

POLICE

v

DAVI DAWSON TUPOU

Date: 30 November 2020
Appearances: Ms L William for the Crown
Mr M Short for the defendant
Sentence: 30 November 2020

SENTENCING NOTES OF WOODHOUSE J

[11:18:08]

[1] Mr Tupou, you appear for sentence for three offences. The serious offence is that you with another young man assaulted Tama Charlie with intent to rob him. There are also two offences of contempt of Court, for breaking a curfew order after you were arrested on the robbery charge.

[2] The facts in summary are as follows. At about 9 pm in January this year you were in a room in town with a friend known as Bruno Mataoti Taoro.

[3] The Crown says the two of you approached the victim and his cousin and it is suggested that you approached him looking for a fight. Taoro punched the victim in the face. You swung a punch at him but missed. The victim fell to the ground and the two of you then took some of his clothing and a waist bag which contained \$40. All of the clothing and the money has been recovered.

[4] I have received a victim impact statement from the 17 year old victim, Tama Charlie. Fortunately for you, as well as for him, the injuries he suffered were minor and it is plain from his statement that there were no other relevant consequences. I will come back to the position with the victim in his relationship with you.

[5] You are aged 20. Your accomplice Bruno is aged 26.

[6] Mr Short on your behalf submitted that it was Bruno who suggested that you approach and then attack this young man and I am prepared to accept that that is the case.

[7] I have received other submissions including, indirectly, your grandmother's opinion – and it is your grandmother who in recent years has had direct responsibility for you as an effective parent. And her opinion is that you are easily led. I just stop there, to say to you, that you need to avoid having other people influence you to do stupid things like this. Do you understand? It is up to you.

[8] Anyway I accept that you were influenced by your friend who in relative terms is quite a bit older than you.

[9] Mr Short has also advised that you were affected by alcohol. That does not provide any excuse for what you did, but it is relevant to the way you thought about this. Also related to the alcohol is the fact that apparently, before this incident, you knew the victim reasonably well and the two of you were friendly. This really just emphasizes how stupid your actions were and supports the conclusion I have read that you were unduly influenced by your 26 year old friend Bruno.

[10] In terms of your background, it appears from Mr Short's submissions that you had a good childhood, brought up from a very young age by a grandfather who died in 2008, and your grandmother who is still alive but not in good health. She has plainly done her best. You have to make sure you do not let her down again. You do have some qualifications and you should use them.

[11] Following the incident, Mr Short has advised me, and on the strong recommendation of your grandmother, you with your grandmother visited the victim both to apologise directly to him and to make reparations to him. And the advice I have is that this was fully accepted by this young man, Maataa Charlie, and he has in fact apparently requested that the prosecution be withdrawn. That information was passed to the police, but they declined to withdraw the prosecution and I am not in a position to do anything about that decision. I consider, in any event, that it is the correct decision. You have committed what actually amounts to a reasonably serious offence.

[12] As I have already indicated you are aged 20 years. Up until recently, you were employed and, it appears, in steady employment as a labourer. And as I have mentioned you have acquired some qualifications. For two periods you were in New Zealand for the purpose, through an uncle, of receiving some other help and qualifications to assist you to get on with your life, and those are the things you need to get back to. The employment in Rarotonga ended recently, apparently because of difficulties of your employer from the pandemic. But that obviously is not a factor against you. You have done well in other respects up until now in terms of holding down a job.

[13] Mr Short on your behalf, and the Crown, are in agreement with the recommendation of the probation officer, that there should be a community based sentence.

[14] For the reasons that I have outlined, the nature of the offending so far as you are concerned, and your background circumstances, and your age, and the steps you have taken to atone for, so to show that you are truly remorseful for, sorry for what you have done; having regard to all of these matters, I agree that there should be a community based sentence. This was, so far as you are concerned, an unpremeditated, low level offence and one that I am sure would never have occurred, particularly being the odd thing against somebody you are friendly with were it not for the alcohol.

[15] You have no previous convictions.

[16] It is abundantly clear in all the circumstances that prison for this offence could not be justified.

[17] Mr Tupou, the sentence is as follows. You will be subject to probation for a period of 12 months with supervision and this is on the following conditions and being the ones recommended by the probation officer and accepted as appropriate by Mr Short on your behalf.

- (a) You are not to purchase or consume alcohol;
- (b) You are not to enter any liquor licenced premises, and that is apart from the supermarket which sells alcohol but you cannot buy it in a supermarket;
- (c) You are to attend counselling and training as directed by the Probation Service; and
- (d) You are not to leave the Cook Islands without the approval of this Court.

[18] Mr Tupou it is over to you. You are the one who has to make sure it does not happen again, no one else can do it. Although I know you are getting support from family. So over to you.

[19] You may now stand down.



Peter Woodhouse, J