

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

CR NO'S 288-289/18

POLICE

v

ANDY LEON JAMES ANDREW

Date: 1 June 2018

Counsel: Ms K Bell for the Crown
Mr N George for the Defendant

SENTENCING NOTES OF HUGH WILLIAMS, CJ

[10:44:15]

- [1] Andy Leon James Andrews, you have been found guilty by a jury on two counts of indecent assault on a young woman by kissing her without her consent. You face the possibility of imprisonment for 7 years on both charges.
- [2] You were charged with a third account of indecent assault by rubbing your penis against the young woman's thigh but the jury acquitted you on that and that aspect of the matter therefore passes from consideration.
- [3] You went out with a number of others on this particular night, including the complainant, to several nightclubs. All of you were drinking spirits and once the nightclubs closed at 2am you went back to the complainant's property for what was called "afters" and all of you continued to drink until the drink ran out. To some considerable extent all of you were at least affected by liquor if not absolutely drunk.
- [4] The victim left the group to go to her bedroom to sleep. You went in and according to you, woke her and the two of you engaged in consensual kissing. The excuse you

gave for going into the bedroom was that you were looking for a packet of cigarettes which sounds a pretty thin excuse if it occurred.

- [5] The complainant was unable to recollect that visit but your admission was backed up by her cousin, also staying in the house, who entered the room because of his concern at your being there.
- [6] You left the property to take somebody home but returned, according to you, by arrangement with the complainant, but again the jury must have rejected that you claimed the kissing of the neck and the face which resulted on the second visit was consensual. She said that she awoke to find you kissing her and was able to escape from the room and appeal to her cousin for assistance.
- [7] Although through Mr George and Probation Service you and your partner say that you had no wish to challenge the jury's verdict, a good deal of the Probation Report is taken by doing just that. And although you are not to be sentenced more harshly by your attitude in that regard it is my duty, in view of the jury's verdict, to disregard any criticism you make of the complainant.
- [8] The effect on her is clearly made out by the victim impact report which has been filed. Fortunately for her, she resides with somebody who is a skilled counsellor and is able to assist her with the trauma which has resulted from the incident of that particular night. But it is clear from the report that she was, and is, severely traumatised by what you did to her on that occasion to the point where, for at least three months or more, she was unable to sleep in her own room and has resorted to her aunt on a number of occasions to assist her to overcome the upset, disquiet and trauma that she experienced.
- [9] The Probation Service again helpfully has given me some information on your background including the fact that you and your partner have been together for about 6 months following your return to Rarotonga in late 2014. It is clear that you are a good worker and in fact on this particular occasion you left after the second visit to the complainant in order to go to work at about 7 am. And it is to your credit that this is the first time you have been before the Court.

- [10] The Crown draw my attention to the principles for sentencing including – as I have said several times this morning already – the need for you to be accountable for the harm you have done, to deter others, to denounce your conduct and to protect the community.
- [11] Ms Bell for the Crown submits – and she is right – that the complainant was vulnerable in the circumstances and she submits that your re-entry to the house on the second occasion was unlawful – I am not sure how far I accept that – but there was, as Ms Bell submits, a degree of premeditation on your going back – not to look for your cigarettes this time but perhaps to see how far you could go with the complainant.
- [12] Ms Bell draws my attention to a case called *Cooper*¹ where the facts are roughly identical to yours which said that there was no tariff sentence for offences of this kind because of course the circumstances vary so widely, and where a 3 ½ year term of imprisonment was imposed (although *Cooper* had been to jail previously and was on parole when he committed the offence).
- [13] And a case called *Manuel*² where a 12 months sentence was imposed but there were other factors affecting that sentence as well.
- [14] The need to deter others and to denounce what you did is paramount in this case. Though it is acknowledged that the circumstances of the offence, un-consensual kissing, not as serious as one commonly finds in indecent assaults, they were serious in this case as is evidenced by the victim impact report and although I might have indicated initially that imprisonment was unlikely for two counts of un-consensual kissing, that is certainly not the case once I look at the other cases to which Ms Bell has referred me and particularly having regard to the victim impact report. I certainly regard your return to the house on the second occasion as a premeditated act and an aggravating factor making the issue worse although there is no cause for differentiation between the sentence to be imposed on either of the counts.

¹ CA 32/05, CANZ 27 May 2005

² CR 439/11, HCCI 22 June 2012

- [15] There is little remorse to be seen. The effect on the victim, as I said, is very important. The starting point is a jail term against a 7 year maximum. The appropriate sentence would be within the 12 to 18 month range.
- [16] In my view having regard to the fact that you are a first offender, the correct sentence to be imposed in this case is one of imprisonment for 12 months and you are sentenced to that.
- [17] You may stand down.

A handwritten signature in black ink, appearing to read 'H Williams', written in a cursive style.

Hugh Williams, CJ