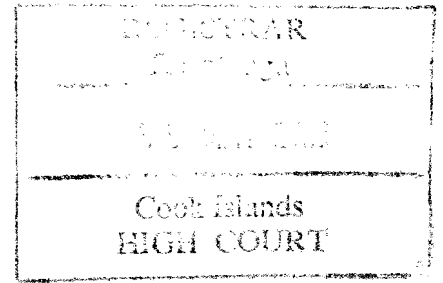


IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CRIMINAL DIVISION)



CR NOS: 536/05,537/05,538/05
539/05,540/05,80/06
374/05,535/05

POLICE

V

UTUTUTAVAKE PATIA
Defendant

Sergeant T Howard for Police
Utututavake Patia for himself
Date of Sentence: 31 March 2006

SENTENCE OF NICHOLSON J

Mr Patia, in September of 2005, you were released on 12 months probation for the offence assault which had been committed earlier that month and following that in December 2005 there was an incident as a result of which you were charged for 5 offences of threatening to kill and 1 assault with intent to injure and for that Justice Hingston sentenced you to probation for a further term of 2 years on the expiry of the 12 months.

Unfortunately, about 2 weeks after that sentence there was a further incident the result of which you have been charged with breach of probation, that is drinking, contrary to the terms of probation, assaulting a constable and resisting arrest and in light of your behaviour and your being back before the Court again during the term of your probation, the Probation Officer has applied for you to be sentenced on the original charges. This is something the Court has power to do.

Having given somebody a chance, in your case two chances, if they continue to offend and don't observe the terms of probation then the Probation Officer can say well look, end of the road, we've done what we can, you should be sentenced afresh so hence I am to sentence you afresh today. So what I do first is I look at the offence of assault committed on the 8th of September 2005 and the facts of that offence were that in the early hours of the morning after the bar closed, you went to your girlfriend's residence at Tupapa, there was an argument between you and her. The victim who was next door heard the argument, came over to see what was going on but when he arrived you attacked him. You punched him with closed fists about four times on the face, when he fell to the ground you kicked him in the face several times, he managed to get up and defend himself but as a result he came out of it with bruises on his face, cut nose, suspected broken nose. And when you were questioned you admitted what had happened. You said you had drunk about six big bottles of Steinlager that evening. So that's the offence for which you were released later that month on 12 months probation.

Then on the 19th of December, less than 3 months after being released there was a further incident. What happened there was when you got home at 4.00 o'clock on Monday the 19th of December 2005 after picking up your girlfriend from work, you found that your sister Vinivini had taken a Vanuatu friend of yours home, started an argument with her and then another sister Teremoana arrived and an argument started with her. You then told your girlfriend who was eating at the time at the dining table to get on the bike and when she refused you grabbed her on her top and dragged her out of the house at the same time punching and slapping her with open and closed fists. Her top was ripped by the time you got her to the bike. Your sisters Teremoana and Vinivini tried to stop you from assaulting her, you turned on them. Maria ran into the house, was followed by you, you grabbed her by her hair and pulled her out of the house. Teremoana ran inside, grabbed the rock that was used a door stop and tried to

stop you from hitting Maria. You then swung her and she hit at you, trying to get you to stop assaulting Maria. You then let go of Maria and then another person Narii your mum arrived and Maria ran to her and then Vinivini came and together with Teremoana they tried to distract your attention so you wouldn't hurt Maria and Narii. You followed Vinivini and Teremoana towards the house swearing and threatening and you went into the house, grabbed a white handled knife and said "I will kill you all" and you turned to Vinivini and told her that you would kill her first. You then grabbed the black handled knife and threatened to stab Vinivini by pointing the knife to her neck. Then Teremoana came and hit you on the back with the rock, you then followed Teremoana out, you got another kitchen knife and you were threatening everyone with it. Then you grabbed a piece of 2 x 2 timber on the ground next to the house, then swung the timber at Teremoana and hit her on the leg. Vinivini was trying to stop you from hitting her but you pushed her into the hedge, a neighbour came and helped. The second time you swung at Teremoana with the timber, you hit her on the face, the third time missed and she took off up the road.

Then a further victim, Paul, was sitting outside when he saw you hit Teremoana with the timber, told you that you had crossed the line, you then turned on him and threatened to kill him. You then told Teremoana, Narii and Maria that you would kill them all and that if you are taken to jail you would come out and kill them all. When the Police came the victims were on the road, you were at home and you calmed down. The victims received various cuts and bruises as a result of it.

Now in sentencing you for that offence, Justice Hingston said, he took on board what Mr George had said for you and he was sympathetic because he said you were put in a situation probably not of your making, however you had been drinking and you also probably precipitated everything by dragging your partner out of the house. He said Mr George had asked him to dispense with the

custodial sentence and that he was going to take the risk because as Mr George said you'd already done a month in prison and had learnt a lesson. So he sentenced you on those charges of threatening to kill and assaulting Teremoana with intent to injure her by a further 2 years probation with special conditions; you are to abstain from consumption of alcohol, not to go on to licensed premises where liquor is sold and to attend the alcohol rehabilitation program. So that was the sentence on February this year.

However on Sunday the 5th of March this year, as I say about a fortnight later after you had been treated quite leniently by Justice Hingston, police were called to the residence of Edward and Kimi Brogan, found that you were there causing trouble, you'd been drinking or well under the influence of alcohol, when you saw the Police you ran away but you were caught by the Police and taken to the police truck. While the Police were taking you to the Police Station, you tried to jump out of the vehicle and when stopped by the police, you assaulted the police constable by grabbing his neck.

At the Arorangi School you tried to jump out of the truck again and was again stopped by the police with the assistance of an off duty police officer. You then grabbed the constable on the neck again till you were calmed down by the other police officer.

At the police station you were arrested for breach of probation, you resisted arrest and refused to go to prison and six police officers used force to put you down, handcuff you and then calm down.

Witnesses told of how you have been seen to be drinking 6 bottles of large Stein that afternoon at home, an hour later you had been drinking at your neighbour's house, drinking Johnny Walker and vodka straight. So those were the charges from that incident – breach of probation by drinking, assaulting a constable and

resisting arrest. So as you realistically know you are now going to be sentenced to a term of imprisonment starting with the first assault back on the 8th of September 2005. The maximum penalty for that is 1 year imprisonment and for that I quash the sentence of 12 months probation and substitute a sentence of 6 months imprisonment.

Now in respect of the five charges of threatening to kill on the 19th of December and assaulting Teremoana with intent to injure her, I quash the sentence of further probation imposed by Justice Hingston on the 24th of February and place on each of the threatening to kill charges I sentence you to 1 year's imprisonment and on the assault with intent to injure I sentence you to, because it is the far more serious offence, 3 years imprisonment.

In respect of the offences in March this year, earlier this month, for the breach of probation I sentence you to 1 month's imprisonment; for assaulting the constable I sentence you to 2 month's imprisonment and for resisting arrest I sentence you also to 2 month's imprisonment. Now all of those sentences will be concurrent and so in effect you are sentenced to an effective term of imprisonment of 3 years.

Now it's clear that you do have a psychiatric difficulty and I trust and hope that you will get back onto a regime of medication which you will keep up. I hope also you will come to grips with your alcohol problem, because clearly alcohol causes you to get into the trouble that you've caused to yourself and other people, but really that's a matter over to you.


JUDGE