

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

CR NO. 767/18

POLICE

v

JUSTIN ROY VANO

Date: 28 November 2019
Appearances: Snr Sergeant F Tararo for prosecution
Mr M Short for defendant
Decision: 28 November 2019

DECISION OF WOODHOUSE, J

[1:5(124)]

[1] Mr Vano has pleaded guilty to charges of assaulting a female and of threatening to kill the same female in the same incident. Assault on a female has a maximum penalty of 2 years imprisonment. Threatening to kill has a maximum penalty of 7 years imprisonment.

[2] Mr Vano, you have heard a reasonably long discussion between me and Senior Sergeant Manavaroa and Mr Short and I want you to continue to bear in mind the maximum penalties that are imposed for this behaviour. They are serious criminal offences. You just acknowledged to me that you do, and I accept that you do given all the other information that I have received.

[3] It is unnecessary to set out the facts in any detail. The essence is that in December last year, after drinking heavily, and while out with a young woman who is now your full time partner, you assaulted her very badly. Amongst other things, and

seemingly over a reasonable period of time, you kicked her in the chest, climbed on top of her and strangled her or attempted to strangle her more than once, threw her on the ground and jumped on her stomach and at that time strangled her again. At some point in all of this you threatened to kill this young woman.

[4] If I was considering only the facts of the offences, you would be facing the prospect of a sentence of imprisonment, possibly for a number of years. There are, however, a substantial number of other matters that I need to take into account. And, as I have already indicated in discussions with Senior Sergeant Manavaroa and with Mr Short, I have concluded that the proper course will be to discharge you without conviction, provided you do something of substance which brings home to you the severity of what you have done, and acknowledges to the community the seriousness of these offences against young women. I do need to explain, hopefully in reasonably short terms, the reasons for this conclusion.

[5] The starting point is that you are a young man. You were 21 years old at the time. This is your first appearance in Court, as I understand it, for offences. Particularly with men, males, 21 is a young age and an age at which judgment and restraint often is significantly absent. Youth has to be taken into account.

[6] Since this offence occurred, and it is now almost 12 months later, a stable relationship has developed between you and the young woman who was assaulted and she is now expecting a child. The two of you are setting out on your life together and, in the intervening period, I am satisfied that really significant steps have been taken by you as well as by her to turn your life around. In particular, you have voluntarily undertaken counselling and I have read a very encouraging report from the counsellor. This is counselling given to you alone, and to your partner alone, and then to both of you. And it seems apparent that this is really helping.

[7] You and your partner are living, as I understand it, with your parents. So there is an extended family situation there. Nevertheless, at this stage in your lives a critical thing for that long term future of the entire family group, including the little child you are expecting, is, as far as possible, to avoid an outcome of this hearing which might endanger the success for the future.

[8] I have come to the conclusion that a conviction could do that particularly when it comes at this date after all the efforts you have made so far.

[9] I should note that I have also taken into account a detailed support letter from your immediate manager in your employment. And it comes from a man of maturity who is not in any way seeking to diminish the seriousness of what you have done. But he recognises the abilities you have got. That is what you must now focus on, having been given the chance I have indicated you are going to get.

[10] In relation to the offending itself, the assault – the attacks you made on your partner were bad – when they are described in the way they have been described by me a moment ago. On the other hand, it does appear that there were no long term serious injuries to her.

[11] In addition, although you are charged with, in one sense, the more serious charge of threatening to kill, I am satisfied that that is an integral part of the assault. As I said, I think in discussions with the Senior Sergeant and Mr Short, it is an assault in words following on from the assaults physically that you made. It does not warrant a separate sentencing.

[12] One other thing that I would conclude with, and there are probably numbers of other things that I might have recorded, but are taken into account from what I have read, is that it does appear that you are taking serious steps to control your consumption of alcohol. You have again acknowledged to me, looking steadily and I believe honestly at me, that you are making real efforts to do that.

[13] I am not here to lecture you I am just wanting to convey the important things and simply say in conclusion in this regard that it is critical to control the consumption of alcohol. It will be critical if you are going to have a good and constructive life with your partner and the child you are expecting.

[14] I will add one other thing as it occurs to me. The pre-sentence report refers to aspects of your background which may very well have contributed to your behaviour, because of things that you have yourself experienced or witnessed, as a much younger

person. Everything I have read indicates that you can turn away from that. And that is the big chance you are getting.

[15] Against that background I will discharge you without conviction subject to one thing that has to happen beforehand and which we have discussed. That is that you make an immediate voluntary donation to one of the organisations which in the Cook Islands assists women who are subject to a domestic violence, or other forms of assault, and which I understand may also assist men in those relationships. This is the Punanga Tauturu Incorporated. What is required is a payment of \$1,000.

[16] I am doing it in this way because, as I understand it, and it would be the case in the New Zealand jurisdiction, I cannot discharge you without conviction and impose upon you a requirement to make a payment following the discharge without conviction. It is in your interests essential that this is done today because I am leaving the Cook Islands tomorrow. It will be in your interests to have me confirm the discharge without conviction immediately following the payment. Proof of that can be provided by a receipt being provided to the Registrar of this Court and a copy to the police for verification. I will leave it with you Mr Short to cover that.

[17] On that basis there will be that discharge tomorrow if this all occurs and there is no need to come back to Court. You have got your chance. You take it.

Addendum:

[18] Before this record of my sentencing remarks was completed, the defendant paid the sum of \$1,000 into court to be paid onto Punanga Tauturu Inc. (The receipt refers to Punanga Tauturu Ltd. I am satisfied the correct organisation has been identified.) As a result there is now a formal order discharging the defendant without conviction.



Peter Woodhouse, J