

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

**CR NOS: 1337, 1338, 1264, 1340,  
1266, 1339, 1267/24, CR 222/25**

**R**

**v**

**MELVIN ELI**

Hearing: 15 August 2025

Counsel: Ms D Schuster for Crown  
Ms M Tangimama Pera-Robati for Defendant

Sentence: 15 August 2025

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**SENTENCING NOTES OF THE HON. JUSTICE C GORDON**

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**Introduction**

[1] Melvin Eli, you appear for sentencing today on eight charges. You pleaded guilty to seven charges of burglary, each of those charges carrying a maximum term of imprisonment of 10 years<sup>1</sup>. You also pleaded guilty to a charge of theft, which carries a maximum penalty of five years' imprisonment<sup>2</sup>.

**Offending**

[2] When you entered your guilty pleas you are taken to have accepted the Summary of Facts. Although you are familiar with the contents of the Summary of Facts it is necessary for me to briefly summarise the background in this sentencing decision.

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<sup>1</sup> Crimes Act 1969, s 263(a): maximum penalty 10 years' imprisonment.

<sup>2</sup> Crimes Act 1969, s 249: maximum penalty 5 years' imprisonment.

[3] Your offending arises out of a number of incidents that took place between June and December 2024.

[4] I first address the burglaries. Between June and August 2024, you and your co-offender carried out a number of burglaries, at night-time, across Rarotonga. You travelled together on his motorcycle and typically entered the buildings by opening unsecured windows or removing windowpanes. In some cases, you forced entry through doors that were old or insecure.

[5] In total, you broke into and entered seven properties, including Cook Islands Building Supplies; the Business Trade Investment Board office; the Crown Law Office; Mr Mokoroa's Ministerial office; the Office of the Prime Minister; the Office of the Deputy Prime Minister; and a clothing store, Tuki's Pareu. The Summary of Facts records that you stole \$9,649 in cash, including \$9,000 from Tuki's Pareu. You also took a number of other items, including four German helmets; three mobile phones; a skill saw worth \$600; a bottle of Pure Fiji lotion; a JBL speaker; a greenstone pendant; and a green dress valued at \$230.

[6] When you were interviewed by a Probation Officer you took issue with some of those items, saying either that your co-offender took them, or that some of the items were not taken. I do not propose to try and resolve those differences. They are not material for this sentencing.

[7] What is material is that you returned just under \$2,000 of the cash that you took. I will come back to that point later in this sentencing decision.

[8] I now turn to summarise the evidence that relates to the theft charge. Between 13 November and 15 December 2024, you and an associate entered Ms Manuela's plantation in Arai-Te-Tonga without permission, and harvested 40 fully ripened watermelons, worth \$2,590 in total. You transported the watermelons in a vehicle to your home in Takuvaine, and later tried (unsuccessfully) to sell them at various resorts and hospitality venues.

### **Pre-sentence report**

[9] I have been provided with a pre-sentence report. The report says you come from a low-income background and you have a lot of financial responsibility for your family. You are the only full-time income earner in your household and you earn about \$500 each week.

[10] The report records that not only do you support your partner and your two young children, aged four and two, but you also help provide for your parents and your three sisters, all of whom are currently unemployed. Your partner has said that a prison sentence would cause serious hardship for the entire family.

[11] The report writer says that you have expressed remorse for your actions and you have accepted the seriousness of the offending. You also say you are concerned about your family's future and you are willing to take responsibility. The report writer notes you were open and co-operative during your interviews with both Police and Probation.

[12] While on bail, you have stayed in full-time employment and have continued to support your extended family. The report writer notes you have built a stable routine centred around work and family life, which may be disrupted if a custodial sentence is imposed.

[13] The recommendation in the report is a sentence of three years' supervision, with the first 12 months to include community work. Conditions relating to counselling, curfew, and alcohol are also proposed. The report writer believes this would be more suitable than a sentence of imprisonment, given the likely impact imprisonment would have on your dependants and support network.

### **Approach to sentencing**

[14] In sentencing you today, Mr Eli, I follow the approach set out by Cook Islands' case law and the principles and purposes of sentencing outlined in ss 7 and 8 of the

Sentencing Act 2002 (NZ) (which have been adopted by the Cook Islands High Court)<sup>3</sup>.

[15] In your case, the sentence I impose will denounce your conduct; hold you accountable for the harm caused to the victims and the community; deter you and others from committing similar offences; and promote a sense of responsibility and acknowledgment of that harm. On the other hand, I must be mindful of the need to assist in your rehabilitation and reintegration into the community.

[16] I am also required to take into account the gravity of your offending, including your degree of culpability; the seriousness of the offending; the general desirability of consistency with sentencings in similar cases; your personal family, whānau, community, and cultural background; and I must impose the least restrictive outcome that is appropriate in the circumstances.

