

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

**CR NO 122/2021
CR NO 120/2021
CR NO 121/2021**

POLICE

v

**TEARIKI TAMATAPU JEROME TAAMARU
JOSIAH GABRIEL WILLIAM MATAIO MAXWELL
POLYCARB JAY-Z TARAI**

Counsel: A Maxwell-Scott and M William for Crown
M Short for Defendants

Sentence: 4 June 2021

**SENTENCING NOTES
OF THE HONOURABLE JUSTICE DAME JUDITH POTTER**

[9:54.0]

[1] Each of the three offenders before the Court today, Mr Maxwell, Mr Taamaru and Mr Tarai, faces a single charge of aggravated robbery, which under the Crimes Act carries a maximum penalty of 14 years' imprisonment.

[2] The offending occurred on 30 January 2021, at the Woo Store at Titikaveka. We have seen a video this morning taken from the CCTV footage of the events of that unfortunate robbery. The three offenders along with another – a fourth alleged defendant, Daniel Mare who has yet to enter a plea – robbed the store armed with a bush-knife and baseball bat. Cigarettes, alcohol and some cash were taken to a value slightly in excess of \$6,800. None has been recovered.

[3] The offenders were arrested shortly afterwards, hardly surprising when the CCTV footage tells so much about the offending.

[4] The Crown accepts that all three pleaded guilty at the first reasonable opportunity, following consultation with their lawyers.

The facts of the offending

[5] As I have stated, the offending occurred on Saturday 30 January 2021, at the Woo Store in Titikaveka. The three offenders, together with Mr Mare, were at his residence in Rutaki drinking alcohol; they decided to go and rob the Woo Store.

[6] All four got into Mr Maxwell's car, a blue Toyota, and travelled towards Titikaveka. Mare was the driver. When they got to the bridge just before the Enuā Manea Hall at Titikaveka, they turned into the first driveway leading to the beach. Just before reaching the beach they turned the vehicle and drove back towards the Hall past the cemetery, and parked their vehicle on another driveway between some graves. At that point the Woo Store was about one house away from where the vehicle was parked.

[7] The three defendants before the Court today got out of the vehicle, while Mari stayed at the driveway in the getaway car and to act as a look-out. The three defendants then walked to the Woo Store, staying close to hedges to avoid being seen. They noticed there were some customers in the shop and waited until the last person left the shop.

[8] Then Taamaru walked into the shop with a bush-knife, followed by Maxwell and Tarai, some seconds later. While Taamaru was in the shop he walked around the side behind the counter where the shopkeeper was. He threatened the shopkeeper with the bush-knife by raising the knife over the shopkeeper's head in a cutting motion. He demanded cash and cigarettes. The shopkeeper, understandably, was extremely scared and frightened and told Taamaru to grab the money from underneath the counter and the cigarettes, and to take them away. That is exactly what Taamaru did.

[9] Maxwell was carrying a baseball bat when he entered the shop. He positioned himself at the front door to keep an eye on people who might be coming to the shop. He threatened the

shopkeeper with the baseball bat by brandishing it, and at the same time uttering threatening words.

[10] Tarai walked into the shop and under instructions went straight to the fridges and stole assorted liquor.

[11] As we know from the footage we have seen this morning, the whole incident was captured on CCTV. This was uploaded onto the Rarotongan Community Facebook page and identification of the offenders followed promptly afterwards.

[12] None of the property, as I have said, was recovered.

Victim Impact Statement

[13] The victim impact statement from Mr Suhadi makes very sad reading. Understandably he was shocked and frightened by these events. He says he has been traumatised and depressed, and he has flashbacks of the person with the knife threatening him. He cannot believe that this happened to him, and that it happened to him during a time when, like so many other people on the Island, he was struggling to maintain a living during the impact of Covid-19. He says he no longer feels safe in his shop, nor in Rarotonga. Those are very sad reflections, but totally understandable.

