

IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA

CR NOS. 387-390/06,16,19,70-
71,146-148,155,191/07

POLICE

v

TEA O TANGAROA TEKEU UEA

Defendant

Mr T Elikana for Police
Mr N George for Defendant
Date sentenced: 09 November 2007

SENTENCE OF NICHOLSON J

1. Tangaroa Uea, a jury found you guilty of two offences of rape, one offence of attempted rape, two offences of indecently assaulting a girl between the age of 12 and 16 years, one offence of committing an indecent act on a girl between the age of 12 and 16 years and four offences of indecently assaulting a girl over the age of 16 years. You were convicted of those offences in accordance with the jury's verdicts and you are now to be sentenced for them.
2. An offence of rape has a maximum penalty of 14 years imprisonment. An offence of attempted rape has a maximum penalty of 10 years imprisonment. An offence of indecent assault or indecent act on a girl between the age of 12 and 16 years has a maximum penalty of 7 years imprisonment. An offence of indecent assault of a girl of or over the age of 16 years has a maximum penalty of 7 years imprisonment.

3. From the evidence given at your trial, and from the jury's verdicts in respect of that evidence, the facts were that the offending took place between the 10th of December 2005 and the 23rd of April 2006 on the island of Atiu. During that time you were the Minister for the Cook Islands Christian Church on that island and you lived in the mission house near the church. The three victims of your offending were members of that church. The orders for non-publication of their names continue and I will therefore identify them in sentencing only by using the letters A, B and C for them.
4. Victim A was born on the 27th of January 1991. Victim B was born on the 10th of October 1988. Victim C was born on the 30th of July 1986. Each of the three victims gave evidence that you had sexually abused her. You gave evidence and denied any such sexual abuse.
5. As stated, based on the evidence and on the verdicts of the jury, the pertinent facts of the offending were that on Saturday evening the 10th of December 2005, Victim A went to the mission house and early the following morning you asked her to go to the library and when you were alone there with her, you kissed her, put your tongue in her mouth and touched her breasts and genital area with your hand. That incident was the subject of Count number one of the amended indictment.
6. After that incident you continued to indecently assault Victim A in a similar way, about five or six times a week at night when members of your family were not there or were asleep. This occurring in the dining room and in the library and continuing until late April the following year. This repeated conduct was the subject of Count two of the amended indictment. This was a representative charge.

7. Between the 14th of December 2005 and the 30th of April 2006, you did an indecent act on Victim A by putting your penis in her mouth. This was the subject of Count Three of the amended indictment.
8. During the evening of Tuesday the 18th of April 2006, you told Victim A to go to your bedroom. There clothes were taken off and you had sexual intercourse with her. This was the rape offence, the subject of Count four of the amended indictment.
9. The following evening, Wednesday the 19th of April, you told Victim A to go to your bedroom and there, after clothes were taken off, you tried to put your penis in her vagina but did not succeed. This was the offence of attempted rape, the subject of Count six of the amended indictment.
10. The following evening, Thursday the 20th of April, you were again with Victim A in your bedroom. After clothes were taken off, you had sexual intercourse with her. This was the offence of rape, the subject of Count eight of the amended indictment.
11. During December 2005, Victim B was in the garage near the mission house playing a guitar. You hugged and then kissed her and in doing so sucked her tongue. You put your hands on her body and they went down to the area of her posterior. This was indecent assault, the subject of Count ten of the amended indictment.
12. The following month January 2006, you again indecently assaulted Victim B. This incident started on the mission house veranda and then continued between the house and the garage. You opened her mouth and kissed her and gave her two love bites. This was the subject of Count eleven of the amended indictment.

13. On Tuesday evening the 31st of January, Victim C was at your house. When she finished playing the piano at about 11.00pm, you and your wife told her not to go home by herself and to sleep at your house. She watched TV in the sitting room and then went to sleep. Early the following morning you sat next to her and hugged and kissed her. This was the offence of indecent assault, the subject of Count twelve of the amended indictment.
14. On Saturday evening the 22nd of April 2006, you took Victim C to your bedroom and after clothes were taken off, you kissed her on her body and tried to put your fingers into her vagina. You then tried to put your penis into her vagina but did not succeed. This was the offence of indecent assault, the subject of Count fourteen of the amended indictment.
15. The Probation Officer has been very conscientious and competent in preparing a detailed report.
16. I refer to substantial parts of the Victim Impact statements to record the harm which your sexual abuse of each girl caused. There was certainly no physical violence as such but the emotional and mental harm suffered by them were considerable.
17. In the Victim Impact statement relating to Victim A, the Interviewing officer, CIB states, *"The victim when spoken to, showed signs of physical withdrawal, felt uncomfortable, confused, traumatized and upsetting experiences of repercussion affected by someone who physically abused her. The effect of the abuse upon her is huge, shocking and has affected her entirely, physically, spiritually, mentally – felt very dirty, disgusted and to live in fear, guilt, loneliness, confused*

