

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

**CR NO's 278/19
476/19, 548/19
580-582/19, 622-637/19**

POLICE

v

TEREMOANA NGAMARAMA NOOROA SADDLER

Hearing date: 29 July 2020

Counsel: Ms M Okotai for the Crown
Mr N George for the Defendant

Sentence: 29 July 2020

SENTENCING NOTES OF HUGH WILLIAMS, CJ

[12:16:28]

[1] Teremoana Ngamarama Nooroa Saddler, at the age of 30 you appear here for sentence today on what, after discussion, has been established as being 19 burglaries to which you pleaded guilty on 23 March this year. There is also one charge of refusing a blood alcohol test and one charge of contempt.

[2] The burglaries to which you pleaded guilty – and, possibly, another five where the Crown seeks to withdraw the charges – were all committed on four occasions between 19 September and 6 October last year, that is to say, within a period of only 17 days.

[3] On 19 September you burgled Cook Islands Building Supplies and the Motor Centre mainly by smashing or jemmying a door, something which is a characteristic of nearly all your burglaries. From the Motor Centre you stole a safe containing \$17,260 none of which has been recovered.

[4] On 26 September you committed another seven burglaries, mainly by the same means, mainly of Government offices – including the Courthouse – most of which yielded you nothing.

[5] On 4 October you committed another five burglaries, again by the same means, most of which again yielded you nothing or only a few dollars.

[6] On 6 October you committed another spate of burglaries, mainly of local businesses, and obtained yet again a few dollars.

[7] Overall, you were finally identified by CCTV, arrested on 6 October and have been in custody since that time, first by being denied bail and then, following your pleas of guilty on 23 March 2020, awaiting sentence.

[8] The total amount taken in the burglaries was \$18,800, nearly all of which came from the Motor Centre, with the balance being made up of the odd few dollars you managed to get here and there from the burglaries.

[9] It is a deplorable record, and by any measure you are a recidivist burglar, a pest to the community and a threat to those whose hard work enabled them to build up businesses, and then have you smash your way in to try to take what they worked so hard to build up.

[10] Initially there was doubt as to the number of burglaries for which you are being sentenced today and as to your previous record, but it has now been agreed the Ministry of Justice records are accurate. They show you have no fewer than 14 previous convictions for burglary and another 22 for contempt of Court by various means.

[11] There are two probation reports, one dated 6 August 2019 for the refusal to undertake the blood alcohol test and some damage to property; and one dated 27 April 2020 for the burglaries and contempts.

[12] It is clear you have had a difficult childhood. A few years ago your family cut off all contact with you because of your erratic behaviour, particularly from

about 2008 when you started offending. Although some people have tried to help you in the past, their efforts have been unavailing.

[13] It is also clear that a lot, if not all, the offending for which you are to be sentenced today occurred when you were living in the so-called Sheraton Hotel premises, the derelict hotel. You were essentially homeless.

[14] It is a sad commentary that the Probation Service says you wanted to go back to jail and the only means that you could find to do so was to reoffend, and, while you have been in custody on remand, Probation comments that you find your situation “is much better than before when he was out at large” because “he confirms he now has a proper place to sleep and most importantly gets fed three times a day”. What an unfortunate comment that is.

[15] Mr George has been trying to help you, though without being paid. Prison Officers and Corporate Finance are prepared to help you. But realistically it is going to be a long time before their efforts will have much of a chance to bear fruit.

[16] The Probation Service says it is certain that you will reoffend. And given the number of charges for which you are to be sentenced today against the list of previous convictions that seems a comment which will unfortunately be borne out.

[17] Ms Okotai, for the Crown, naturally emphasises the number of charges for which you are being sentenced, the fact that they were committed over a very brief period, the amount of money taken, and the way in which burglaries were committed. She submits, and I agree, that in terms of the New Zealand case of *Senior v. Police*¹ confirmed by *Police v Maoate*² in the Cook Islands, you are plainly a recidivist burglar, somebody who has no compunction about smashing his way into property and taking people’s goods. So the protection of the public is a significant factor to be taken into account in deciding what length of jail term needs to be imposed on you.