Aggravating Factors

[14] The Crown has identified in submissions the aggravating factors of this offending, which I accept. There were multiple offenders, four offenders, three of whom entered the store and one who was the look-out and getaway driver. Of course, his part in this robbery is as great as those of the offenders who entered the store. Two of the offenders who entered the store were armed, one with a bush-knife and one with a baseball bat. They all wore facial disguises. There was premeditation and planning. From the facts I have read, it is abundantly clear that this was not an opportunistic event; it was swift and focused and shows a degree of planning, including the donning of disguises, rudimentary though they were.

[15] The use of weapons: the bush-knife, which was held very close to the shopkeeper as he was made to take money out of the till and to surrender the cigarettes. It is fortunate that the shopkeeper was not injured; but, of course, it was an extremely frightening experience for him.

[16] There is the element of public concern. A store like this is a place where the public regularly go, and there is the potential for harm to members of the public by this sort of offending. These types of robberies can too often go out of control, when entirely innocent people become victims.

[17] And finally, the value of the items taken, in value over \$6,800.

[18] There are no mitigating circumstances of the offending itself.

[19] I turn now to consider the situation of the three offenders.

Mr Taamaru

[20] Mr Taamaru is 23 years of age. On 19 December 2015, he was sentenced in Australia to two years and seven months' imprisonment. One of the offences for which he was sentenced was aggravated robbery, involving a violent assault on a 68-year-old shopkeeper in Perth. He was returned from Australia on 5 April 2017, to his home in the Cook Islands. In 2015 when Mr Taamaru was convicted of the offending in Australia he would have been young, 18 years of age. He is no longer young, he is 23 years of age. He pleaded guilty at an early stage and is entitled to consideration by way of a discount for that early plea.

Josiah Maxwell

[21] Mr Maxwell is 25 years of age and has a number of previous convictions. In 2016 for theft, when he was convicted and fined; in 2017 for burglary, when he was convicted and sentenced to 12 months' Probation supervision; and in 2018 for theft when, again, he was fined. So Mr Maxwell has had the opportunity to realise that this type of offending will receive sentences from the Court that reflect the seriousness of the offending. At the age of 25 years he appears not to have taken on board that this type of conduct will not be tolerated by our community.

[22] Mr Short, in oral submissions and in written submissions filed this morning, has referred to the attempts by Mr Maxwell's family to rally together, to show support and to demonstrate the remorse it is said Mr Maxwell feels in relation to this offending. They have together collected the sum of \$1,000, which has been paid to the shopkeeper, and a receipt is attached to Mr Short's written submissions, showing that payment has been made.

[23] I regard this as a very definite attempt by Mr Maxwell's family to show support and to demonstrate the remorse they say he feels. Of course, whether there is true remorse and a turning point in your life, Mr Maxwell, will depend on your future conduct from here on out. I am gratified to know you have the support of your family in this.

Polycarb Jay-Z Tarai

[24] Mr Tarai is only 17 years old, and counsel for the Crown were at pains when asking for the video of the CCTV footage to be shown this morning, to demonstrate the comparatively minor part that Mr Tarai took in this offending. He was deputed to go to the fridge and take alcohol.

[25] He is a first offender. He has not previously been before the Courts, and he is a young person who, Mr Short submitted, has a good future ahead of him. Letters of support have been filed, which I have read; particularly by Mr Wichman. He too entered an early guilty plea.

Crown submissions

[26] In very comprehensive submissions the Crown has referred to the New Zealand Court of Appeal case of *Mako*,¹ which set tariff sentences in New Zealand, and also the case of *Goodwin*² in the Cook Islands, which recognises that those tariff sentences need to be adjusted for Cook Islands conditions. The Crown has also referred me to a number of recent decisions dealing with aggravated robbery sentences with comparatively young persons involved.

¹ *R v Mako*, 17 CRNZ 272 (NZCA).

² *Goodwin v R*, [2019] CKCA 1.

[27] On 5 August 2020, and again on 1 September 2020, *Manuela, Eli, Tuakanangaro* and *Rairoa*.³ Before me on 25 August 2020, *Mose*,⁴ a young man, aged 17 years also, but whose offending was considerably more serious than Mr Tarai in this instance. And, again, on 14 December 2020 the case of *Trego*⁵ where Keane J delivered the judgment.

