

POLICE

v

TEPAREARIKI TEOKOTAI PATRIC RONGOKEA

Hearing: 24 January 2023 (via Zoom)
Counsel: Ms J Crawford for Crown
Mr M Short for Defendant
Sentence: 24 January 2023

SENTENCING NOTES OF KEANE, CJ

[0]

[1] Tepareariki Rongokea, you appear for sentence for three offences at the Arorangi Prison at about 2am on Sunday 12 June 2022; an assault with intent to injure, preceded by two common assaults.

[2] On the date of your offences you were a second officer at the prison, but you were not then on duty. The officer then in charge allowed you to enter because you were senior to him, but noticed you smelt strongly of alcohol.

[3] Before you arrived he had sent the complainant, a more junior officer, to rest in the Guard Room, and another officer to rest in the Restricted Area; and you heard that second officer sleeping.

[4] The officer in charge explained to you that they were resting, because he had instructed them to. But you went to the Guard Room and asked the complainant if he was sleeping or working.

[5] An increasingly acrimonious exchange then ensued, which an inmate interrupted, asking to be taken to the toilet. The complainant then began to leave the Guard Room to escort the inmate, but you blocked the door.

[6] You ordered the complainant to give you the keys, saying you would escort the inmate yourself. Noticing you smelt of alcohol, the complainant refused. You began to poke your finger at him, and swear. He responded that you were off duty and had not been called in by the Superintendent.

[7] You grabbed the complainant by the neck with one hand, and dropped him to the ground onto his back. When he tried to remove your hand, you took his neck with both hands.

[8] You attempted to punch him in the face. He dodged that punch, but when he got up you punched him in the face with a right closed fist, and challenged him to fight.

[9] The officer in charge asked you to leave the prison, and saw you out. The complainant contacted a more senior officer by telephone, who arrived 45 minutes later and instructed those on duty to complete reports.

[10] In the meantime, you had asked that the complainant come outside the prison and to agree not to report the incident, but he refused, and the question was by then out of his hands.

[11] At first you were charged with common assault, but when the Crown assumed responsibility, you were charged as you are now with three assaults culminating in the punch to the face, the assault with intent to injure.

Victim impact statement

[12] The complainant says that in the assault he suffered an injury to his back calling for four to six weeks off work, a cut lip and a loosened front tooth.

[13] He says he was twice penalised, because of the form of leave he was granted as he recovered from his back injury. Since resuming work, he has suffered emotionally.

Probation report

[14] At the time of your offences, your report says, your wife was in New Zealand with your three children, where they are at school. You were here caring for your elderly parents. COVID restrictions had kept you apart for some months.

[15] You say, your report says, that you went to the prison as a matter of duty, to check that officers were awake and vigilant. You say you were not drunk. You had not had anything to drink since the night before.

[16] In short, your report says, you say you were acting consistent with your duty, the complainant was insubordinate, and the incident escalated to the point where you offended.

[17] Your report, however, relying on the accounts of the other officers, attributes all that happened at the prison that early morning to the fact that you were affected by alcohol. It rates your assault on the complainant both unprovoked and severe.

[18] Your report also notes you have three assault convictions, in 2006, 2009 and 2011. Each time you were convicted and ordered to come up if called upon within six months. On this fourth occasion it recommends a higher sanction.

[19] Your report recommends that you be sentenced to a short term of imprisonment, followed by 12 months supervision with these special conditions:

- a) You are to abstain from alcohol;
- b) You are not to enter any licensed premises like bars or nightclubs, without approval;
- c) You are to attend counselling as directed; and
- d) You are not to leave the Cook Islands without the approval of this Court.

Sentencing principles

[20] In sentencing you I must protect the community, hold you accountable for your offending, and deter you and others. I must also, to the extent I am able, impose a sentence enabling you to rehabilitate and to reintegrate with your family as soon as practicable.

[21] In that balance the nature and relative gravity of your offending has to be decisive, and your sentence must be consistent with those imposed for offending of like character. Furthermore, violent offending normally attracts a more deterrent sentence.

[22] The maximum sentence for common assault is imprisonment for one year, and in this incident you committed two such offences. The maximum for assault with intent to injure is three years.

