

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

**CR NO. 198/09**

**QUEEN**

**v**

**TEVITA VAKALALABULE**

Date: 30 August 2010

Counsel: C Evans for Crown  
N George for Offender

Sentence: 30 August 2010

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**SENTENCING NOTES OF HUGH WILLIAMS J**

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Solicitors:

C Evans, Crown Law, PO Box 484 Avarua, Rarotonga ([Catherine@crownlaw.gov.ck](mailto:Catherine@crownlaw.gov.ck))

G Norman, Norman George & Associates P.C. Takuvaine, Rarotonga ([lawman@ovster.net.ck](mailto:lawman@ovster.net.ck))

[1] Mr Vakatafale, you appear here for sentence today having been convicted by a jury and Nicholson J following a jury trial. You were acquitted on the major charges that you faced, but the jury convicted you on one charge of assault on a female, a Ms Henry, on 19 November 2008, an offence for which the maximum penalty is two years' imprisonment.

[2] It seems that you and others on that night were engaged in an all-night drinking session, first at the Banana Court and the Hideaway Bar and then at a private home. It looks as though there was an altercation that broke out in the early hours of the morning when all of you were deeply drunk. You lunged at one of those present and the victim came to her aid and you swung a punch at her. You fractured her jaw, admittedly in a minor way, and caused multiple bruising and scratches. The Police were called and the victim was hospitalised. You said that you blacked out at the time and had little recollection of what occurred, no doubt because of your gross ingestion of alcohol.

[3] At the age of 36 the Probation Service tells me a significant amount about your background, including that the relationship between you and your wife is still persisting but it would be fair to describe it as having been 'patchy' over recent times. You voluntarily have undertaken some counselling. You were disbarred largely as a result of this incident, and Mr George tells me that you have involved yourself in religion as a result of this incident. Your wife and the Probation Service say that you are an excessive drinker who is unable to stop once you become involved. That seems a fair summation of the position.

[4] The Crown takes the view that you should be made accountable for this offence, and indeed the sentences imposed in the Cook Islands for male violence on females are too lenient. Ms Evans for the Crown particularly makes the point that this is not the first time you have been convicted of male assaults female, having been convicted and fined for a similar offence in October 2007. Therefore the Crown says, and justifiably, that deterrence of you and others should be a prime motivation in sentencing and the promotion of a sense of responsibility for violence against

women. Ms Evans makes the point, and again it is perfectly correct, that this was an unprovoked drunken attack where there is little remorse and where the complainant had to go through a trial before you were convicted as you are today. Ms Evans suggests that the starting point should be a term of imprisonment and that of a length of four to six months.

[5] I have read the supporting letter that your sister wrote in support of a bail application. I have very carefully read the very helpful Probation Service report. I have also looked very carefully at the victim impact statement. The victim may have been drinking like you on that particular night but there was absolutely no excuse whatsoever for the assault which took place, which was obviously just a drunken brawl. I place particular regard on the statement made by your wife and I have read that very closely. I have also read the testimonials which Mr George has handed up this afternoon.

[6] The sentence to be imposed on you needs to try and instil a sense of accountability in you and other likeminded men who might assault women, denounce your conduct and to try and protect the community from that form of behaviour. There are, as the Crown has submitted, significant aggravating features, particularly your previous conviction for male assaults female, and there is very little in the way of mitigation that you can point to.

[7] All sentencing is difficult, Mr Vakalalabule, and yours is a particularly difficult sentence. I will tell you now that you are going to escape prison but only just by the skin of your teeth. There would be plenty of justification in sending a man who has been convicted of a second male assaults female offence to jail. The reason that you are not going to jail is that I suspect Mr George is correct in saying that you have finally recognised that you and alcohol cannot mix, and that when you start drinking you simply do not stop until events like this occur, but just possibly you have touched the bottom and now you are doing something about it. Your embracing of religion is a good thing, your going to counselling is a good thing, your support from your wife is a fortunate thing, and the loss of your profession, hopefully temporarily, is also a mark of the seriousness of this offence. Now I hasten to add that lawyers who offend against the criminal law are not entitled to any leniency at all compared to

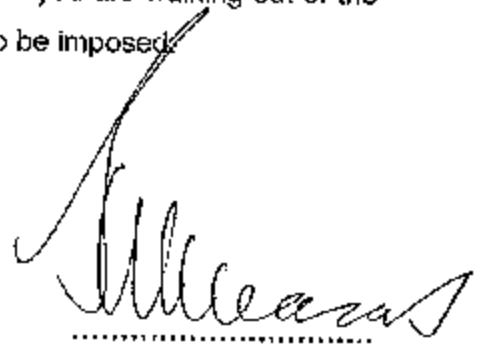
others, but you are a man who has been convicted of assaulting women twice now but just possibly you recognise now that the root cause of your problem is alcohol, and that you will need to stay away from alcohol.

[8] Because of that and because of the recommendation from the Probation Officer I am going to place you on probation for 12 months. It is pointless fining you as your wife would simply have to pay the fine. It is hopeless and far too serious a matter just to order you to come up for conviction if called upon. But you need to recognise very clearly that if you offend again in this way within the probationary period or afterwards, you will certainly go to jail.

[9] The conditions on which the 12 month probation is imposed are:

- a) that you do not consume alcohol or liquor at all;
- b) that you continue with the counselling; and
- c) that you attend any workshop as instructed by Probation where they direct you to attend.

So, you can count yourself fortunate Mr Vakalalabuile that you are walking out of the Courthouse and not going to jail. That is the sentence to be imposed.

A handwritten signature in black ink, appearing to read 'Williams J', written over a dotted horizontal line.

**Williams J**