¹ *Senior v Police*, 18 CRNZ 340.

² *R v Maoate* (2016), CKHC CR 19/2015, 11 March 2016.

[18] Ms Okotai directs my attention to cases such as *Kakino*³, *Iotua*⁴ and *Taufahema*⁵, where the start points for sentencing were 4, 6 and 5 years for multiple burglaries. Those cases are a helpful indication to the kind of start point and thus the kind of finish point we need to arrive at as far as you are concerned.

[19] The only reduction from those is the fact that you have now pleaded guilty, though after about after five months in custody before doing so. I need to try and arrive at a sentence which will reflect the gravity of your offending, the seriousness of the offence – 10 years is the maximum term of imprisonment of each of the burglaries – and try, however unlikely your record suggests it will occur, to promote in you a sense of accountability and a sense of responsibility.

[20] There is no chance of reparation. The police were unable to recover any of the money taken from Motor Centre.

[21] Clearly your conduct needs to be denounced and hopefully the sentence to be imposed will deter others, something which is necessary because burglary is a prevalent offence in the Cook Islands and is on the rise.

[22] As I have said the maximum sentence is 10 years imprisonment on each of the burglaries. In this case the offending was premeditated. There are, of course, the very large number of charges committed over a very brief time. It was brazen offending. Even though many of the burglaries resulted in nothing of worth for you, there is a lack of concern for others and their property. Burglary is a prevalent offence in the Cook Islands.

[23] Amongst the aggravating factors, those which make the offending worse, are the fact that you were on bail for other offending when you committed all of these offences; you have a shocking record of previous convictions and you have been to jail before. That has obviously not affected your conduct, in fact, as mentioned, you say you committed some of these offences in order to get back to jail and have

³ *Police v Kakino* [2012], CKHC 38; 8 November 2012.

⁴ *Police v Iotua* [2015], CKHC 2; 13 March 2015.

⁵ *Police v Taufahema* [2018], CKHC 3; 21 March 2018.

somewhere to sleep and get three meals a day. You are plainly a recidivist burglar who will reoffend when you get out of jail for these offences.

[24] So, having regard to the authorities, before allowance for the particular circumstances of your offending, the starting point for the burglaries is about 6 years imprisonment.

[25] The only mitigating factor reducing the length of sentence are your pleas which at least saved the resources of prosecution and meant that those whose premises have been burgled were freed of the obligation to give evidence. Those mitigating circumstances justify a reduction in your possible sentence of a maximum of about 20%, that is about 18 months.

[26] For your offending, the 6 year starting point needs to be increased for the factors mentioned, particularly your previous offending, the number of charges, the short time of their commission and the commission of these offences while you were on bail. So the reduction of 20% for the mitigating circumstances, after increasing the starting point for those aggravating factors, still brings you back to about 6 years imprisonment on each of the burglaries.

[27] However, you have spent now about 10 months in custody on remand, including about four months since you would have been sentenced had it not been for the current pandemic circumstances. As Ms Okotai accepts, because of the delays which have occurred through those external factors, you are entitled to some recognition of the time that you have spent in custody on remand, particularly following the entering of the pleas. The upshot of all of that is that, as Mr George submits, you are entitled to an additional deduction from what would otherwise be imposed to recognise the unique delay in sentencing.

[28] On the contempt of court you are simply convicted and discharged.

[29] On the refusal to undertake the blood alcohol test you are disqualified from holding or obtaining a driver's licence for the mandatory 12 months, that term to commence when you are released from prison.

[30] On each of the burglaries, given the credit from the 6 year result that would otherwise have been imposed for the period of your remand in custody, I impose a sentence of 5 years and 3 months on all those counts.

A handwritten signature in black ink, appearing to read 'Hugh Williams', written in a cursive style. The signature is positioned above a horizontal line.

Hugh Williams, CJ