

**POLICE**

v

**TEREA MARUAAU**

Date: 02 June 2016

Counsel: Ms A Mills for the Police  
Mr D McNair for Defendant

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**SENTENCING NOTES OF HUGH WILLIAMS J**

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[1] Terea Maruaau, at the age of 18, you appear here for sentence today, first on charges of what is called contempt of court and theft committed on Christmas Day last year, and secondly, because of the background that I will detail later in these remarks, on charges of arson and receiving which were offenses committed sometime in the past. All sentencings are difficult but yours is much more difficult than most.

[2] As far as the theft and contempt of court are concerned - and the contempt of court is no more than drinking a bottle of beer on Christmas Eve contrary to conditions imposed on you - the situation is that you were out with friends. You did not just drink one bottle of beer, you got drunk, and when you saw a motorbike, the owner of which was having a nap somewhere, you took a valuable cellphone, bank cards, some perfume and a wristband from the luggage container and took them home. The items stolen in total were worth about \$2,200.

[3] What followed is critical in deciding what should be done with you. If the contempt of court was no more than a bottle of beer on Christmas Eve as I have said, I would be prepared to overlook that. But it was not just one bottle of beer, you got drunk and you were not meant to drink alcohol.

[4] We turned the sentencing into what in New Zealand terms would be called a disputed facts hearing in order to find out more about the circumstances of the theft.

[5] You gave evidence yesterday; two police officers and Mr Maggie MP gave evidence today; and you had the chance to respond. If you had said that you had panicked because you had been

apprehended while drinking alcohol and you knew you were not to do that, and lied to the police as a result, that in the circumstances might have been understandable.

[6] But as it now appears you took the bike owner's valuable belongings back home and hid them – the perfume, the wristband and the ATM card in a suitcase, and the phone in your work boot.

[7] Somehow, the fact that it was you who had taken his gear became known to the bike owner and he went around to your place where you were living at Mr Maggie's – in a house on Mr Maggie's property – and asked you where his belongings were. You denied having them but you agreed to him searching the suitcase and he found everything except the cellphone.

[8] You denied knowing anything about the cellphone and even now it is a little bit unclear how the cellphone came to be found. But it is clear that when it was found you denied knowing anything about it and denied being involved in the theft, even though the owner opened the cellphone and identified it at the time.

[9] Mr Maggie telephoned the police. They took you down to the police station and you gave a statement to them. The officers have confirmed that the statement is correct, and it conforms with what I have just said about what occurred.

[10] You continued to dispute that the circumstances were as I had outlined them and you said in evidence that the statement you made to the police was incorrect even though you accepted that you read it over before you signed it. So I need to tell you that the circumstances of the theft, summarised, are that, drunk, you stole somebody's valuable belongings, tried to hide them to avoid recovery, and denied knowing anything about them on a number of occasions despite the fact that the evidence was overwhelming. That does not put you in a good light.

[11] I need to go back to the arson and receiving charges. On 6 September 2014, in the early hours of the morning, a house at Aitutaki was burned to the ground. It was worth about \$580,000. It was burned to the ground because a few days beforehand, you and an accomplice burgled a number of houses including the one that was later razed and were arrested and charged. And in some odd way you decided that if you burned the house down you could not be convicted of burglary of that property – that is very unlikely to have been correct but that is what you decided. So you and your accomplice agreed to burn the house. But, before 6 September, he pulled out.

[12] On the evening, however, of 5 September when the coast was clear and everybody in your house was in bed, you decided to torch the house. You went to it, burgled it, set fire to it and took some

liquor from it. The house was completely destroyed. Fortunately, but just by chance, nobody was hurt but arson always involves the risk of serious injury or death to people in the property burnt down.

[13] You came before the Chief Justice for sentencing in September 2015, but, before you could be sentenced Mr Maggie and the lawyer then acting for you, Mr Manarangi, worked out a very detailed documented regime by which you could stay in the community, living at Mr Maggie's house, and would not go to jail. The Chief Justice accepted what was proposed and at that time he said that you need to be given the opportunity. Mr Manarangi signed for you. He has explained to me that in addition to what is set out in the Orders, he offered to assist you to deal with your future.

