

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

**CR NO'S 393-395/21
226-232/22
1940/22**

R

v

TEINA NGAMETUATOE

Hearing: 16 March 2023
Appearances: Ms M Pittman for Crown
Mr B Mason for Defendant
Sentence: 16 March 2023

SENTENCING NOTES OF TOOGOOD, J

[9:32:06]

[1] Teina Ngametuatoe, you appear for sentencing having pleaded guilty to ten charges of sexual and violent offending against a child, your stepdaughter, to whom I refer as M. They include one charge of cruelty to a child for offending that began when M was only five years old. The sexual offending began when she was 12 or 13. It involves three charges of rape (one of them a representative charge reflecting repeated offending over more than four years) and three of indecent assault on a girl aged 12 to 16 years. The other violence charges are assault on a child; assault with intent to injure and two charges of assault on a female. You are to be sentenced also on one charge of contempt of Court for disobeying an order when you failed to remain on Rarotonga for sentencing.

The facts

[2] The agreed to summary of facts makes disturbing reading. You lived on the island of Mangaia with M's mother, her half-brother and M. M's mother was a midwife who would spend a lot of time away from home, both during the day and at night. You were physically abusive towards M throughout her childhood, according to the agreed summary, being jealous of her because she was not your child. When you were angry with your wife you would take it out on M. You used to smack her in the face, causing black eyes, and you would hit her with a stick, hold her by the throat and pull her hair. On one occasion, following a complaint made by the police by M's school teacher, you were warned by police to stop. As I have said, that offending continued for something like seven years.

[3] When M was 12, you began to take a sexual interest in her. When she was alone you would frequently enter her room, or make her go to your room, and force her to lie down next to you. You would pull your own pants down and touch your penis with one hand while using your other hand to touch M's breast over her clothes. At times you would masturbate and ejaculate towards her or onto her.

[4] On one occasion, M was lying in bed and you approached her wearing only your underwear. You lay down on top of her, propping yourself up with your elbows, ignoring her crying.

[5] You began raping M when she was around 12 or 13 years old. On the first occasion, you made her lie down on your bed and take her pants off. Although she tried to keep her legs closed, you told her to open them so it would not hurt. You inserted your penis into her vagina and began having sexual intercourse with her, ejaculating onto the bed next to her. M was in pain, crying and bleeding.

[6] After that you continued to rape her frequently, that offending ceasing only when she became pregnant to you, aged 15 years. You would wait until others in the household were asleep and then go into M's room which she shared with her half-brother and step-grandmother. You would wake M up and take her into the middle room of the house where nobody slept and have sex with her on the floor. Sometimes, M would cry and be left with bruises on her hands and legs from your holding her down. If M pretended to be asleep to

avoid having sex with you, you would get angry and punish her the next day by making her do hard labour.

[7] On one occasion after you had raped M, you felt her face in the dark and realised she was crying. You punched her in the face, the impact making her lip swell and bleed and she screamed out. You turned on the light, saw that she was bleeding and took her outside to the water tank to wash her face. When M's mother returned home, M was lying on the bed crying and was taken to hospital. You said you accidentally kicked M when you were trying to kick the cat.

[8] On another occasion, M was at home on a Saturday watching cartoons in your bedroom. You entered the room and sat on the side of the bed. M was sitting on the floor. You started touching M on her shoulder and, assuming you wanted to have sexual intercourse, M said "No". You got angry and grabbed her by the neck. You pushed her onto the floor, holding her down by the throat. M screamed and you let her go. She was unable to go to school that day because of the scratches and bruising on her neck that you had caused. M told her mother you had choked her and that you were "touching her". When M's mother questioned you, you said you had choked her as a punishment for being cheeky but denied touching her.

[9] On another occasion, when M was around 13 years old, you went into her room during the night and began touching her breasts and waist. You pulled her pants down, as well as your own, got on top of her, grabbing her hands and trying to get her to hold onto your waist. She refused and clenched her fists. While you were on top of her with your pants down, your wife came into the room and turned on the light. She argued with you, and you apologised and said you would not do it again. That was a lie; the sexual offending continued.

[10] In March 2009, M discovered she was about six months pregnant with your child, the baby having been conceived in September 2008 when M was 15. She told people she had been raped by a stranger.

[11] M gave birth on Rarotonga on 13 June 2009. After that she and the baby went to live in Australia with extended family for a period.