Crown submission

[23] The Crown submits that your lead offence for sentence is the injuring with intent to injure offence, your punch to the complainant's face at the conclusion of the assault.

[24] That offence, the Crown submits, relying especially on a recent sentencing decision of this Court, *Police v Moekapiti*¹, with which I agree, is one where Potter J held that a starting point for assault with intent to injure offences ought to begin at 15-18 months.

[25] In your case, the Crown submits, a 16 month starting point is called for to reflect four aggravating features:

- a) The sustained nature of your assault on the complainant, three separate assaults.
- b) Your attack to his head and throat, culminating in the punch to the face, and the risk posed by strangulation.

¹ [2001] CKHC 15.

- c) The power imbalance between you and the complainant, your abuse of authority and his vulnerability.
- d) The impact of your offending on the complainant as outlined in his victim impact statement.

[26] The Crown at first contended for a two month uplift to take account of your previous assault convictions, but accepts they are too old. You are entitled, as the Crown accepts, to a one-third discount for your plea.

[27] The Crown submits, that a sentence of imprisonment of 12 months or less is therefore likely, and invites me to commute it to 12 months probation and six months community work, subject to the special conditions recommended.

Defence submission

[28] Mr Short, in his very complete submission, supported by many references, submits I should impose on you a non-custodial sentence.

[29] Your references confirm that, this offending apart, you are a responsible son, husband and father. You have been a sportsman of ability and you have contributed largely to the community in church and sporting organisations, and in other ways.

[30] Your senior colleagues at Arorangi Prison hold you in high regard. You have had charge of the prison in the absence of the Superintendent. You have been responsible for training. You are described as a significant 'asset'.

[31] Your wife says that at the time you offended you were missing your family in New Zealand, and you were depressed. Your offences, she says, are entirely uncharacteristic of you.

[32] But for the fact at the beginning of last year that your parents were in need, you intended to move with your family to New Zealand. Once you complete your sentence, that is what you intend to do.

[33] Your counsel says that have since met with the complainant and his family to express your remorse and to attempt recompense, but the charges ultimately laid prevented that going further.

Conclusion

[34] In sentencing you, as I have said, I must begin with the nature and gravity of your offending, and your assault on the complainant has a number of concerning aspects to it.

[35] To throw him to the ground you took him by the throat with one hand, and while he was on his back you held his throat with two hands, and then tried to punch him in the face. Once he was on his feet, you did punch him with real force.

[36] This intensifying assault happened, moreover, in the early hours of the morning when you had no right or duty to be at the prison. The prison was then in the charge of another officer whom you overrode.

[37] For whatever reason you singled out the complainant without any justification. You intervened arbitrarily when he tried to escort the inmate to the toilet. You became angry and aggressive.

[38] When, immediately after assaulting the complainant you left the prison, you tried to get him to agree not to make any complaint. That was a further abuse of your authority.

[39] You seem, as your report says, to have been fuelled throughout this incident by alcohol. The officers smelt it on you, and you had at least admitted you had been drinking the night before. That is an issue you need to face up to.

[40] It is suggested in one of your references that your offences might have been dealt with internally as disciplinary matters. That would have been quite wrong. They are serious criminal offences.

[41] The effect on the complainant has also to be of concern. As an officer junior to you he was, and remains, under a disadvantage. His leave entitlement is an issue within the jurisdiction of the Ombudsman, to whom a copy of these notes is to be sent.

[42] In short, I consider, your offences are aggravated in the four ways in which the Crown submits and that, but for the Crown's submission, it would be proper to sentence you to imprisonment as your report recommends.

[43] If that were the sentence I were to impose on you, furthermore, I would take a 16 month starting point for your lead offence, but not to uplift it by two months. I reduce it by two months, because you might need to be kept apart in the prison. I would round up your one-third discount for plea to five months, resulting in a nine month sentence.

[44] That being the sentence I would ordinarily impose, I am able to accept other Crown's submission, supported by your own counsel.

[45] I sentence you to 12 months probation, six months community work, subject to the four special conditions recommended.



P J Keane, CJ