bottle. You found the bottle, you smashed it and you carried into the fight to cause damage. So you used a seriously dangerous weapon. A broken bottle can cause considerable and maximum damage. You then actually used it to wound not just one person but two. One of those was a blow to the head with the broken bottle. You say you do not know how that happened and it might have happened in the struggle but you have pleaded guilty to intending to injure that person. And there is also, as I say, more than one person.

[20] Another aggravating feature might be that you are no stranger to the Courts, that you are a bad man. I do not intend to take that into account here because your previous offending has not been anything like this.

[21] What then of things in your favour? The mitigating circumstances. Certainly you pleaded guilty at the first reasonable opportunity and the case law says that even though that sometime after you were first charged you ought to get a credit for pleading guilty the moment the charge was changed and that is what has happened here. You have also spent 5 ½ months on remand in prison and that needs to be taken into account.

[22] So where do I start here when I look at all of those aggravating features? This has to put it in the range of perhaps 2 to 3 ½ years imprisonment as a starting point. And I intend to take 2 ½ years as that starting point, that is 30 months.

[23] You are entitled as I have said to the reduction from that starting point of a significant amount for both the amount of time you have spent in prison on remand because the parole system here does not take it into account, and also your guilty plea.

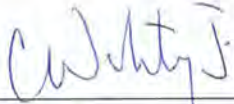
[24] In New Zealand the guiding case for the discount for a guilty plea is a case called the *R v Hessel*. And the highest Court in New Zealand, the Supreme Court, on appeal changed the approach of the Court of Appeal which said there for a first-up guilty plea there ought to be a reduction of one third of the sentence. And the Supreme Court said that is too much, it should be no more than a quarter of the sentence. As far as I am aware there is no decision on that approach by the Court of Appeal of the Cook Islands. It may well have agreed with sentences where a quarter was deducted but there has been no discussion about it and tariff guidance to this Court.

[25] I think that the Cook Islands is slightly different to New Zealand and that a one third deduction is appropriate. For number of reasons the cost of trials and bringing people to justice is high in this country. Frankly, the conditions of imprisonment are perhaps more extreme than they are in New Zealand. And the culture of this country is different. I think this country is more, the people are perhaps more forgiving. And for that reason I think that a third deduction is an appropriate start, or appropriate for those who plead guilty at the first opportunity; to give an incentive, to get the matter dealt with, without being too much inconvenience to victims, to witnesses and to the State.

[26] So I am going to give you from the 30 months starting point a deduction of 10 months for your guilty plea and 5 ½ months for the time that you have already spent in prison on remand.

[27] You are therefore sentenced to 14 ½ months imprisonment from now.

[28] That relates to each of the counts and is to be served concurrently.



Colin Doherty, J