[12] M returned to Mangaia with the baby in 2010 and moved back into your home. She returned to school. One day when M was text messaging another boy at the school, the teacher reported it to you. When M got home you yelled at her and hit her with a hose, warning her about talking to boys.

[13] On another occasion, you hit and kicked M and punched her in the face, ceasing only when your wife pulled you away. M suffered bruises and scratches from your assault.

[14] In October 2010, M moved away to live with her partner's family. Her son remained with you and your wife. M complained formally to the Australian police about your conduct in March 2021. When spoken to by the police in July 2021, you admitted performing sexual acts on and with M from the age of 12 and you admitted to having sexual intercourse with her. You said you started falling in love with her when she was in Form 1 or Form 2 and maintained that your sexual engagement with her was consensual. You accepted, however, that she might have consented because of the authority you had over her. You also admitted to physically abusing her from a young age. The truth, Mr Ngametuaotae, is that she lived in fear of you and was forced to leave Mangaia, her birthplace, because she could no longer stand living on the same island as you.

Victim impact

[15] I do not need to refer to a victim impact statement to assess the grievous impact of your offending on M. This type of offending invariably affects child victims well into adulthood. M says that the physical effects of your abuse and her injuries have gone away, although some scars remain, but the mental side of all that you did to her remains with her today. She says the physical, sexual and mental abuse you inflicted on her over those years has stolen her childhood, and ruined her life. She says the relationship she had with her mother is no longer there and it is devastating as she should be the one she hoped would support her in this moment in time.

[16] M has told her partner that she does not trust males and she does not want them to have a daughter because of what she went through. She says, however, that if they do have a daughter she will ensure that she is never around any males in her immediate or extended

family. She says she would not even leave her with her partner to change nappies or bath her – she just could not take the risk that her daughter would suffer as she has suffered.

[17] M used to self-harm because of what happened to her. When her partner and she argued, and he brought up her past, she would lock herself in the bathroom and cut herself with razor blades. Fortunately, that ceased two years ago but she refers to it as an example of the lasting effect of your appalling abuse. She doubts her physical appearance, feeling ugly and not worthy and although her partner tries to comfort her by saying it is not true, she does not believe that.

[18] M says that reporting your offending to the police helped her; she stopped self-harming and felt she could start a healing process. M says that while you were offending against her she would tell other people but they did not believe her and they did not care, even in her first interviews with the police in the Cook Islands and in Australia; she found that very hard.

[19] M says that now you have pleaded guilty there is some sort of closure with the case and she thinks, still, that you deserve more than a jail sentence. She has nightmares to this day where you appear in her dreams. When she wakes up, she thinks you do not deserve to live for what you did to her and the effect it has on her now: being uncomfortable around males; the loss of trust with family members; not having a relationship with her mother. All that has gone because of you and she wants you to feel the way she does now. But she is hoping for closure once you are sentenced. She is angry about what she has endured all her life. Her mother asked her to drop the case and she feels that her mother has chosen you over her and she is hurt by that. She has not spoken to her mother for two years but misses her so much. She hopes that when this is all over she can talk with her mother and forgive one another because she does not want to live in the same way anymore. She would be very happy if her mother went to her wedding when she gets married.

Purposes and principles of sentencing

[20] I take into account in approaching the appropriate sentences to impose upon you, the purposes and principles of sentencing set out in the relevant legislation which includes the

New Zealand Sentencing Act 2002.¹ The sentencing purposes that I consider to be important in your case are:

- a) holding you accountable for the harm done to your victim and the community by your offending;
- b) promoting in you a sense of responsibility for, and an acknowledgment of, that harm;
- c) denouncing your conduct;
- d) protecting the community by deterring you and others from offending in this way; and
- e) assisting, as far as is possible, your rehabilitation and reintegration.

[21] In sentencing you, I need to take account of the gravity and seriousness of the offending and your degree of culpability or blameworthiness. I need to have regard to the maximum penalty for your offending which, in the case of the rape charges – the most serious – is 14 years' imprisonment. I must have regard also to the need for consistency in sentencing, comparing your offending with that of other offenders and the sentences imposed on them and I have full regard to the information provided to me about the effect of your offending on M. I bear in mind that I should impose the least restrictive outcome that is appropriate in the circumstances and in doing so take into account your personal circumstances. In this case, M is now 29 years old so your offending might be regarded as historic and it is clear that you have led a full and worthy life in your community since then. I will take that into account in a way that must recognise also that this offending was, by any standard, appalling.