[14] But the Chief Justice went on, unsurprisingly, to say, "let me repeat that this is your last chance, let me repeat too my grateful thanks to Mr Maggie for what he is embarking on and let me thank also Mr Manarangi for the efforts he has taken on your behalf. You are in a perpetual debt to these people for what they are prepared to do for you – you had better not let them down". And the orders he made, the arrangements that Messrs Manarangi and Maggie had agreed, said that deferral of your sentence on the arson and receiving charges was conditional amongst other things that you did not reoffend; that you lived at Mr Maggie's place and worked only for an employer of whom he approved; that you made arrangements for savings from your wages; that you would not associate with people of whom Mr Maggie disapproved; and that you would not consume alcohol.

[15] Now as I have said, if the events of Christmas Eve / Christmas Day were just a single drink for the time of the year which was in breach of the non-alcohol provision, one can understand that. But you got drunk, you committed a theft and, in the face of overwhelming evidence, denied you had been responsible. You did not say that you panicked and made it all up because you realised you were going to be, or you put yourself in jeopardy of, being sentenced on the arson and receiving. You just committed a dishonest act and stuck to denying it. So the result is that you find yourself here for sentencing on what is a modest contempt of court, a somewhat more serious theft and a very serious arson charge.

[16] The Probation Service summarises your good background. They cover your present circumstances - you are not living with Mr Maggie anymore but with your Uncle Rima - and the fact that, as Mr McNair says for you as well, you have been working well for your employer and claim to have committed these offences simply because you were not thinking.

[17] Mr McNair also stresses the fact that you are still youthful - when you committed the arson you were only about 16 - and suggests a non-custodial outcome should be the answer.

[18] The Crown suggests there was significant premeditation in the arson of a property worth about half a million dollars and when you persisted in committing the offence even after your accomplice had gotten sensible and withdrawn. The Crown acknowledges your pleas to the charges and your youth but suggest that for the arson, although there is no tariff against the 10 year maximum, in a case called *McCormick* with roughly similar in facts, a starting point of 3 years in jail was upheld on appeal. As to your youthfulness the Crown very properly referred back to the Chief Justice's remarks that I have already recounted. The Crown suggests that overall the starting point should be about 4 years in jail for you.

[19] You are an exceptionally foolish young man. You have had the helping hand of many highly regarded and well intentioned people in the community including a Member of Parliament and the Chief Justice of the Cook Islands. And yet, thoughtlessly, you spurned all that help and committed what is a moderately serious theft. And you are back here despite having been generously treated, very generously treated, by the Court on previous occasions. But the Chief Justice warned you that if you offended again you would be back for sentence on the arson and receiving as well as for any other offence. The theft was of valuable belongings, it was a sneaky theft and denied despite the fact of overwhelming evidence. It is possible you simply deliberately breached the conditions so generously imposed only eight months ago.

[20] Arson sentences are difficult to draw any conclusion from because the circumstances vary so widely. And the receiving in this case is obviously not of great additional consequence.

[21] On the breach of condition or contempt of court you will be convicted and discharged.

[22] On the theft, given the conditions imposed on you by the Chief Justice and having regard to your denial, in the circumstances you are sentenced to a year in jail to run alongside the sentence on the arson.

[23] And as far as the receiving is concerned, in the context that is of lesser importance and you will be sentenced to a year in jail concurrent with the other sentence as well.

[24] As far as the arson is concerned, given the value of the property, the effect on the owners, the risk to them, your motive to try and escape conviction on the burglary, and your planning and determination to carry the matter through, in my view that easily supports a starting point of about a third of the maximum, that is to say about 4 to 5 years in jail.

[25] As to factors making it worse, although it is not strictly an aggravating factor, the abuse of the leniency the Court offered you as recently as last September is a factor to be taken into account.

[26] You are entitled to a reduction for your pleas. You are also entitled to a reduction because you are still a young man despite committing an adult crime. In those circumstances I think that the appropriate sentence for you is to take about 40 percent off of what would otherwise be the appropriate starting point. So, on the arson, you are convicted and sentenced to 2 and half years imprisonment.

[27] Stand down.

A handwritten signature in black ink, appearing to read 'H Williams', written in a cursive style. The signature is positioned above a horizontal line.

**Hugh Williams, J**