[17] Sentencing is a two-stage process<sup>4</sup>. First, I must set a starting point for your sentence. In doing so, I will take into account any aggravating and mitigating features of your offending. Then at the second stage I will consider factors personal to you that may change the starting point by either lowering it (if any personal factors are in your favour), or increasing it, if there are any aggravating personal factors.

### **Stage one: setting a starting point**

#### *Crown submissions*

[18] Crown counsel, Ms Schuster, submits that the burglary charges should be taken as the lead offending for the purposes of setting a starting point.

[19] Mr Schuster submits that your offending underlying the burglary charges involves a number of aggravating factors:

- (a) Your offending showed a clear degree of planning. You and your co-offender travelled by motorcycle to multiple locations around

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<sup>3</sup> See *O'Carrol v R* [2020] NZSC 92, [2020] 1 NZLR 299 at [11].

<sup>4</sup> *R v Kamana* CA 504/2022, 28 June 2022 at [26].

Avarua and Avatiu. Your co-offender often stayed outside as a lookout to reduce the chance of being caught, which shows careful co-ordination.

- (b) The total value of property stolen was significant, estimated at over \$10,000. You committed a total of seven burglaries, reflecting a repeated and deliberate pattern of offending.
- (c) You did not act alone but carried out the burglaries with another, which increased the scale and seriousness of the offending.
- (d) Additionally, the break-ins took place at night, further demonstrating planning and premeditation, as well as posing a greater risk to community safety.

[20] Ms Schuster referred the Court to a number of cases that she submits are helpful in determining an appropriate starting point for your offending. They include the following cases: *Police v Mose*<sup>5</sup>; *Police v Taufahema*<sup>6</sup>; *Police v Kakino*<sup>7</sup>; and *Police v Teava*<sup>8</sup>.

[21] Based on the cases the Crown refers to, Ms Schuster submits a starting point of three and a half years' imprisonment for the burglary charges would be appropriate.

#### *Defence submissions*

[22] Your counsel, Ms Tangimama Pera-Robati, does not seek to challenge or contradict the Crown's submissions on the starting point. Rather, her focus is on the character references which I will come to shortly.

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<sup>5</sup> *Police v Mose* HC Rarotonga CR 499/19, 25 August 2020.

<sup>6</sup> *Police v Taufahema* HC Rarotonga CR 359/17, 21 March 2018.

<sup>7</sup> *Police v Kakino* HC Rarotonga CR 385/11, 8 November 2012.

<sup>8</sup> *Police v Teava* HC Rarotonga CR 478/19, 20 September 2019.

## *Discussion*

[23] Mr Eli, your offending was serious and sustained. Over a period of three months you carried out seven burglaries, targeting government buildings and commercial properties. The burglaries were not spontaneous acts but planned and coordinated, often involving a lookout and occurring at night. You and your co-offender targeted premises that were either poorly secured or vulnerable, and you made deliberate efforts to enter undetected. The offending caused a significant financial loss – nearly \$10,000 – and involved the theft of both valuable and personal items.

[24] As Crown counsel points out, this Court has said in the past that burglary will, “ordinarily attract a short term of imprisonment as a starting point”<sup>9</sup>. The Court has also said<sup>10</sup>:

[11] Burglary is becoming a major problem on the island. It undermines the security of the community and the security of the tourism industry. This Court has warned that charges of burglary can expect to attract a prison sentence.

[25] The theft of the 40 watermelons, though a separate incident, also reflects deliberate and sustained offending. You unlawfully entered private land on more than one occasion and tried to profit by selling the stolen produce. The value of the theft, \$2,590, is not insignificant. I accept the Crown’s submission that this offending should be treated as an uplift to the primary burglary offending. I propose to proceed in that way after I have considered your personal circumstances, which I will apply to the starting point for the seven burglaries.

[26] Having regard to the case law provided by the Crown, I consider a starting point of three years and six months’ imprisonment is appropriate for the burglary charges.

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<sup>9</sup> *Police v Maka* HC Rarotonga, CR 43/11, 22 June 2012, at [10].

<sup>10</sup> *Police v Kakino*, above n 7.

## **Stage two: adjusting the starting point**

### *Crown submissions*

[27] The Crown acknowledges there are a number of mitigating features in your case:

- (a) Your guilty plea, for which the Crown accepts a discount in the range of 25 to 33 per cent is available.
- (b) Your youth. You were 19 years old at the time of the burglary offending and 20 at the time of the theft. The Crown accepts that you should receive some level of discount for this factor but says it should be limited to 15 per cent due to your prior relevant conviction.
- (c) Your personal economic circumstances, which reflect significant hardship and social disadvantage.
- (d) The Crown also acknowledges the hardship that a sentence of imprisonment would cause to your young children, who are likely to be negatively affected by your absence.
- (e) The assistance you provided to the authorities. This included making full admissions during your Police interview, and identifying the involvement of your co-offender in the burglaries. This helped the Police to understand the full extent of the offending. In the Crown's written submissions it was submitted that a discount in region of 40 per cent would be appropriate for your assistance given to authorities. However, in oral submissions today, Ms Schuster says that the advice now available to the Crown from the Police indicates that of the two, you were the lead offender. In those circumstances, Ms Schuster submits that a maximum discount of 30 per cent should be given for this factor.