Sentencing approach

[22] The approach I have followed in arriving at the appropriate sentences is, first, to calculate a starting point incorporating all aggravating and mitigating features of the offending, and then to consider all aggravating and mitigating factors personal to you with a

¹ See Criminal Procedure Act 1980-81, Part II.

discount for your guilty pleas. They are calculated as a total percentage of the starting point and an end sentence is then reached.²

[23] However, because you are being sentenced for more than one offence, I have also considered which offence or offences to focus on first, and looked at what effect the other offences should have to reach an effective end sentence which reflects, fairly, the totality of your offending.

[24] I am guided in this case by the New Zealand decision of *R v AM*,³ which has been adopted here by the Court of Appeal in the case of *R v Tou*,⁴ and I consider also the New Zealand Sentencing Act.

[25] I now spend some time recording the submissions I have received from the Crown and from your counsel, Mr Mason.

Submissions of counsel

Crown submissions

[26] The Crown submits that there are a number of aggravating factors that should be taken into account:

- a) The prolonged and ongoing offending beginning when your victim was only 12 or 13 years old and which continued until she fell pregnant with your child. You indecently assaulted M on many occasions and repeatedly had sexual intercourse with her without consent. I make it clear that the fact that your victim may not have resisted you on every occasion, does not mean she consented. Forced consent out of fear and violence is no consent at all.

² *R v Kamana* CA 504/22, 28 June 2022.

³ *R v AM* [2010] NZCA 114.

⁴ *R v Tou* CA 508/22, 24 November 2022.

- b) There was a significant degree of planning and premeditation and deception involved in your offending, as you preyed upon M when you could be with her alone. The Crown describes your approach as deliberate and manipulative.
- c) You were around 33 years old when the offending began, an age disparity of 20 years.
- d) Your victim was vulnerable throughout the offending not only because of her age but because of your role as her stepfather and the owner of the house where she lived. You were entrusted with her care as a parent, as an adult and your offending amounted to a serious abuse of that trust.
- e) The offending involved violence and cruelty on your part, causing injuries about which you lied. And you continued to deny abusing her.
- f) The pregnancy that resulted from your offending I consider, despite Mr Mason's submissions, to be an aggravating factor. That consequence has had a profound and lasting effect on M's life. The child lives with you and your wife and apparently has no relationship with his mother. I accept that you have cared for him properly since he lived with you after M's departure.
- g) Finally, the Crown submits that the victim impact in this case is serious and that it is not possible to overstate the ongoing effects your conduct has had.

[27] Following the two-step approach that I have mentioned, the Crown suggests an end sentence of 12 years' imprisonment would be appropriate in your case. On the contempt of court charge the Crown seeks conviction and discharge.

Defence submissions

[28] Mr Mason has presented comprehensive submissions on your behalf and I am grateful for his balanced approach and his assistance. He says you have accepted your wrongdoing and that you acknowledge that you stole your victim's childhood; you caused her to self-harm; you caused irreparable damage to her sense of self-worth; and you caused her to have

recurring nightmares, Mr Mason submits that you accept that these consequences are consistent with those suffered by victims of sexual assault. It is significant in my view that you appreciate that your sentencing will give M some closure and you acknowledge also her view that no sentence could ever be enough to compensate for the effects of your offending on her.

[29] There is no dispute between your counsel and the Crown on the sentencing principles and the relevant law to be applied. On that basis, Mr Mason accepts the starting point of 15 years' imprisonment suggested by the Crown is appropriate and agrees with the reasons for that submission.

[30] But Mr Mason also makes full submissions in mitigation of your offending. First, he notes that when you were approached by the police in July 2021, you gave full and frank disclosure of your offending with no hint of evasiveness. He points to the consistency between M's complaint to the Queensland police and your admissions when interviewed.

[31] You accept that you did not plead guilty at the earliest opportunity which was the first call of your case after counsel was engaged and full disclosure had been made. That was on 29 August 2022. But before that hearing you decided to dispense with counsel and opted for the advice of a pastor of the Celebration Church. Without any legal representation you pleaded guilty to all of the charges by zoom call from Mangaia on 21 October 2022. However, you breached your bail, giving rise to the contempt charge. You re-engaged counsel on 13 January this year and the charges reverted to those that had been agreed between the Crown and your counsel before you breached your bail. You have been in prison since pleading guilty to those charges on 20 January 2023.

[32] Mr Mason does not deny that the Crown was put to some inconvenience by the way you have approached the prosecution but submits that you should still be given a full one-third sentence credit for your guilty pleas, pointing to your immediate acceptance on interview by the police of what you have done. Although it is acknowledged you may have caused her some distress by your wavering, your guilty plea has spared M the need to appear in Court and to have to relive and be questioned on the harrowing experiences of her past.

