

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

CR NO's 1724, 1727/2023

R

v

TIARE JESSARIAH MARETU

Counsel: J Crawford for the Crown
L Rokoika for defendant

Oral Sentence: 23 November 2023

(ORAL) SENTENCING NOTES OF GRICE J

[10:28:45]

[1] Mr Maretu, you appear on two charges; injuring with reckless disregard which has a maximum penalty of 5 years imprisonment, and fighting in a public place which carries a maximum penalty of 3 months imprisonment and/or a \$100 fine.

[2] Ms Rokoika has indicated on your behalf that you accept all the facts and that is essential to the plea of guilty. These are set out in the summary of facts that Ms Rishworth read to the court.

[3] The events giving rise to the charges related to a fight inside a local nightclub on the evening of 8 November. You had been drinking there and you were with family and friends. At about 11.45 pm a fight broke out between a member of your family and another person in the club. You entered the fight and exchanged punches with someone and then during the fight you grabbed an empty glass bottle and approached the victim and struck him with the bottle on

the right side of his eye which resulted in cuts and bruises to the victim's eye. The defendant when interviewed denied being in a fight at the time. That is the background.

[4] As Ms Rokoika acknowledged, there are number of principles in sentencing which I must consider before I impose the final sentence. Those principles take into account the gravity of the offending in this case, including the degree of culpability or blame on you. Secondly, I must take into account the seriousness of the offence in comparison with other offences and I must take into account the maximum penalty. I must take into account the desirability for consistency with other sentences for like offences, that is, similar to those with which you are charged. I must also take into account any information that I have on the effect on the victim in this case.

[5] Ultimately I must impose the least restrictive outcome that is appropriate and take into account any particular circumstances that would be appropriate. Ms Rokoika has addressed me about those. I must take into account your personal family, whanau, community and cultural background in imposing a sentence and consider rehabilitation.

[6] At the same time the purposes of sentencing which I must consider are: that the sentence should hold you accountable for the harm done to the victim and the community by the offending; promote in you a sense of responsibility for and acknowledgement of that harm; to provide for the interests of the victim, to provide reparation for harm done by the offending, and to denounce the conduct in which you were involved as well as to deter you and other offenders from similar offending. I must also consider the protection of the community and if possible assist in your rehabilitation or integration.

[7] The Crown in the circumstances, given your age and the early guilty plea that you entered, indicated that it would seek a fine and a direction that any fine be paid in full before the court releases your passport.

[8] The Crown referred to a number of other sentencing decisions including *Amate*¹ which was an appeal from a decision of a Justice of the Peace in which a Samoan national had been sentenced to 12 months probation service including two community service which meant he

¹ *Amate v Police* High Court Cook Islands, 28 November 2013, CR 472/2013, Grice J.

could not leave the country and that would cause undue hardship to the family who were caring for him here. The defendant was unemployed, had no family here, and was an over stayer. But he had family commitments in Samoa. In that decision I noted that the Justices had rightly commented that the charge which was assault on a female had occurred in the course of celebrations, that it carried a maximum term of imprisonment of 2 years and then they had proceeded to impose a supervisory sentence, noting that that would mean the appellant could not leave the country. Therefore I allowed the appeal and imposed a fine there of \$700 but noted a message needed to be sent to the defendant about being accountable for that type of offending.

[9] In a more recent decision to which the crown have referred, that of *Rasmussen*² which involved two indecent assault charges and a charge of attempting to pervert the course of justice, which each carried maximum periods of 7 years imprisonment. Again a non-custodial sentence was imposed from a starting point of 6 months imprisonment. In that case the issues that the Judge particularly noted were remorse and the severe consequences on the professional standing of the defendant as well as health issues. The fine there imposed was \$2,500 with half the amount to be paid by way of compensation to the victim on the indecent assault charges and a further fine on the attempt to pervert the course of justice.