[28] After referring to the mitigating factors, that is factors that apply in your favour, Ms Schuster says there is an aggravating factor. You have a relevant prior conviction for aggravated robbery from 2020. The Crown does not seek an uplift for this offending as you were only 15 years old at the time you committed that offence. Still, Ms Schuster submits, it remains a relevant factor in your sentencing.

[29] Ms Schuster notes that the maximum discount in the Cook Islands is 70 per cent, as a global discount for all sources of mitigation<sup>11</sup>. She submits that the full discount would be available in your case. The end sentence for the burglaries would accordingly be 12.6 months' imprisonment.

[30] Rather than adding the uplift for the theft of watermelons to the starting point for the burglary charges, and then considering personal factors on the uplifted starting point, the Crown says the uplift should be added to the end sentence for the burglary charges. I understand that to be because the assistance you gave to authorities related to the burglary charges and would not apply to the theft charge.

[31] Ms Schuster submits that your theft of the 40 watermelons should be considered by adding an uplift of 4 months' imprisonment to the end sentence for the burglary charges.

[32] Ms Schuster also submits the appropriate end sentence would be 15 months' imprisonment. If that sentence were to be commuted to a non-custodial sentence,<sup>12</sup> the Crown says it should be for the maximum period of three years. In support of that submission Ms Schuster notes that, while the Crown suggests a reparation order could be made, in reality such an order would not be realistic given your circumstances. That is a relevant factor which supports the Crown's submission that the maximum non-custodial sentence should be for three years.

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<sup>11</sup> *R v Kamana*, above n 4.

<sup>12</sup> Criminal Justice Act 1967, s 6.

### *Defence submissions*

[33] Ms Tangimama Pera-Robati has filed a number of character references: from your mother, your partner, and your partner's parents. Each of them speaks positively of your character. For example, your partner's parents say they have found you to be a kind and humble young man, who works hard to earn and provide for his young family. Your partner acknowledges that your actions have affected the public, and they have also affected her, your children, and you as well. She says you truly regret your actions. She says she knows we all make mistakes and that we all learn from our mistakes. She asks that you be given a second chance to correct yourself.

### *Discussion*

[34] In very fair and balanced submissions the Crown has acknowledged a number of personal factors that will act in your favour to reduce the starting point. I generally accept those submissions.

[35] First, there is your guilty plea. You entered that plea at an early stage and have accepted full responsibility for your actions. You are entitled to a discount of 33 per cent on your sentence to reflect that plea, which has saved the time and cost of a trial.

[36] You are still a young man, having been just 19 at the time of the burglaries and 20 at the time of the theft. I consider a discount of 15 per cent is appropriate for youth.

[37] I also take into account your genuine remorse. You were co-operative with both the Police and Probation, took responsibility at an early stage, and have expressed concern for the impact of your actions on your family and your community. Since your arrest, you have remained in full-time work and maintained a stable and positive routine. That shows a level of maturity and self-discipline that weighs in your favour. I give you a 5 per cent discount for your remorse.

[38] The Crown refers to your difficult economic circumstances and notes a possible nexus or link with your offending. While that may be so, I do not propose to

give you a discount for this factor. It is better for it to be considered when I make my decision as to whether a prison sentence should be commuted to a non-custodial sentence. But I will give you a discount of 10 per cent for the impact a prison sentence will have on your young children<sup>13</sup>.

[39] I note the Crown's acknowledgement that a maximum discount of 30 per cent would be appropriate for your assistance to authorities. I accept that submission having regard to your guilty pleas and your willingness to assist with the prosecution of your co-offender on the burglary charges. Bearing in mind you appear to have been the lead offender out of the two of you, I consider 30 per cent would be the maximum discount I could give.

[40] I do not treat your prior conviction for aggravated robbery as a factor that would warrant an increase in your sentence. It simply means that you are not entitled to a discount for prior good character.

[41] In summary, the discounts I will give are 33 per cent (guilty plea), 15 per cent (youth), 5 per cent (remorse), 10 per cent (impact on children), and 30 per cent for your assistance to authorities. The total of those discounts obviously exceeds the maximum 70 per cent discount that would be available. In those circumstances, the Court will apply a 70 per cent discount.

[42] That results in a sentence of 12.6 months' imprisonment on the burglary charges.