[33] Mr Mason submits on your behalf that the birth of your son in June 2009 is not the aggravating feature of your offending that the Crown submits it to be. He argued that, although there is no doubt that the pregnancy added to the distress suffered by M, unless it could be shown that you deliberately wished for and engineered the pregnancy. He says it is difficult to see how that can be regarded as an aggravating feature. As I have said, I acknowledge that you have cared for your son since he returned from the initial period in Australia but I do not accept the proposition that the pregnancy and birth of your son does not make the consequences of your offending more serious. You must have known that repeatedly having intercourse with your young victim would be likely to result in her becoming pregnant.

[34] I have noted the references which describe your son's progress at school and the testimonials supporting the proposition that you are a good father to your sons. It would appear that you have treated them very differently from the way you treated M. As to that, Mr Mason submits that you are something of a Jekyll & Hyde character. You are well regarded in the Manganian community as evidenced by the many references, which I have read, speaking of you as you are seen now; you are a community leader holding the title of Rangatira, one rank below that of the Paramount Chief of Mangaia; and you are a prominent leader of your church, respected for your work in the community. People describe you as generous. You have been a senior health inspector, regarded as a good employee, for some 30 years.

[35] Mr Mason suggests that while your service to the community might be seen as commendable, some might also regard it as hypocritical given your knowledge of your own past wrongdoing. He says that you had not sought to be a community leader but merely responded to requests to help and that you did not wish to explain why you did not feel you could take on those roles. I interpret that submission as meaning that you have felt a strong sense of guilt about your offending and remorse, and that is evidenced by your immediate confession to the police. That is significant in terms of your rehabilitation prospects and it seems to me that you have demonstrated all of the characteristics of a good family man, citizen and community leader. There is no suggestion that you have offended in this way on any other occasion and you have no other criminal convictions.

[36] I am told that you hoped that your day of reckoning would not come until your boys had reached the age of 15. Mr Mason acknowledges there may be many reasons why your victim delayed in bringing her complaint but notes that has spared her son and her brother at least for a period.

[37] It is important to say that delay in making complaints about offending of this kind is common because of the seriously traumatic effect this type of offending has on its victims. It takes courage for any victim of sexual abuse of this kind to come forward and expose themselves to the prospect of having to give evidence and relive their past. Whatever consequences you might face now in terms of the damage to your reputation in the community, they are solely a result of your offending and your victim bears no responsibility for that.

[38] Mr Mason also points out that you do not enjoy good health. You suffer from diabetes, hypertension and gout and you are required to inject yourself with insulin twice a day. I have read the medical report setting out your condition and treatment.

[39] Mr Mason has referred to Australian cases that address the consequences of imprisonment for an offender who suffers from ill-health. I am content for the present purposes to adopt and apply the principles which Mr Mason seeks to draw from the authorities; namely:

- a) that health issues cannot be used to avoid punishment; but
- b) health is a mitigating factor if the health condition would make imprisonment more onerous for the offender than it would be for others in good health;
- c) that health is a mitigating factor if imprisonment is likely to gravely impact the offender's health; but
- d) the Court must be cautious to ensure the issue of health does not undermine the sentencing process.

[40] Mr Mason is critical of the conditions in the Arorangi Prison where you will serve your sentence and he submits that it is unlikely you will receive the level of treatment, diet and conditions conducive to your well-being. There is no evidence before me of the conditions in the prison but I am aware of observations made by the Judges of this Court and the Court of Appeal; they acknowledge that prison conditions in a smaller economy such as this cannot be expected to meet the conditions or the standards provided in larger economies, particularly in terms of rehabilitation and prison conditions. I take that into account. But on the evidence I am not persuaded you would receive less than proper treatment for your medical conditions.

[41] Finally, Mr Mason urges on the Court a merciful approach, noting that Cook Islands culture is steeped in mercy and forgiveness. I acknowledge that and respect it. Mr Mason extends on your behalf a full apology to M, saying that you acknowledge that that may not be of much comfort to her and that you hope that she will achieve some catharsis through the imposition of what will inevitably be a lengthy prison sentence.

The starting point

[42] The charges of rape are the most serious you face and I treat them as the lead offences.

[43] Given the level of agreement between experienced counsel as to the approach I should take, and my view that what is proposed is consistent with the authorities, I am content to adopt the Crown's propositions, as Mr Mason has done.