[28] It is disappointing and disturbing that this type of offending has been the subject of sentencing decisions by the Court on numerous occasions so recently. This type of offending must stop. It is a threat to those who are the immediate victims and it is a threat to the public at large. A hard and clear message must go out to the community – and it seems particularly to young men, that they will face custodial sentences for this type of offending; necessarily heavy in the case of repeat offenders.

Sentencing

[29] The Crown recommends a starting point of 3.5 years' imprisonment for all offenders. I adopt that starting point.

[30] I take into account the purposes and principles of sentencing as they are set out in the New Zealand Sentencing Act. In this case the purposes must include deterrence, not only of these offenders but, as I have just mentioned, of all those in the community who would consider – drunk or sober, being involved in this type of offending. And, of course, the message must go out: If you are going to drink to the extent that you lose your own rationality then you must stop drinking before it is too late, and before you make the bad decisions that lead to this type of offending.

[31] There must be accountability on behalf of the offenders.

³ *R v Manuela, Eli & Tuakanangaro*, (CRN 218-220/2020), Keane J, 5 August 2020; and *R v Rairoa*, (CRN 221/2020), CKHC 1 September 2020.

⁴ *R v Mose*, (CRN 499-500, 508, 662, 674-676, 753 & 755/19), Potter J, 25 August 2020.

⁵ *R v Trego*, (CRN 661/19), Keane J, 14 December 2020.

Sentences

[32] In the case of Mr Taamaru, I take a starting point of 3.5 years. I uplift that starting point by six months because of the very serious offending in which he has been involved in Australia. He is entitled to a discount of one-third for his early guilty plea.

[33] The end sentence imposed on you is two years and eight months' imprisonment.

[34] Mr Maxwell, I take a starting point of 3.5 years. The Crown did not seek an uplift on that starting point because of your previous offending. I was not minded to accept that submission; your previous offending indicates to the Court that an uplift is entirely justifiable. But given the submissions by Mr Short this morning, and the evidence of the strong support your family offer you, and the steps that have been taken to demonstrate your remorse, I resist uplifting the starting point of 3.5 years.

[35] Mr Maxwell, from the starting point of 3.5 years there is a discount for your early plea and the sentence imposed is two years and four months' imprisonment.

[36] Mr Tarai, sentencing for you is a difficult exercise for the Court. Your youth entitles you to considerable consideration, and the Crown has helpfully referred me to cases – particularly the case of Mr Eli, who was only 15 – where the Court has seen fit not to impose a custodial sentence. In your case, Mr Tarai, I adopt the words of Justice Keane, when he was sentencing Eli in the *Manuela* case. He said:

An adult prison is the last place you should be consigned to at your age ... the prison to which you would be consigned is not rehabilitative. The contrary is the case. If you are to avoid offending in this order in the future you must learn to live responsibly in the community. This then is your opportunity, and I cannot stress to you how significant it is.

[37] I adopt those words, Mr Tarai because they apply to you as much as they did to young Mr Eli. This is your opportunity but, as I have said earlier, if you reoffend you can expect very serious sentences from the Court.

[38] The sentence I impose on you, taking into account your youth, is 18 months' probation.

[39] The conditions that apply will be those recommended in the pre-sentence report by the Probation Service:

- a) To abstain from the purchase and consumption of alcohol;
- b) Not to enter any licensed premises without the approval of the Probation Service;
- c) Not to be abroad between the hours of 7.00 pm and 7.00 am – unless in the company, the Probation Service recommended, of "his parents", I say of "a parent";
- d) To attend counselling and workshops as directed by the Probation Service; and
- e) Not to leave the Cook Islands without the approval of the High Court.

[40] Those are the sentences imposed.

[41] On behalf of Mr Taamaru, Mr Short has asked the Court to take into account towards the length of sentence, the period of time Mr Taamaru has spent in prison awaiting sentence for his part in this offending. I ask the Court to liaise with the Prison Authorities. There will be a deduction from Mr Taamaru's sentence for the time he has spent in custody in the Cook Islands.

[42] Likewise for Mr Maxwell, there will be an arithmetical calculation and in my written sentencing notes that will be taken into account, by way of deduction from his sentence.



Judith Potter, J