IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA via AUDIO LINK
(CRIMINAL DIVISION)

CR NO's 87-90/2022

POLICE

v

ROMANI PAKURA KATOA

Hearing date: 22 April 2022 (via Zoom)

Counsel: Ms A Maxwell-Scott for the Crown
Mr M Short for defendant

Decision: 22 April 2022

DECISION OF HUGH WILLIAMS, CJ

[10:28:35]

[1] Romani Pakura Katoa, at the age of 46 you appear before a Court for the first time, having pleaded guilty on 25 February 2022 to one charge of possessing an offensive weapon in a public place, where the maximum sentence is one year imprisonment; and three charges of male assaults female, where the maximum sentence is two years imprisonment.

[2] The offensive weapon was a machete or bush knife, and the assaults on the females were committed by the use of that machete. All of this took place on 15 August 2020, so sentencing has been delayed beyond the normal span, partly because of the pandemic and travel restrictions and partly because of your travel and work commitments.

[3] It is to be noted that the offensive weapon charge that you face was substituted by the police for the charge you originally faced arising out of this incident, namely

wounding with intent to injure. But the victim, who is, I think, your nephew, gave a statement saying he actually grabbed the machete rather than your using it on him. In any event his hand was cut, but you were facing a maximum of seven years imprisonment on the original charge.

[4] What happened was that you and others had been drinking at Trader Jacks just near the canoe shed, and at about half past two in the morning you were outside and noticed fighting around the canoes by persons who had come out of local clubs and bars. You grabbed a shovel and a machete out of your vehicle and approached the group fighting; largely arising out of your concern because of your longstanding and deep involvement in canoeing, that the canoes would be damaged, as in fact they have been previously by those congregating in the canoe shed and smoking cannabis, drinking and behaving in a disorderly fashion.

[5] You approached the people in the shed. It was pitch dark – now I am told lights have been installed, which is a good thing – and began trying to stop the bad behaviour that was going on, and stop the chance of any damage to the canoes. You used the machete on your nephew, but he says he grabbed that. And then you banged the machete, fortunately the flat side, against the buttocks of three women in order to usher them out of the shed. They were bruised as a result. It may be that you never had an intention to injure the people in the shed, but they, seeing you advancing on them with an offensive weapon like a machete, had no idea that you were not going to use it in a much more dangerous and damaging fashion.

[6] Mr Short has analysed the disclosed material and presents a more detailed analysis of the facts. He notes that there was the fight in the vaka shed, which is the site of some of your community activities, and that you yourself were assaulted during the fighting that was going on and knocked to the ground. But he says that the shed was dark, you could not see what you were doing. Entering that area with an offensive weapon in those circumstances and striking out with it was a very foolish thing to do. What you should have done, as you now recognise, was go a few metres down the road and call the police to resolve the situation.

[7] The police ultimately did come. You were arrested and you spent some time in custody on remand before you were released.

[8] The main probation report, which dealt only with the assault charges, not the weapon charge, refers to your very significant personal history of contributions to the Cook Islands community and recommends ultimately that you not be sentenced to imprisonment. What the Probation Service says, is that you are the "director and founder of Katoa Consulting and over the years you have built a reputation for yourself in the Cook Islands, having led multi-disciplinary teams in private and public sectors, that you have taken projects from conception through to full implementation in some of the most isolated and challenging communities in the Cook Islands and the Pacific".

[9] You have also been involved in a lot of development projects around the Cook Islands, e.g. managing the Arutanga Harbour development programme in Aitutaki and the Cook Islands renewable development programme. It is of note that you are an avid member of the Cook Islands Sports Association, being re-elected as the Cook Islands F.I.N.A Bureau Member from 2021 to 2025, and holding various positions in different sports codes in the Cook Islands.

[10] Mr Short has also tendered a curriculum vitae for you, which again speaks of your very impressive record, both in sports and in business and there are a number of testimonials before me, including one from the Attorney-General, which are very laudatory about your contribution to the Cook Islands. That is a matter which stands you in good stead today.