and went to the extent of wanting to commit suicide. She feels that she is however responsible for the whole affair from the start hence the result of writing up a diary to release the stress, pain and ordeal of what happened in her life and decided upon completion of her diary to commit suicide as she thought she didn't deserve to live this life... The assault has corrupted parts of her. Her trust in family, friends and community, her faith in God, her place of safety in the world, her daily routines and of course the unknown. Every word spoken about the assault hurts, however, understands and accepts responsibility she has to overcome her strong reluctance to speak out things so private, in order to enhance the work done so by the police, to ensure that the accused does not cause such disgusting and dirty habits to other young youths. She commits herself to overcome from this experience in life. She sometimes spends time on her own, basically concentrating on school to try and take her mind off the assaults.... She wants the accused to face the penalty and stop him from repeating the same act on other young teenagers in the future.

18. The Victim Impact statement for Victim B, was prepared by the same interviewing police officer. In that it is reported: *"the victim felt very uncomfortable, hurt, blamed and responsible having to share the thought of going through the whole episode. She is scared and uncomfortable when comes in contact with the accused and his family. However, she is comforted by the love of her family, friends and partner throughout the event of being upset until such time as she was required for trial. She believes the unpleasant incidents of assault will leave a mark on her eternally.."*
19. The same police officer prepared the Victim Impact statement for C. He said that: *"She had lived on Atiu all her life since childhood which she once called home. She had the remarkable good fortune to be*

born happy. She would have had her share of challenges and difficult times in life like all people would. She is known to her family as a cheerful, friendly, easy-going and open to life kind of person. She feels scared, unsafe when she comes face to face with the accused and did not want any more to do with him. She is ashamed and disgusted.... She adopted a whole new life by travelling overseas.

20. *Her family supported her throughout the event of being upset until such time she was required to return back for trial. She is at times confused, upset, ashamed, dirty and disgusted. .*
21. It is clear that each of the three victims has suffered considerable harm from what you did to her.
22. In the Probation Report to which I have already referred, the Probation Officer describes your age of 54 years, your family circumstances and your history, particularly of qualification within the church and service to the church and the community. He refers to many testimonials of your good character and gratitude from people for what you had done for them.
23. In the Crown's submissions today, Mr Elikana emphasized that the aggravating factors should be taken into account in the sentencing, particularly the age of the victims and the abuse of the position of trust which you held and abused. He made particular reference to information given by Pastor Kapao.
24. In his submissions on sentencing today, your counsel Mr George referred to your age, you being a parent of six children, having no previous convictions and the role and service which you had given and continue to give to the church and to the community. He referred to

the many testimonials describing your character and service. I have read those which have been provided and I have listened carefully to the summary of the testimonials which have not reached me but which Mr George referred to.

25. Mr George said that you were full of remorse for the consequences of the convictions on your family, your friends and other people. He said the impact on your life and that of your family and other people of your convictions is tremendous. He asked for leniency and he asked for a non-custodial sentence to be imposed taking into account that you have already been seven months in custody. He asked that you be continued to allow to serve the community.
26. Your offending was of a serious type involving sexual abuse of girls. This seriousness is reflected in the maximum penalties prescribed for each type of offence. Your offending was also of particular gravity because it was not one isolated incident, but repeated offending involving three separate girls as victims and was over a considerable period of time. Because of the nature and gravity of the offending, the only appropriate sentence is imprisonment.
27. The main aggravating factors of your offending were the vulnerability of each victim because of her age and the position of trust and responsibility which you held with relation to each as the Minister of her church. You exploited that vulnerability and trust by telling each of them in effect that what you were doing was not wrong and was sanctioned by the bible.
28. The next significant aggravating factor was pre-meditation on your part, particularly when you took Victims A and C to your bedroom when your wife was away from Atiu during April 2006.

