

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

**CR NOS. 77, 78, 79, 80, 81, 822024
165/2024**

POLICE

v

JUDGE ROMEO NEE NEE

Hearing: 20 January 2025 (via Zoom)

Appearances: Ms T Scott and Mr T White for Crown
Ms M Tangimama for Defendant

Sentence: 20 January 2025

SENTENCING NOTES OF KEANE, CJ

[1] Judge Nee Nee, you appear a sentence for three offences on 22-23 January 2024: assaulting the mother of your son, now aged two, whose care you share; breach of her protection order; and wilful damage.

[2] At about 8pm on Monday, 22 January 2024, your child's mother, whom I will call A, went to her Airbnb in Inave, Arorangi to clean it up. She took with her your son, whom I will call B. You were to meet them there.

[3] At the Airbnb you repeatedly asked A for her cell phone, and became angry and abusive until she gave it to you. When she refused to unlock it you punched the walls until she gave you the code.

[4] You found from A's text messages she was seeing someone else, and your anger increased. You continued to punch the walls and abuse her. Concerned that B was in the room, and distressed, A asked you to go outside. You refused.

[5] You stayed that night at the Airbnb with A and B; and at 5 am the following morning, when you were still asleep, A took back her phone. When you woke, that angered you again. You punched and kicked the walls, and threw A into the wall several times with such force it cracked.

[6] You pinned A to the ground, grabbing her wrists and digging in your nails. Then, when she tried to run outside you grabbed her hair, dragged her back, and locked the door.

[7] After that you grabbed A by her T-shirt, pinned her to the ground, and ripped it off her. You pushed her head into the floor, and screamed at her and abused her for about an hour.

[8] A was very frightened not just for herself but for B, who began screaming. She begged you to stop and to let her go to him. When you finally did, she at last got out the door.

[9] A woman next door called the police and came over and stayed with A, a brave thing to do. You abused her too, but left with B – taking A's phone and purse, which contained cash.

Victim impact

[10] In her statement, 10 months later, A minimises your offences and their impact on her. Since then, she says, handovers have been safe. You have stayed a fully engaged parent. You are essential to B's wellbeing. She hopes you will not be imprisoned.

Probation report

[11] Your report says that you acknowledge the harm that you have done to A and B. You also think some agreed facts have been overstated, but wish to focus on the future; a comment to which I will return.

[12] Your report confirms that you have B in your care every second day, and that at age 26, your life is stabilising. You are living in a rental home. You are in responsible work. You are able to meet your living expenses.

[13] Also now very important to you is your church, where you have made new friends. You are mentored by your church leader. Your mother is proud of the progress you have made and is grateful to A for co-parenting B with you, despite your offences.

[14] Your offences, your report says, are indeed serious, and you have offended in that way in New Zealand. Normally, they would warrant imprisonment. But your life is now more positive; you are responsibly co-parenting your son. Your risk of reoffending is low.

[15] Your report recommends that you be sentenced to probation supervision for three years, the first 12 months by way of community service, subject to two special conditions:

- (a) you attend any counselling and workshop directed by the probation service;
and
- (b) you not leave Rarotonga without the approval of the High Court.

Crown submission

[16] The Crown submits that in principle your offences call for a prison sentence, with a 12 month starting point: nine months for the assault on A, uplifted by three months for the wilful damage.¹

[17] The Crown submits that your offending, your assault on A principally, has five aggravating features:

- (a) Although you and she were no longer in a relationship, your assault on A constituted domestic violence;

¹ *Police v Kaokao* HC Rarotonga CR 820/12, 9 November 2012; *Police v Anguna* HC Rarotonga JP Appeal 7/13, 11 September 2013; *R v Utanga* HC Rarotonga CR65/23, 24 October 2023; *Police v Morris* [2012] CKHC 43; CR373/11, 9 November 2012; *R v Ngataua* HC Rarotonga CR 443/20, 22 May 2023.

- (b) Your assault on A, extending over an hour, was sustained and serious;
- (c) The effect on A, despite her minimising statement, was bruising, her ripped shirt, the property damage, and significant fear and distress;
- (d) You offended in B's presence, a source of emotional harm to him; and
- (e) You offended as you did in spite of A's protection order, and in breach of it.

[18] The Crown also advances as aggravating, and justifying a 5% uplift², your related convictions in New Zealand. Between October 2016 – December 2017, when you were 17–18, you assaulted a female, one or more, four times; each categorised as family violence.

[19] For your first three offences you were sentenced to 5 months' community detention, 100 hours' community work and 18 months' intensive supervision. For your fourth, compounded by other offences, including breach of intensive supervision, you were sentenced to 6 months' home detention.

[20] Thus, the Crown submits, in principle, your offences ultimately warrant a prison sentence in excess of 12 months, but then offsets against that your personal circumstances and contends they warrant a total discount just short of 60%:

- (a) one third for your plea;
- (b) 20% for remorse, prospects of rehabilitation, and youth; and
- (c) 5% for the hardship B would suffer if you were imprisoned.

[21] Ultimately, the Crown submits, the least restrictive sentence for your offence, and for you, meeting the principles and purposes of sentence, is a community based sentence.

² *Crown v Ioane* HC Rarotonga CR 656/16, 25 November 2016, Grice J.

Defence submission

[22] Your counsel supports a community-based sentence. Such a sentence, she submits, is consistent with those imposed for assaults on females, even with a prior related conviction³, and those for your other offences⁴.

[23] She questions to what extent your New Zealand convictions can or ought to be taken into account. You have served your sentence for those offences. The conviction history report is abstract. She accepts, however, they may be fairly and reasonably taken into account.

[24] She has supplied me with references in which your friends and workmates speak very well of you. Also a generous letter from A in your support, and a letter from your counsellor, which is especially reassuring.

Conclusions

[25] Your assault on A on 23 January 2024, Mr Nee Nee, your lead offence for sentence does, as your report says and the Crown submits, fully warrant – indeed requires, a sentence of imprisonment.

[26] It was a sustained and vicious assault on A in the early hours of the morning, aggravated by all that had happened in the hours before; most obviously your violent and threatening anger, and the damage you inflicted. It is telling that at 5 am on 23 January, you still had A's phone, and assaulted her because she had taken it back while you were asleep.

[27] As I said earlier, your probation report says you think the facts agreed are overstated. But that hardly fits with A minimising your offence in her impact statement, and letter. Rather, I think the facts may be understated. But I accept also that since your offending your life has stabilised, you are undergoing counselling and showing the benefits, and you have consistently put B first.

[28] I will not imprison you. I will sentence you as your report recommends; but I want you to be clear about one thing. Were I to imprison you, as principle normally requires, I

³ *R v Vakalalabule* HC Rarotonga CR 198/09, 30 August 2010, Hugh Williams J.

⁴ *Police v Williams* HC Rarotonga CR 153/99, 2 December 1999, Greig J.

would allow you a one-third discount for pleading guilty, sparing A the further trauma of giving evidence at trial, and a 5% discount for the effect on B. But that is all.

[29] A 20% discount for remorse, prospects of rehabilitation and youth would not square with the fact that, at age 26, you now have five convictions for domestic assaults, and solid community sentences have neither assisted nor deterred you. A sixth such offence would call for imprisonment.

[30] For your three offences, I sentence you 18 months' probation supervision (set to be proportionate to your offence). The first 6 months of which is to be by way of community service (set to recognise your commitments, primarily to B).

[31] That sentence is to be subject to these special conditions:

- (a) You are to attend counselling and workshops as directed by Probation Services.
- (b) You are not to leave Rarotonga without the approval of the High Court.



P J Keane, CJ