[11] The Crown's submissions suggest that because of the seriousness and number of the offences and the facts of the matter the starting point overall should be about one and a half to two years imprisonment. They stressed the violence and the use of a weapon. That is perhaps a little too high. It exceeds the maximum on the weapons charge, but when all the offending is taken into account the suggested starting point is not greatly too high.

[12] The Crown acknowledges that you indicated earlier a willingness to plead guilty to these matters, even though it has taken some time to have actually to reach

sentence, and the Crown agrees that a reduction in the sentence for your plea of about a third would be not out of the way. That may be a little generous in the circumstances. They suggest another 15% should be deducted for your being a first offender. As I remarked in another sentencing recently, the absence of previous convictions is not a mitigating factor, it is an absence of an aggravating factor which would otherwise increase the sentence.

[13] The Crown in both sets of its submissions suggests that the proposed discharge without conviction would be out of range for what is justified for a serious incident of this sort. They note the threat of violence, the bruising and the injury, and refer me to three offences including the *Police v. Anguna*[1], a judgment of the former Chief Justice, which has some factually comparative features with your own situation. The Crown accepts that your contribution to the community and your plea are mitigating factors.

[14] In supplementary submissions filed after the reading of Mr Short's submissions, the Crown maintains its position that a discharge without conviction would be too lenient a sentence.

[15] Ms Maxwell-Scott makes some comments about two other issues. The first is the efforts you and your family made to, as it put, "reach out" to the victims' families in accordance with Cook Islands custom. At the point in the prosecution process when you and your family did this, that was almost certainly an attempt to pervert the course of justice – possibly a perversion of the course of justice – because the victims then wrote letters to the police saying that they were satisfied with the process that had been undergone and wished to withdraw the charges. It is not of course for them to withdraw the charges, it is for the police or the Crown on due consideration of the criminal offending.

[16] Mr Short contrasts the dictates of Cook Islands custom in this sort of situation with the requirements of the criminal law. It is certainly open to a person charged with offences to "reach out" in accordance with custom to the victims or their families or those affected by their criminal conduct but the point at which you did it might have exposed you and those who instigated this process to a serious criminal charge;

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1 JP Appeal 7/13, 11 September 2013.

attempted perversion of the course of justice or actual perversion of the course of justice.

[17] The point at which such initiative should be undertaken is only after a plea of guilty has been entered. At that point the position of the witnesses drops out of consideration, because the plea is an admission of guilt, and certainly restorative justice features in accordance with Cook Islands custom can be taken into account in mitigation of sentence. But it should be done openly and the Court should be advised, or at least the Crown should be advised, that it is being undertaken. So there is nothing wrong with what you and your supporters did in this case; what was wrong and what exposed you to possible further criminal prosecution is the point in the prosecution process where it was undertaken, namely before you entered pleas to the offences.

[18] Ms Maxwell-Scott was also dubious about the genuineness of the remorse that was referred to by Mr Short. She was right to express concerns in that regard. But I note the supplementary probation report where you have taken steps to ensure that the fact of your remorse and your regret for the incident has been expressed more forcibly.

[19] Mr Short in his submissions suggest that the assaults are the lead charge in this case. I take the point of view that the use of a weapon in the dark, when you had been drinking, and when there are crowds of people around was certainly the lead offence and the assaults are, in a sense, consequential on that.

[20] Mr Short notes that, as a result of representations, particularly by your nephew, the police reduced the original weapons charge. So in a sense you have already had the benefit of those representations with the main charge against you being reduced from one with a maximum sentence of seven years, to one of one year.

[21] A considerable number of letters of support and testimonials have been filed. Like Ms Maxwell-Scott, I think that some of the persons who did so may have gone beyond their proper brief in the comments they have made but in combination with your CV, they certainly provide evidence of a substantial and impressive contribution to the Cook Islands Society, both in your work and in your sporting achievements.