[10] Turning to the present case, the Crown noted the victim had returned to Australia, so no victim impact statement could be obtained. However, Ms Rokoika tells me that the victim is a family member and was part of the party with whom the defendant went to the nightclub that evening. They were all having a stag night celebration.

[11] Ms Rokoika on your behalf submits that while she recognised, and it had been made clear to you, the seriousness of the offending, the behaviour was out of character and related to your intoxication, that you were very remorseful, and she gave an apology on your behalf in her submissions.

² *Police v Rasmussen* High Court Cook Islands, 18 August 2021, CRN 458-459/20 & 662/20, Woodhouse J

[12] Ms Rokoika said that you had caused embarrassment to your family and to the wider Penhryn community to whom you are related. She also submitted you had not appeared before a court before. You have no immediate family living in Rarotonga and you need to return to Australia to be with your family and to attend to your job. You pleaded guilty within the first week of being charged and you have cooperated fully with the authorities.

[13] Ms Rokoika submitted that while sentences in New Zealand were helpful in terms of categorising the offending culpability, the notion that sentences in the Cook Islands in some cases might be lower for comparable offending than in New Zealand had been recently highlighted in a case involving sentencing for assaults causing grievous bodily harm of *Virivirisai*.³

[14] Ms Rokoika also pointed out that looking at the offending in the totality, your youth and the hardship if you were detained in the Cook Islands as well as its effect on the Cook Islands immigration law, it was appropriate for a monetary fine to be imposed in this case. She also indicated that you were in a position to pay a fine and that you would pay it immediately.

[15] The general approach to sentencing is a two-step approach. The first step looking at the nature of the offending and calculating what a starting point might be. In this case the Crown indicated that a start point might be imprisonment on this charge but considering other factors including mitigation, Ms Rishworth indicated that that would not be the end point in relation to the offence. Therefore I do not take a point of imprisonment as a start point in your case but go directly to consideration of the sentence I should impose other than a custodial sentence.

[16] There has been no probation report in this matter. Ms Rokoika indicated that that right had been waived and the Crown takes no issue with the personal circumstances that Ms Rokoika has told me about, so I will proceed on that basis.

³ *Virivirisai* CR 277/18; 597/18. 22 March 2019 cited in *Goodwin v Crown* [2019] CKCA 1.

[17] In relation to this case, denouncing your behaviour is an important aspect of sentencing in this case. The type of bar fight that erupted in this case is abhorred by this community and we have seen its reaction to this fight. It could have led to much more serious injuries than were involved in your case, and in fact it did led to serious injuries in relation to others involved in the incident.⁴

[18] Deterrence is also an important factor, both in relation to this defendant and your family and associates but also the wider community of the Cook Islands.

[19] I accept the submissions of the Crown and do not consider that the circumstances of this offending warrants a starting point of imprisonment which leaves the option of community service, supervision or a fine. However community service or supervision or other community based sentences are not appropriate because you need to return to your home and get back to work and that is an important personal factor for you, particularly given your age.

[20] In the circumstances, given this is a first offence, your youth, the extent of your remorse and your willingness to pay a fine, I do consider a fine is appropriate. However, that needs to be sufficient to reflect the deterrence and denunciation principles. Ms Rokoika has checked with you and your financial circumstances are such that you are in a position to pay a fine. The fine will need to be paid by you rather than family - although you may need their assistance, you will need to pay them back. But your passport will not be released until the fine is paid in full.

[21] So in view of your financial circumstances, you are an apprenticeship carpenter and the nature of the crime, I impose a total fine of \$2,250 to be paid immediately. That is \$100 for the fighting in a public place charge, and the balance of \$2,150 in relation to the more serious injuring with reckless disregard charge. Of that amount \$1,000 of the fine in relation to the injuring charge is to be paid to the victim by way of compensation.

⁴ The prosecutor indicated that recently fines of up to \$500.00 had been imposed on less culpable offenders involved the fight by the Justices of the Peace.

[22] You are now free to go. I hope you take this as a lesson and do not wish to return to this court or any court.



Grice J