

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

**CR NO's 521/15 & 530/15**

**CROWN**

v

**SEREMAIA LABAIBURE**

Hearing: 25 November 2016  
Counsel: Ms A Mills for the Crown  
Mr M Short for the Defendant  
Sentence: 25 November 2016

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**SENTENCING NOTES OF GRICE J**

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[FTR 9:44:12]

[1] Mr Labaibure, you appear for sentences on two charges, the first one of injuring with intent to cause grievous bodily harm pursuant to s 209(1) of the Crimes Act 1969. This charge has a maximum penalty of 10 years imprisonment. The second charge is of assault on a female under s 214(b) of the Crimes Act. This carries a maximum penalty of 2 years imprisonment. Each of those charges relates to one incident which occurred on 17 October 2015. They result from a prolonged assault and altercation with the victim, your partner.

[2] The Crown has indicated they accept that. I also note that when this matter was first called, the description of the incident put forward by the Crown was disputed on your behalf by Mr Short. As a result of that the Crown and Mr Short discussed the facts and the Crown made some amendment. Otherwise you accept the factual situation.

[3] Your counsel says it was a heated messy row with some blame on both sides. That of course is not an excuse for domestic violence. However as a result of the amendments and the submissions by counsel on the circumstances the incident has slightly altered in seriousness in my view.

[4] You had been at home when your partner arrived back to the house. She had been drinking. When she returned she went to the bedroom. You got into an argument with her and she subsequently went to sleep in another room where you poured water on her. She woke up and you started arguing again. She then went back to the bedroom and went to sleep locking the door. You came back and kicked the door open. You again poured water on her. She woke up and you argued further. She threw a basket of clothes at you and then you punched her. You continued punching her in the head and grabbing her nose and mouth making it hard for her to breathe. You squeezed her throat.

[5] The victim then realised you had a knife. There was some lack of clarity about how you obtained the knife, but she took it from you and broke free threatening to kill herself. She in fact did create a small puncture wound in her chest which was referred to in the medical report. The Crown accepts it was self-inflicted.

[6] It is accepted there was some provocation during the argument about what the victim said to you regarding your ex-wife and children. But you responded again by grabbing her and throwing her to the floor and kicking her numerous times. She started to get dizzy while you were punching her and ripping her clothes off. You told her to get some frozen vegetables to put on her head and then you used those to hit her further and grabbed her head and banged it into the cupboards. This prolonged attack only terminated when she left the house while you slept to go to her parents' home.

[7] The principles of sentencing in the Cook Islands are based on the New Zealand Sentencing Act principles. The sentence must reflect that you are held accountable for the harm done by you and not only to the victim also to but the community. It must promote a sense of responsibility and acknowledgement of the offending as well as providing for the interest of the victim and also must denounce the conduct, deterring both you and others from committing the same or similar

offences and protecting the community from such offences. The sentence has to take into account the gravity of the offence including the degree of blame on you; and also the seriousness of this offence compared to others. I have an obligation to make the sentence that I impose on you consistent with appropriate sentences in respect of similar offences and similar personal circumstances.

[8] In this case counsel has submitted there are no directly comparable sentencing cases in the Cook Islands. However I have been referred to the New Zealand case of *Taueki*<sup>1</sup> which establish some sentencing bands or guidance for these types of offences of causing grievous bodily harm and intent to cause grievous bodily harm. In that case it was a more serious offence than the one you are charged with. The offence dealt with by the New Zealand Court also had a higher maximum sentence of 14 years, rather than the charge which you face which has a maximum imprisonment of 10 years in the Cook Islands. So I take that into account as well. But that case does give some guidance and both counsel referred to it.

[9] In that case for the first band of offending the Court suggested that imprisonment from 3 to 6 years should be imposed. The Court said this was for offending at the lower end of the spectrum. It is not appropriate for extreme violence or violence which is life-threatening. And the Court said aggravating factors include whether there was a weapon involved, whether the injuries were lasting, whether the victim was a victim of domestic violence and classified as vulnerable. In those cases the lower end of the band in New Zealand is 3 years imprisonment.

[10] This was a case of domestic violence. There was a weapon involved, it was a knife although there is some confusion about how it was obtained. However I accept the submissions of counsel that it was at the lower end of the scale of sentencing for the category 1. The injuries required medical attention and I have a medical report, but they were not lasting which is lucky for you. The violence went on for a protracted length of time. I also note there was an allegation of provocation. However in my view the type of provocation referred to, which was saying things about your former wife and family, is not the type that would have a mitigating effect on this sentence.

