

**IN THE HIGH COURT OF
NIUE (CRIMINAL DIVISION)**

APPLICATION No.s:

IN THE MATTER OF: Lionel Tahega, Desmond
Togiakona, and Sione Laponi
Togiakona
(Defendants)

AND Niue Police
(Informant)

SENTENCING DECISION

[1] In accordance with my decision of 1 December 2011 there are three charges to be sentenced:

- i) A charge of assault against Desmond Togiakona to Doreen Matakapea.
- ii) A charge of assault against Lionel Tahega to Doreen Matakapea.
- iii) A charge of wilful mischief to a television set against Lionel Tahega.

[2] On 25 January 2012 the Chief of Police filed sentencing submissions in the Niue High Court. In these submissions reference is made to some facts which are known to the Court will not be set out. The submissions of the Chief of Police include:

Desmond Togiakona

- i) He is a 17 year old male with one previous conviction for wilful mischief to property resulting in a fine.
- ii) It is submitted he has anger and alcohol problems.
- iii) The issue that he did not intend to assault Doreen Matakapea is irrelevant and the experience for the victim was terrifying.
- iv) A short sharp custodial sentence is sought followed by a three month period of supervision where alcohol is banned.

Lionel Tahega

- i) He is a young male with no previous convictions.
- ii) He involved himself late in the incident.
- iii) Reparation in excess of \$300 is sought for the television set.

[3] On 6 February 2012 submissions were received from Counsel for the defendants as follows:

Desmond Togiakona

- i) There was a degree of provocation from the Matakapea family.
- ii) He did not intend to assault Doreen Matakapea.
- iii) No injuries were suffered by Doreen.
- iv) He was 16 at the time of offending and locked up overnight after being arrested.
- v) He should receive maximum credit for his guilty plea.
- vi) He has one previous conviction not similar to this offence.
- vii) Community work is appropriate.

Lionel Tahega

- i) Provocation from the Matakapea family.
- ii) He was involved late in the piece.
- iii) No injuries were suffered by Doreen.
- iv) He should receive maximum credit for his guilty plea.
- v) He is in full time employment and has no previous convictions and should receive credit for his previously blameless character.

- vi) He accepts he should pay reparation for the television set but say it is an older CRT type of television set and \$300 is excessive.
- vii) A sentence of community work and reparation is recommended.

Decision

Desmond Togiakona

- [4] Desmond has been charged with assault under section 157 Niue Act 1966 which has a maximum penalty of 1 years imprisonment.
- [5] This was a serious incident which was fuelled by alcohol in which the defendant was fully involved. Intentional or not, the fact is that he assaulted Doreen and the only saving grace is that the victim was not seriously injured.
- [6] The defendant has a previously conviction and although it was unrelated the defendant is too familiar with the justice system for all the wrong reasons.
- [7] The defendant should take stock of his behaviour and the impact it is having on his family and the wider community.
- [8] I note the timing of the entry of the guilty plea by the defendant but consider this is only one factor to take into account, and may well be conceded by the lack of remorse shown by the defendant.
- [9] Taking into account the above factors I sentence the defendant as follows:
 - i) A fine of \$350 to be paid within one month.
 - ii) A prohibition order is made against the defendant prohibiting him from the purchase and consumption of alcohol for a period of six months. A copy of this prohibition order is to be sent to all liquor outlets in Niue.

Lionel Tahega

- [10] In my view Lionel Tahega's position is more serious than his co defendant.

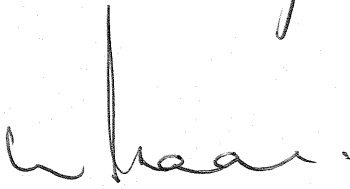
[11] This defendant pursued the victim and punched her twice through the window of her vehicle. Later and without invitation he entered the victim's house and threw a rock through their television set.

[12] Although this defendant has no previous convictions the charges and a guilty plea was entered to the amended charges, all the circumstances of the case must be considered when pronouncing sentence. As with his co defendant no remorse has been shown.

[13] In respect to both charges I sentence the defendant as follows:

- i) A fine of \$450 to be paid within one month.
- ii) Payment to the victim of \$300 being reparation for the damage to the television set.
- iii) A prohibition, prohibiting the defendant from consuming or purchasing alcohol in Niue for a period of six months. A copy of this order is to be sent to all liquor outlets in Niue.

Dated at Wellington this 16th day of February 2012



W W Isaac
Judge