

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

**CR NO's 891/12
911/12
59/13
147/13**

POLICE

v

NOEMA KAUVAREVAI

Hearing: 19 September 2013

Appearances: Ms C King for the Crown
Mr B Mason for the Defendant

Sentence: 19 September 2013

SENTENCING NOTES OF WESTON CJ

[FTR 10:00:08]

[1] Mr Kauvarevai you are here today for sentence having pleaded guilty to four different offenses which I will shortly set out.

[2] I record that this morning you had applied to vacate your guilty plea in relation to the assault charge but that you then withdrew that application such that the guilty plea remained.

[3] The four charges are these.

- (a) First, careless driving causing injury, pursuant to s 26 of the Transport Act and the maximum penalty for that is 5 years imprisonment.
- (b) The second is you have pleaded guilty to sexual intercourse with a girl over 12 under 16 in breach of s 147(1) of the Crimes Act and the maximum penalty for that is 7 years imprisonment.

- (c) Third, you have pleaded guilty to injuring with intent to injure in breach of s 209(2) of the Crimes Act. The maximum penalty for that is 5 years imprisonment.
- (d) And the fourth offence to which you have pleaded guilty is under the Narcotics and Misuse of Drugs Act and you have pleaded guilty to possessing a single utensil and the maximum penalty for that is 5 years imprisonment or a \$5000 fine.

[4] The detail of your conduct is recorded in the four police captioned sheets which have been provided to the Court as I will shortly discuss. Your counsel, Mr Mason, has made some detailed submissions about the facts in two of these cases. Needless to say I have read those captioned reports.

[5] The Crown has submitted that the offending should all be regarded as separate instances such that I should arrive at a sentence for each of the four charges and then add them one to the other such that you are given a total amount of sentencing that comprises each of the four charges to which you have pleaded guilty.

[6] The Crown has also submitted that the lead charge is the injuring with intent. Overall the Crown submissions are that you should have a term of imprisonment of something like 6 years imprisonment.

[7] Mr Mason, who has now taken over from Mr George as your lawyer, has made very extensive submissions on your behalf. It is clear that he sees you as someone who is capable of redemption. He has candidly faced up to your extensive criminal history and explained the background to your offending in the early 2000s in Mangaia and then around 2005 to 2008 in Rarotonga. There are a number of burglary charges in that history. He says, nonetheless, that you have now given up being a burglar and indeed there is nothing beyond 2008 in your record.

[8] I start by looking at the sex offending. Mr Mason endeavoured to address the Court by reference to the circumstances of the victim and her family life. I am not prepared to get into that topic. He made the point that there were none of the usual aggravating features that seem to be depressingly common in offending of this sort. You are not a close family member, you have not abused a position of trust. I

understand the Crown accepts that there are none of those usual factors present here today.

[9] Mr Mason spent some time going through the various police disclosures. One of the reasons for this was to endeavour to head off the statement made in the police caption sheet that you knew that the victim was under age. Mr Mason submitted that this was based on what the victim herself had said that she had said to you. There has been no formal challenge to that evidence and indeed you have pleaded guilty on the basis of the disclosures made. Therefore I am obliged to accept that you did know that she was under age.

[10] It seems to me that the level of offending in relation to this one charge would normally justify a sentence in the vicinity of 2 years once discount has been made for an early guilty plea. Because there is a whole package of offending here I will need to come back shortly and address what should be the overall sentence imposed upon you.

[11] I now turn to the assault charge.

[12] The assault here was over in a very short time. It was relatively violent and you are said to have kicked the victim twice in the head. The victim was in hospital overnight. Mr Mason said that there were factors that I needed to take into account such as the fact that the only evidence against you was from the girl who was the victim of the sex allegation against you. That, it seems to me, is not a relevant factor.

[13] He went on to accept that your assault did have a cowardly aspect to it because you kicked the victim when he was already down. He said it was a one-off event. He made a strong submission that the earlier conviction that you have for assault on a female was equally a one-off circumstance and there is no pattern in your behaviour of violence. While I do not have any details about the earlier conviction that you had for assault on a female, the sentence in that case seems to have been very light so I am prepared to assume that it was not a serious assault.

[14] Notwithstanding the absence of a history of assault, though, it does seem that this one act was a significant assault and needs to be regarded as such. Again, if this

were the only matter before me I would be sentencing you for that assault in the vicinity of 2 years imprisonment taking into account your guilty plea.

[15] I now move on to the third offence, the driving one.

[16] Mr Mason said there were mitigating circumstances here in that this offence occurred not through reckless indifference on your part but because you made an error of judgment. While there is a dispute as to whether the victim was indicating to turn left or not, I am prepared to accept that this offence is at the more minor end. I do not want to diminish the effect that the accident would have had on the victim, she was clearly greatly alarmed, she suffered damage to her bike and would have been fearful. I also accept that you did not simply leave the scene without more but made sure that there was a neighbour looking after the victim.

[17] Again, if I was sentencing this by itself and taking account of your criminal history but also discounting for the early guilty plea I would be inclined to sentence you for around about a month in prison in relation to that.

[18] In relation to the final charge, possession of a utensil, I accept there was only one utensil involved. There was no possession of cannabis associated with it and thus this charge is at the lower end of the scale.

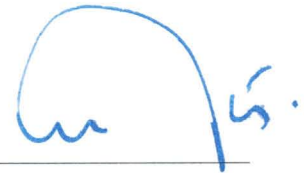
[19] Nevertheless Parliament requires the Courts to impose very significant penalties much higher than in New Zealand for this type of offending. I believe that if I were sentencing you on this by itself then taking into account all relevant circumstances there would be a period of 4 months imprisonment.

[20] So, if I were to add all of those periods together Mr Kauvarevai, I would come up with a total term of 4 years and 5 months, and that is what the Crown says you should get because I should add it all up.

[21] Mr Mason has very strongly and persuasively said that I should not be doing that. In relation to your criminal record, I have had regard to the dates at which the various offences have occurred and the type of offending, and I had noted that most of the offending for which I am sentencing you today is of a different dimension to that recorded in your history.

[22] Taking all of those factors into account and looking at the totality of your offending, I believe that an appropriate sentence for you today is 3 years imprisonment and I will sentence you now to 3 years imprisonment. When you come out you will be subject to a term of probation but that follows as a matter of law.

[23] There have been various requests made for you to pay reparation. I think there is absolutely no chance of you being able to pay reparation and accordingly I make no orders for reparation.



Tom Weston
Chief Justice