

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

**CR NOS. 31/08,33/08**

**POLICE**

**V**

**CHARLIE OKOTAI** of Aitutaki and  
**FERNANDO TAKAI NGATIPA**, also  
of Aitutaki  
**Defendants**

Ms M Henry for Police  
Mr N George for Defendants  
Date: 10 December 2009

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**SENTENCE OF HUGH WILLIAMS J**

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1. In a reserved judgment delivered on 29 September 2009 the Chief Justice, David Williams CJ, found the two accused guilty on one count of inciting or counselling persons to commit unlawful trespass on Aitutaki Airport on Sunday 29 June 2008 but when the offence of wilful trespass was not in fact committed. The maximum sentence under s. 334 (2) of the Crimes Act 1969 of the Cook Islands is a jail term of 1½ months or a fine of \$50.00.
2. The case was heard by the Chief Justice in Aitutaki on 14<sup>th</sup> and 15<sup>th</sup> of April 2009 and submissions were later filed. The defendant Pastor Okotai has filed a consent to his being sentenced in absentia notwithstanding normally sentencing of course is carried out in the presence of the person convicted. Mr Ngatipa is present.
3. These convictions arise out of a series of protests conducted at the Aitutaki Airport against flights coming into and leaving the airport on Sundays. There is no doubt as is made clear in the Chief Justice's

judgment that the defendants and those participating in the protest are sincere in their opposition to the flights, but in their view Sunday flights are contrary to their beliefs under the Bible. Nonetheless these protests have been a matter of significant agitation in Aitutaki and a matter of significant comment one way or the other throughout the Cook Islands during the period of the protests had been undertaken.

4. The protests were undertaken at the Aitutaki Airport on 29 June 2008 and what converted a lawful protest and exercise of the defendants' rights under Article 64(1)(e) and (f) of the Constitution of the Cook Islands is that the defendants encouraged those present to go on to the airport runway and disrupt incoming flights. As Reverend Okotai said in evidence that "we had only one objective, if we are on the airport that for the plane not to land, we had only one objective, go on the runaway to stay there so plane can't land. Prayer service not to be part of that."
5. At one point in the protest the defendants encouraged those participating to go to the seaward side of the airport where the security is much less tight than on the terminal or road side of the airport.
6. However as mentioned in fact although the protestors made efforts and made movements to agree to what they were being urged to do they did not in fact disrupt any flights. Reverend Okotai encouraged the protestors in forceful terms, telling them that "you the landowners go onto the airport", "you have a right to go on, blood will be spilt, the terminal will be on fire, crash the fence." Mr Ngatipa was similarly active in the protest.
7. The Chief Justice carefully reviewed the facts disclosed in the evidence. He acknowledged the rights of Pastor Okotai and Mr Ngatipa under Article 61 (4) (e), (f) of the Constitution to freedom of

speech and expression and freedom of peaceful assembly but held that what had taken place in this instance went beyond the defendants' rights in that regard and that their actions extended beyond their constitutional rights.

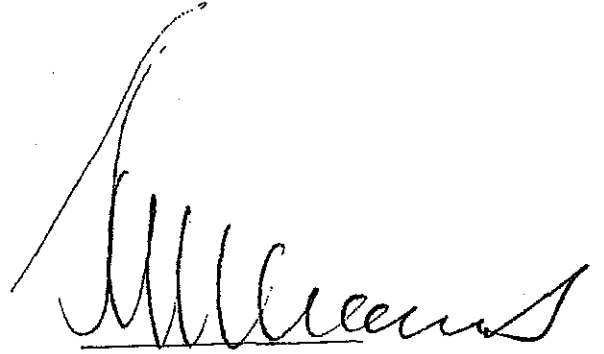
8. The defence of tarotaro was raised. That was discussed by the Chief Justice. The ambit of the tarotaro defence appears to have been somewhat uncertain when given in evidence but in any case the Chief Justice held the defence had not been made out in this instance.
9. The Probation Service said that Pastor Okotai is 53, a first offender and a lifelong Christian who had achieved his ambition of being made a pastor. Of importance in the resolution of this matter a supporting statement from the Cook Islands Christian Church makes clear that if Pastor Okotai is convicted of any offence, particularly the ones under consideration today, he will be dismissed from his pastorship. As discussed with Mr George, acting for him that would be a disproportionately grave result for what Pastor Okotai did on this occasion. He had a belief that it was the word of God which encouraged him to offend in the way the Chief Justice held him to have offended. Naturally enough he has exhibited remorse at his actions since this occurred and has also refrained from participating in the ongoing protests at Aitutaki. Also of importance as far as the resolution of this matter is concerned is that the church has indicated that it will pay any costs which might be awarded against the Pastor.
10. Mr Ngatipa is a man of some age, 76. This is his first offence. He has very little in the way of this world's goods to meet any order against him. His sole income is an old age pension.
11. The Crown through Ms Henry submitted that a conviction should be entered. This was not a case where any discount could be allowed