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<sup>1</sup> R v Taueki, Ridley, Roberts CA CA384/04 [30 June 2005]

[11] As the Court said in the *Kakino Kakino Jnr*<sup>2</sup>, domestic violence in any shape or form is unacceptable. The Court said the community has indicated that such violence is unacceptable. The island community itself is affected by this sort of violence. Its security and sense of family wellbeing are affected. The sentence must deter others from doing the same and mark the responsibility that you must take.

[12] I also note that the Cook Islands community has taken steps for campaigns and other sorts of publicity in trying to deal with domestic violence on the island.

[13] Counsel for the Crown also referred me to another decision called *Kakino*<sup>3</sup>. This related to a charge of aggravated wounding with intent to cause injury. In that case the starting point was taken as 2 ½ years and a final sentence of 1 year 3 months imprisonment was imposed.

[14] In that case the defendant entered the victim's home and struck her three times on the head. It happened in the course of a burglary.

[15] In another case referred to me of *Tua*<sup>4</sup>, the defendant faced a charge of attempting to commit an offence, and intent to cause grievous bodily harm, as well as escape from lawful custody. The starting point in that was 2 years 9 months with a final sentence of 1 year 9 months, taking into account mitigating factors which included that he was a first time offender. That was a premeditated attack in which the victim suffered head injuries, broken arms and ribs.

[16] In *Robinson*<sup>5</sup> a starting point of 18 months imprisonment with an end sentence of 12 months was imposed on a charge of injuring with intent and a common assault on the police officers.

[17] In *Kakino* where the charge related to domestic violence in addition to a number of other charges the female was subjected to a very low level of violence and virtually no injuries. In that case a term of 5 months imprisonment was imposed. The maximum on that charge was however only 2 years imprisonment.

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<sup>2</sup> Police v Kakino Junior, CRs 385,386,434,436,437, 444-446/11, 14-15/12, 154-155/12, 310-313/12 (8 November 2012)

<sup>3</sup> Police v Kakino, CR 11/2005 (15 June 2007)

[18] The aggravating factors in this case were that there was a weapon involved, it occurred over a period of time, it involved attack to the head, it involved domestic violence and a vulnerable victim. It did not involve alcohol or other type of aggravating circumstances, nor was it premeditated.

[19] Another factor is that you have previous convictions. One quite recent relates to assault on a same victim. You were sentenced on 13 August 2015 to 12 months probation and 3 months community service. The other charges are largely unrelated to this type of offending. These previous offences must be taken into account.

[20] In these circumstances I take as a starting point 12 months imprisonment. Before I had heard from your counsel and the change to the statement of facts, I would have taken a higher starting point somewhere in the region of 18 months or slightly more imprisonment.

[21] I now turn to look at the mitigating circumstances.

[22] First, as your counsel has submitted, you pleaded guilty at an early stage. This attracts a discount. You ensured that the victim did not have to go through a lengthy court hearing. In my view a maximum discount should be applied for that of one-third from the sentence.

[23] In terms of your personal circumstances I note you are the main breadwinner. You have a full time job and are on flexi-time to help with the baby. Clearly if you are imprisoned this is in jeopardy. The baby is quite young and is dependent on you for support. The victim also works. You have been together since this incident and there is no evidence of any further incidents before this Court. You have both undertaken counselling since this incident. Mr Short submits that this has been effective.

[24] The victim urges the Court to be lenient. She is here today to support you and has your baby with her. There is also an indication that she has told the

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<sup>4</sup> Police v Tua, CR 339/09,389/09 (10 July 2009)

<sup>5</sup> Police v Robinson, CRs 934/12 & 177/13 (6 December 2013)

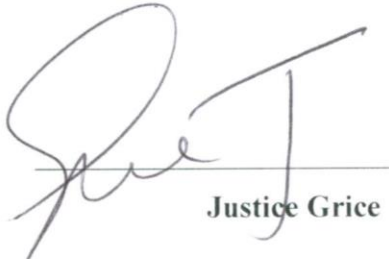
authorities she had made up the incident and wanted to withdraw the charges. That is not unusual in domestic violence cases. However to your credit you candidly admit the incident.

[25] While it is going to be a hardship for the victim and your child, in my view there is no choice here but a custodial sentence. As I have said, my views have been changed by the submissions of your counsel and in the circumstances I am of the view that an appropriate period of imprisonment on the charge is 6 months imprisonment followed by a term of 12 months probation on conditions that you abstain from the purchase or consumption of alcohol or the use or obtaining of prohibitive drugs, that you not enter any licensed premises without the approval of the probation service, and that you attend counselling services or training as directed by the probation service.

[26] On the charge of assault I impose a sentence of 3 months imprisonment.

[27] To be served concurrently.

[28] I also make an order for medical costs of \$20 and Court costs of \$50 on each of the charges.



Justice Grice