

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

CR NO: 313-314/2014

POLICE

v

ROBERT YOUNG

Date: 22 May 2015

Counsel: Ms M Henry for the Police
Mr D McNair for the Defendant

SENTENCING NOTES OF JUSTICE DAME JUDITH POTTER

[1] Robert Young you are before the Court for sentencing on two charges of burglary: Burglary relating to Computer Man and a burglary relating to Sava Limited. The maximum penalty for the offence of burglary, which involves breaking and entering premises with intent to commit a crime therei, is a term of imprisonment not exceeding 10 years. I understand from my inquiries of counsel that two other charges of burglary await trial.

[2] The facts of these matters are set out in the Police summaries of facts which Ms Henry has referred to me. The burglary at Computer Man in Avarua took place on the 23 June 2014 You climbed through a window, went through a slightly open door, walked straight to the centre of the adjacent church, ripped the pitch off, used a pinch bar to pull the wall off, entered the premises and took a laptop, SD card, phone, tablets and a number of other items.

[3] On the 25th June, two days later, the Police received a complaint of a burglary at Sava Limited in Nikao. Following that, the Police executed a search warrant at your residence and found a substantial amount of stolen property including a large quantity of liquor. You entered through the back wall of the premises of Sava Limited, turned off the CC TV cameras and grabbed as much stuff as you could.

[4] These were serious burglaries of commercial premises only two days apart. It is fortunate that because of the quick response of the Police most of the items you stole have been recovered.

[5] The Crown's submissions refer me to previous cases where this Court has clearly stated what a menace the crime of burglary is. Burglars and burglary are a menace to their victims of course, they are a menace to the community at large because they disturb and undermine the trust upon which we rely as a community for our safety and security - and when I say we, I include particularly our children who will grow up in a community we hope for them, will be safe and secure. You might appreciate, Mr Young, having young children that is a very important consideration. Burglars are a menace to their families and their friends because inevitably they will be caught and imprisonment is the sentence which the Courts have been clear to say, will almost inevitably follow.

[6] The aggravating factors of this offending noted by the Crown are the burglaries were conducted within two days of each other. Two businesses were targeted and there was a large range of goods stolen.

[7] The mitigating factors have been emphasised by Mr McNair in very thoughtful submissions and are noted and referred to in the Probation report. You are 38 years of age, Mr Young, and you come before this Court as a first offender. I regard it as a tragedy that somebody who has led a crime free life to the age of 38, gets involved in this sort of criminal offending.

[8] You pleaded guilty at the earliest available opportunity. You acknowledge and accept full responsibility for the offences. You are remorseful and you are willing to pay reparation to the extent the victims have not been fully compensated by the return of their items. You have maintained stable employment since the age of 20 years and Mr McNair tells me you

now have your own building business and employ several others in that business. You have a young family, and an extended family who are very supportive of you. You have provided a number of references. Mr McNair has handed up to me these references in Court today and I have had the opportunity to read them quickly. There is no doubt they are very supportive of you. You are described as a hard working and efficient builder and it is clear those who have employed you, and for whom you have worked, hold you in high regard and treat you as very reliable tradesman and member of society.

[9] Mr McNair in his submissions, highlights your personal circumstances. That you care for your son, aged one and a half and your ageing grandfather who both live with you. Your partner is presently in Australia and I understand she intends to return to Rarotonga with your second child who was born recently in Australia. Mr McNair's submissions state that you send money regularly to your partner for that child's maintenance. You are also responsible for payment of the mortgage on your home. Mr McNair submitted that this offending was an aberration in an otherwise settled and disciplined lifestyle. The personal stresses arising from domestic problems caused you to become involved with the wrong group of people and you made some terrible mistakes. He stresses that you are prepared to make full restitution to those who are the victims of your criminal offending.

[10] The Crown seeks a custodial sentence from a starting point of 3 to 6 months imprisonment referring to the case of the *Police v. Grant Young*¹. There were some differences in that case. Grant Young was not a first offender, he burgled tourist premises and in doing so he acted in breach of trust because it was a family business that was responsible for the tourist premises he burgled. Nevertheless, burglary is burglary, and the starting point proposed by the Crown is consistent with the approach of the Courts.

[11] Both the Probation officer in the pre-sentence report and Mr McNair seek a non-custodial sentence. Mr McNair suggests a fine, Probation for 18 months, community service and restitution where applicable. I have wrestled with the appropriate sentence in this case Mr Young. I should send you to jail. Putting it more accurately, you have offended in a way that

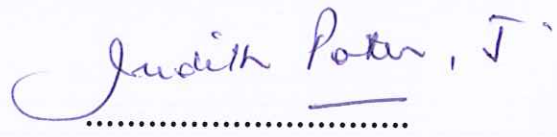
¹ *Police v Grant Young* Paterson J, 29 November 2012

will send you to jail. But bearing in mind your circumstances and the submissions ably made on your behalf, I propose to deal with the matter otherwise than by a custodial sentence.

[12] So on each of these charges, the penalty to be served concurrently, you are fined \$1500.00. You are to pay Court costs of \$30.00. You are sentenced to Probation supervision for 18 months with the conditions specified in the Probation report: that you are to attend workshop and/or counselling as directed by Probation services.

[13] I do not propose to impose community service, the reason being that clearly, your business and your current contracts engage you in work for more than 5 days a week and I consider that would negative your opportunity to improve the situation you have got yourself into.

[14] You may stand down.



.....
Judith Potter J