

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

**CR NO's JU 3-7/18, 17/18, 23/18  
JU 27/18, 8-9/18, 19-20/18  
379-380/18, 741/18  
JU 34/18, 40/18, 374/18  
742/18, 474/18, 587/18  
32/18, 22/18, 455/18  
405/18, 43/18  
588/18, 422/18, 39/18  
JU 35/18, 33/18**

**POLICE**

v

**A.B.  
(FREDERICK MARSTERS)**

Date: 8 August 2019

Counsel: Senior Sergeant T Manavaroa for prosecution  
Mr W Rasmussen for defendant

---

**SENTENCING NOTES OF DOHERTY J**

---

[10/11/30]

- [1] Frederick Marsters, you are now for a sentence on a considerable number of charges.
- [2] Seven of burglary where over the first three or so months of last year you, together with some mates burgled commercial premises. You took money, alcohol and food. And one of those was a domestic house where you took cash and alcohol.
- [3] Then there are eight charges of unlawfully taking motor vehicles and these all relate to motorbikes, again over a period in 2018.
- [4] At some stage you were placed on bail and you breached your bail conditions. Usually the curfew, it was a 24 hour curfew which I know would be tough for a 15 or 16 year old to observe but on eleven occasions you breached that and you face contempt of court charges.

[5] At one stage when you had taken a motorbike, police gave chase and you failed to stop and you are charged with that. And another, there is on the same day wilful damage of that motorcycle.

[6] Then there are three charges of theft which ranged from theft of some nu, small amount of coconut juice, \$150 of cash and then \$500 worth of bike parts.

[7] These all carry pretty significant sentences of imprisonment. Burglary up to 10 years, unlawful taking of motorcycles up to 5 years, theft 5 years etcetera.

[8] I am going to deal with the charges now by reading out the numbers of them. That is just so that that is clear on the Court record.

[9] The burglaries are under numbers JU 3/18, 4/18, 5/18, 6/18, 7/18, 17/18 and 23/18.

[10] The unlawful takings under JU 27/18, 8/18, 9/18, 19/18, 20/18, 380/18, 379/18, 741/18.

[11] The contempts are under JU 34/18, 40/18, 374/18, 742/18, 474/18, 587/18, 32/18, 22/18, 455/18, 405/18 and 43/18.

[12] The thefts 588/18, 422/18 and 39/18.

[13] The wilful damage is JU 35/18, your failing to stop 33/18. That should deal with them all.

[14] The JU relates to the Juvenile Court which is not this Court. But sometimes when things get out of hand people are transferred, even young people up to this Court for sentencing because the sentencing can be a lot tougher.

[15] You have been sent here because you were in a position that nothing seemed to work. You were not able to behave yourself for whatever reason. And I have the report from the probation officer and I have heard from your counsel Mr Rasmussen that things have not been easy either for you or for your family. And you have pretty much been out of control.

[16] As a result of that and your not being able to stick to the rules, you have been remanded in custody to the local prison.

[17] I am sure that was probably done also to protect the general community who you stole things from and whose premises you broke into. There was damage done and things taken but you are not in a position to make that good anymore.

[18] To your credit you have pleaded guilty to all these charges. And I understand there has been some negotiation about them but you have accepted responsibility. And you told me that from the dock this morning when I asked you – you said you took responsibility and that you are sorry you have offended in this way.

[19] Your lawyer also tells me that being on remand in the prison seems to have been something of a help. He has noticed the difference in you. You have told me that it has changed you. There is some stability there and I can understand if you have been living rough then it is good to have a roof over your head and a good feed every day. And that has helped.

[20] You committed most of these crimes when you were 15. You are now 16. When I total up what the maximum sentence is for all of this, I get to about 150 years imprisonment. No one wants to send a young man into prison. But there comes a time when that has to happen and police thinks that should happen now. The Probation Service think that should happen now. And the Probation Service tell me and your counsel tells me that you are prepared to accept what you get.

[21] Well let me tell you, you are not getting 150 years, you are not getting anything like that. My job as the sentencing court is to provide a sentence which shows you and the rest of the community that offending like this does not work – that is called deterrence.

[22] I have got to denounce your conduct. You interfered with the lives of the people who owned the property – you did not seem to care you took it or you broke into it. I have got to punish as well. I have got to hold you accountable. But above all I have got to impose the least restrictive sentence that I think is appropriate.

[23] You are a young man who is developing. You seem to have come on in leaps and bounds recently. And I think, your lawyer thinks, you tell me you think, that is because you got a bit of structure around your life.

[24] Your home life has not been too flash either, and counsel has told me about that. It is also in the Probation Services report. You tell me though that your mum and dad have been coming to visit you regularly. Counsel who is their lawyer as well is assisting in some land issues and he tells me, and I accept from him, that there has been a change in their circumstances too. Your dad has got a job, your two sisters who live at home also have jobs.

[25] So what I am going to do is give you a chance now that you have had this time in prison, perhaps to have seen some change. You are going to get a bit more prison, but you are not going to get years.

[26] Under the law I can do certain things. What I intend to do to help with your rehabilitation, your coming good, is to sentence you on all of these charges except for the contempt of court, which is the breach of the probation. All of these charges I am going to sentence you now to 3½ months imprisonment, so you do another 3½ from now. That takes into account that you have already spent 8 months on remand.

[27] So effectively I am sentencing you to 11½ months imprisonment, but you have already done eight of it. So I give you credit for that, and it is 3½ months. What that allows me to do, because of the Criminal Justice Act, if I sentence you to less than a year I can then impose probation on you when you are released.

[28] What that means is that the Probation Service can help you. And I am going to impose some special conditions about that.

[29] Under s 8 of the Criminal Justice Act I can impose special conditions, pretty much as I think fit to help rehabilitate you. So on all of those charges except the contempt of court, you are sentenced to 3½ months imprisonment and on your release 12 months' probation which is the maximum I can impose, with the special conditions that you live and work as directed by your probation officer, so they can tell you where to live, maybe at home, maybe elsewhere,

where to work. It is also a condition that you undergo any training or course or education that they direct you to undertake, again to help you get on with your life.

[30] I am also going to impose a condition that you not associate, as you do not get around with anyone, that the Probation Service prohibit you from getting around and that is to try and keep you out of the tough company. All of that is designed to give you the chance to see whether this, being inside for a while, has helped you.

[31] On all the contempt matters you are convicted and ordered to come up for sentence if called upon within the next 12 months. So that means if you are back before the Court, you can be re-sentenced on those matters as well.

[32] I do not want, and did not want to send you to prison but I have. But I have done it for the shortest possible time that I think is appropriate so that I can structure this next bit, when you come out you get some help.

[33] I do not know if that is going to work, it is going to pretty much be up to you. And I am sure that the police are going to take a pretty good eye on you as is the Probation Service and you might end up back here – I hope you do not – and I wish you good luck.



---

Colin Doherty, J