[43] As far as the theft of the watermelons is concerned, I accept the Crown's submission that this offending is separate in time, place, and nature and accordingly requires a discrete cumulative sentence. This was not opportunistic offending but was premeditated and involved you and your co-offender going on to the owner's property unlawfully at night. Also, as Crown counsel points out, the theft occurred while you were on bail for the burglary charges. The value of the property stolen was \$2,590. Your half-share would be \$1,295.

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<sup>13</sup> See *Philip v R* [2022] NZSC 149, 1 NZLR 571, where the New Zealand Supreme Court considered the trial Judge's discount of 10 per cent for this factor was appropriate.

[44] I consider this offending on its own would attract a starting point of around 12 months' imprisonment<sup>14</sup>. I accept the Crown's submission that there needs to be an uplift given that you committed this offending while on bail for the burglary charges. An uplift of two months is appropriate, resulting in a sentence of 14 months' imprisonment.

[45] However, I will apply the discounts I gave you on the burglary charges, apart from the discount for assistance to authorities. They are 33 per cent (guilty plea), 15 per cent (youth), 5 per cent (remorse), and 10 per cent (impact on your children). That is a total of 63 per cent, in other words a discount of 8.82 months. That results in a sentence of 5.18 months. That would be the sentence if the theft charge were on its own. However, because it is being applied as an uplift to the burglary charges, I will adopt a lesser figure.

[46] In total the final sentence (if I do impose a sentence of imprisonment) will be 15 months' imprisonment.

### **Final Sentence**

[47] I come now to what I consider to be the most difficult part of this sentencing decision, and that is whether I should impose a sentence of 15 months' imprisonment or whether I should commute that sentence to a non-custodial sentence, which I have the power to do.

[48] The calculations I have undertaken, and which I have referred to up to this point, represent important steps in the reasoning process that a Court must undertake to reach a proper sentence. However, as the Court of Appeal has said:

At the end of that exercise it is important to step back and ask whether the overall sentence reflects the gravity of the offending after taking into account all mitigating factors<sup>15</sup>.

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<sup>14</sup> *Police v Taufahema*, at n 6 above; and *Police v Maruaau*, HC Rarotonga CR 69/2015, 2 June 2016.

<sup>15</sup> *R v Kamana*, above n 4, at [34].

[49] I have thought long and hard about this issue in your case, Mr Eli. On the one hand, the burglary charges represent serious offending and the theft charge represents offending while you were on bail for the burglary charges.

[50] On the other hand, you face significant financial pressures. That was also the case when you offended. As I have already said, you are the sole income earner for your household, supporting not only your partner and two young children but also your parents and three sisters. This is a heavy burden for someone of your age. The pre-sentence report makes clear that imprisonment would cause real and immediate hardship to your whānau. In your favour too, you have returned just under \$2,000 of the cash taken in the burglaries.

[51] Standing back, this is a case where the seriousness of your offending must be weighed carefully against your capacity for rehabilitation. Having regard to the Probation officer's report you clearly have that capacity. A custodial sentence would be justified given the number and nature of the burglaries. But the question is whether that sentence must be served in prison, or whether there is an alternative sentence that can hold you accountable while better supporting your rehabilitation and your family's wellbeing.

[52] I also bear in mind the requirement to impose the least restrictive outcome that is appropriate in the circumstances. I note that in doing so I have been assisted by a further oral report from the Probation officer in response to some queries the Court had this morning.

[53] By a narrow margin I have decided that it is appropriate to commute your sentence to a non-custodial sentence which, of necessity given all the circumstances of your offending, and the fact that I will not be making a reparation order which would not be realistic, must be for the maximum period of three years. The first 12 months are to be served on community service, and I have been assisted this morning by the advice from the Probation officer that community service is served every Saturday from 7:30 am to 4:00 pm.

[54] I make it clear to you, Mr Eli, in imposing the sentence I propose, this is not a soft option. You will be required to comply with the conditions I will impose for a period of three years; and as well, as I have indicated, the first 12 months will be served on community service.

[55] I did have a query about two of the proposed conditions that relate to alcohol. However, having heard from the Probation officer this morning who tells me that you told him you were “tipsy” when you committed at least some of the offending, I propose to add those conditions.

### **Imposition of sentence**

[56] Mr Eli would you now please return to the dock.

[57] I sentence you to three years’ probation supervision, with the first 12 months to be served on community service, with the following special conditions:

- (a) To attend counselling or workshops with Rick Currie at Te Punanga Ora’anga Matutu.
- (b) To be subject to a curfew between the hours of 7:00 pm to 7:00 am.
- (c) Not to consume or purchase alcohol.
- (d) Not to enter any liquor license premises, such as bars and nightclubs.
- (e) Not to associate with your co-offenders, Rangi Tuaru and Lucas Kamana.
- (f) Not to leave Rarotonga without the prior approval of the High Court.

[58] Stand down please, Mr Eli.



Gordon J