29. A further aggravating factor was the extent of harm to each victim resulting from your abuse of her. I referred to this earlier, in reading parts of the Victim Impact statements.
30. The mitigating factors have been stated and emphasized by your counsel Mr George. They are mainly your age of 54 years, your lack of any previous conviction, your being a parent and your previous good character, conduct and service as recorded in the testimonials which have been provided.
31. The process of deciding and calculating an appropriate sentence is complicated because of the number of offences, their different nature and time, and the number of victims involved. However I have considered as will become clear, a sentence for each offence and have reached a final effective total term of sentence of imprisonment.
32. Having regard to the seriousness and gravity of the two rape offences, I consider that the appropriate starting point, for each of them is 4 years imprisonment. I consider that the serious aggravating factors which I have stated require that a term of two years imprisonment be added to that starting point to make a term of 6 years imprisonment for each. From the 6 years, a reduction of 1 year imprisonment should be made to allow for the mitigating factors. This results in an effective term of 5 years imprisonment for each of the rape offences. They are to be concurrent with each other.
33. Having regard to its seriousness and gravity, I consider an appropriate starting point for the attempted rape offence is 2 years imprisonment. To this 1 year's imprisonment should be added for the serious aggravating factors making a term of 3 years of imprisonment. From

this a reduction of 6 months imprisonment should be made to allow for the mitigating factors. This results in an effective term of imprisonment of 2 years, 6 months imprisonment. I will mention when I summarize whether it is concurrent or cumulative.

34. I consider that the appropriate starting point for the two indecent assault and one indecent act offence relating to Victim A, the subject of counts 1,2 and 3, should be 1 year imprisonment. To that should be added 6 months for the serious aggravating factors to make 1 year 6 months and from this a reduction of 3 months should be made to allow for the mitigating factors, resulting in an effective term of 1 year 3 months.
35. For the same reasons and having regard to the nature of the touching involved, I consider that an appropriate point of 1 years imprisonment for the indecent assault offences against Victim B and Victim C on Counts 10,11 and 12 should be 1 years imprisonment. To this 6 months imprisonment should be added for the serious aggravating factors making 1 year 6 months and a reduction of 3 months made for mitigating factors resulting in a net term of 1 years 3 months imprisonment.
36. The indecent acts with relation to Victim C in Count 14 of the amended indictment were of a more serious nature and accordingly I consider the starting point for that offence should be 2 years imprisonment. To this an allowance of 1 year's imprisonment for the aggravating factors should be added, to make 3 years imprisonment and from that a reduction of 6 months should be made to allow for the mitigating factors. This results in a net term of 2 years 6 months imprisonment.

37. As all the offences involved sexual abuse of girls and were in the same context of your relationship with them as a Minister, concurrent sentences of imprisonment may be appropriate. However, as some offences relate to separate victims and acts and two are for the offence of rape, cumulative sentences for some are appropriate. When cumulative sentences of imprisonment are imposed, whether individually or in combination with concurrent sentences, they must not result in a total period of imprisonment wholly out of proportion to the gravity of the overall offending. Applying this totality principle, I consider that the following combination of concurrent and cumulative sentences is appropriate.
38. For the offences of rape, the subject of Counts 4 and 8, I sentence you to 5 years imprisonment on each, these are concurrent with each other.
39. For the offence of attempted rape, the subject of Count 6, I sentence you to 2 years 6 months imprisonment, this is concurrent with all other sentences.
40. For each of the three offences of indecently assaulting and indecent act on Victim A, a girl between the age of 12 and 16 years, the subject of counts 1,2 and 3, I sentence you to 1 year 3 months, these are concurrent with each other and all other sentences.
41. For the 3 offences of indecent assault on a girl of or over the age of 16 years, the subject to Counts 10,11 and 12, I sentence you to 1 year 3 months imprisonment, these are concurrent with each other and all other sentences.

42. For the offence of indecent assault on a girl of or over the age of 16 years, the subject of Count 14, I sentence you to 2 years 6 months imprisonment. This is cumulative on the rape sentences of 5 years.

43. Therefore, the overall result is sentences imposing an effective cumulative term of 7 years 6 months imprisonment. I sentence you accordingly for each of the offences and upon that basis. The period you have already been in custody, will form part of the service of this term.

Judge