[22] There is, in one of the testimonials, a suggestion that were you to be convicted, it would detrimentally affect your ability to travel out of the Cook Islands. Mr Short has elaborated on that from his own experience this morning. That assertion is not infrequently made, but much less frequently proved. It is easy to say that convictions will bar entry to other countries and indeed, in most entry forms, the possibility of conviction is asked about. But disclosure of a previous conviction does not, in every country and with every conviction, result in the individual being barred from entry. For it to form a significant mitigating feature in sentencing for serious criminal offences, it needs to be proved, not merely asserted. Whilst the possibility is recognised, it is not a matter of great moment as far as your sentencing is concerned.

[23] In terms of the principles of sentencing, these were serious offences committed in a situation where you are fortunate that you are not still facing much more serious charges than you are. There was the use of a weapon in darkened circumstances where the chances of much greater injury were present. You need to be made accountable for the harm that you have done to the victims and the community. I need to try and promote a sense of responsibility in you. I accept that apart from this instance, you have made a considerable contribution to the community. I need to denounce your conduct and deter others from acting similarly.

[24] As I said, the lead charge is the use of a weapon in a public place, where there had been drinking and when vision was impaired. Fortunately you only used the flat of the machete, against four victims as it turns out. Those circumstances would certainly suggest that initially the starting point should be a term of imprisonment.

[25] In mitigation – to reduce the sentence – is of course your plea, the fact it was your first offence and your substantial contributions to the Cook Islands community. That would normally reduce the appropriate sentence to below one of imprisonment.

[26] Mr Short submits that a discharge without conviction would be appropriate and refers me to the New Zealand Sentencing Act 2002, ss 106 and 107, which say that a discharge without conviction can be entered if the direct and indirect consequences of the offending are out of all proportion to its gravity. There is a limit to the extent to which one can import statute law from another country into the Cook Islands, but it is

a useful guide as to how a discharge without conviction application should be approached.

[27] He refers to *R v. Hughes*[2] and *Police v. Rakacikaci*[3]. In the latter a discharge without conviction was given because the defendant would lose his job if convicted. That may not be enough to warrant a discharge without conviction in most circumstances.

[28] The problem here is what should be the appropriate sentence to impose on you or to put it more in terms of the application, whether you should be discharged without conviction following your pleas of guilty to four serious offences where normally a sentence of imprisonment would be considered appropriate.

[29] Because of the gaps in the sentences available in the Cook Islands, if a term of imprisonment is not to be imposed, the next most serious alternative is probation. But in your case a sentence of probation would be inappropriate: you have no need for guidance from the Probation Service as your CV and the testimonials attest.

[30] Should you be sentenced to come up for sentence if called upon under s 113 of the Criminal Procedure Act 1980-1? The answer to that is that a conviction has to be entered before that sentence can be contemplated. So that would rule out the application that you be discharged without conviction.

[31] A discharge without conviction under s 111 of the Criminal Procedure Act 1980-1 is open, but in the Cook Islands there is no statutory test as to when that might be appropriate, and on its own that would seem to be too lenient a sentence for the circumstances in which this offending took place.

[32] Under s 113(3) of the Criminal Procedure Act 1980-1 the Court has power, to grant a discharge without conviction even when the charge is proved, and also make

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2 [2009] 3 NZLR 222.
3 CR 532 & 534/19, Keane J, 1 September 2020.

orders for payment of costs, damages, compensation or restitution; none of those are appropriate in your particular case.

[33] So what I propose to do is to say that if, with one week of today, you pay $1,500 to a charity or charities in the Cook Islands with a principal aim of combating violence in the community, particularly violence against women. I am prepared to say that that, in combination with your personal record, would be sufficient to make a sentence of discharging you without conviction appropriate.

[34] So what I propose to do is adjourn the sentencing from today for one week to give you the chance to make that or those payments. The recipients of your payment or payments should be charities where the Crown accepts that the principal aim of the organisation is the reduction of violence, particularly violence against women. If you make those payments then you will get a discharge without conviction.

[35] So in formal terms what we will do is adjourn the sentencing for one week to give you the chance to make that payment or payments, and if you do, a discharge without conviction will follow. If you do not, then I will reconsider the matter as to what is the appropriate outcome.

[36] On that basis the sentencing is adjourned.

Hugh Williams, CJ