for any plea. The Crown acknowledges the lack of previous convictions although it said that denunciation and deterrence not only of these offenders but also their associates should be an aspect of sentencing.

12. Mr George for the defence, stressed the lack of previous convictions of both defendants their religious belief that they were encouraged to participate in their view of what was right at Aitutaki Airport on this Sunday. Both men are non-violent. They were generally involved with the protest and in particular in the Pastor's case, the conviction would have a significant effect on his career.
13. Of Mr Ngatipa, Mr George said he was what he called a "musical legend" in the Cook Islands from the 1960s. Again, he was doing what seemed to be appropriate to him with regard to his belief.
14. The range of sentences available are discharge without conviction, an order that they, Pastor Okotai and Mr Ngatipa, come up for sentence if called on or something intermediate between the two.
15. What happened on this occasion was far too serious to warrant a discharge without conviction. As is well understood the most dangerous parts of air traffic are landing and taking off. Had these defendants and their supporters actually gone on to the runway as they were encouraged to do, who knows what might have occurred so far as incoming or outgoing aircraft might have been concerned. There was an obvious risk to the plane, the passengers and the crew in what these men urged their supporters to do and it is thankfully a matter of good sense on good luck that none of the protesters actually interfered with the arrival of the aircraft. There was a lengthy attempt on occasion to breach security in two places but fortunately nobody did what they were encouraged to do. So discharge without conviction would be inappropriately. It would be too lenient.

16. The problem about ordering the two accused to come up for sentence if called upon is that in terms of s. 113 of the Criminal Procedure for an order in that regard it is a necessary that prior to an order the defendant must be convicted. As already noted conviction, in particular for Pastor Okotal's, will result in his dismissal from his Pastorship. That would be inappropriate, far too serious for what they did on this occasion. So the imposition of a conviction as a pre condition to an order that they come up for sentence if called upon means that not the appropriate sentence to be imposed.
17. As discussed with counsel the only intermediate possible sentence is that this sentencing be delayed for a period in order for the defendants or the Church to meet the costs of the prosecution. Whatever the sincerity of the protest, there seems no reason why the people of the Cook Islands should be called upon to meet Crown Law's costs in prosecuting these defendants for what has been held, however sincere, to be an unlawful activity.
18. Therefore what seems to be the appropriate course and one in discussion with Mr George with which he agreed was that the sentencing be adjourned for 6 months and that in the meantime the defendants or those supporting them pay the costs of the prosecution in airfares, accommodation and the like amounting to \$1674.00. Provided that those funds are paid and provided the defendants do not engage within that period in unlawful activity similar to that which brought them before the Court, then the expectation would be that in 6 months time a discharge without conviction could probably be entered.
19. Just to make it clear, any Judge of this Court can impose that result. So that would seem to be an appropriate sentence. It marks what has been found to be the unlawfulness of the defendants' activities.

It ensures that the Prosecution is fiscally neutral. And provided, as expected, the defendants do not re-offend, it will ultimately result in their discharge without conviction.

A handwritten signature in black ink, appearing to read "H Williams J". The signature is written in a cursive style with a large, sweeping initial "H".

**Hugh Williams J**