[44] The raping of your victim which began when she was only 12 or 13 years old was prolonged and repetitive, on occasions accompanied by violence. While the summary of facts records that you professed to have started falling in love with her, there was nothing loving about the way in which you used her as a sexual object. Your professed love was no more than a perverted sexual obsession with an available and vulnerable victim who was trapped in her own home.

[45] It was a gross breach of trust and of your duty as M's father-figure to protect her. The harm you have caused M has been devastating for her, not least because you deprived her of her ability to grow into adulthood through a normal childhood. You sexualised her at a very

young age leading to ongoing consequences of lack of trust in males and difficulties with her partner. Your offending has had and will continue to have profound effects on her.

Conclusions as to initial starting point

[46] In the guideline judgment for sexual violation (both rape and unlawful sexual connection), the New Zealand Court of Appeal has identified a number of relevant aggravating factors, and prescribed bands of appropriate sentences where certain factors are present.⁵ Many of the aggravating factors outlined in the guideline are present in your offending and I have taken them into account.

[47] Repeated rapes of one or more family members over a period of years is the paradigm case; that is the clearest and most appropriate example of offending in band four, which is the highest band. That characterises your offending.

[48] I acknowledge that the starting point must reflect the lower maximum sentence for rape in the Cook Islands. While a starting point in the region of 20 years' imprisonment for the sexual offending would be appropriate in the New Zealand context, the starting point of 13 to 14 years' imprisonment suggested by counsel is appropriate in this case. Prolonged cruelty towards a child, which began in this case when M was only five, would warrant a starting point somewhere in the vicinity of 2½ to 3 years' imprisonment. I would increase the starting point by around a year for each of the separate assault charges given that they occurred in a domestic setting where children should feel safe. Reflecting the need to stand back and look at the totality of the offending overall, I consider a starting point of 15 years' imprisonment to be appropriate in this case.

[49] I turn next to consider factors personal to you.

Aggravating and mitigating personal factors

[50] There are no aggravating personal factors.

⁵ *R v AM* above, fn 3 at [24].

[51] You are 50 years old and you have been, until you were taken into custody, living with your wife and two sons and enjoying a full community life. You have no previous convictions and it is clear that you are now a man who is highly regarded in the community being both respected and liked. But the nature, extent and duration of the offending in this case limits the extent to which the absence of convictions and evidence of good character can be held to be relevant mitigating factors. I do acknowledge, however, that there is a strong sense of community feeling that is highly supportive of you despite your offending and that there is a level of forgiveness which is consistent with the references to Cook Islands culture as discussed in the cases. It is difficult, however, to avoid the impression that those who support you so strongly pay far less regard than is warranted to the serious consequences for a former member of their community who has suffered throughout almost her whole life from your offending.

[52] I allow the appropriate discounts for the mitigating factors which I have discussed above in the context of Mr Mason's submissions.

[53] While absconding on bail and remaining at large for some 4½ months does you no credit, and caused added distress to the complainant, I acknowledge that you confessed to your offending as soon as you were confronted with the allegations by the police and that you have exhibited through your guilty pleas a willingness to accept accountability for your offending. You have spared your victim the ordeal of a trial. In those circumstances I consider a discount of 28% is appropriate on account of your guilty pleas and what I regard as genuine remorse.

[54] You are also entitled to a modest discount of 5% for your work in the community.

[55] I also take into account your health condition and the fact that you will be imprisoned on Rarotonga away from the immediate company of your family and friends. Because of your ill-health you will find your prison conditions far harder to endure than other prisoners, and I allow a discount of 10% on account of those factors.

[56] That means that the discounts for mitigating factors I have mentioned amount to a 43% or six year and nine months' discount, leading to an end sentence of just over 8 years.

[57] Sentencing is not a mathematical exercise and taking into account the time you have spent in custody awaiting sentence, I consider that the total sentence you must serve will be one of 8 years' imprisonment.

Sentence

[58] On each of the rape charges for which you have been convicted, I sentence you to 8 years' imprisonment.

[59] On the indecent assault charges, I sentence you to 4 years' imprisonment.

[60] On each of the assault charges not involving a sexual element, you are sentenced to 18 months imprisonment.

[61] For the charge of cruelty to a child, you are sentenced to 3 years' imprisonment.

[62] All of these sentences are to be served concurrently, that is at the same time, meaning that the total effective end sentence is one of 8 years' imprisonment.

[63] On the charge of contempt of court you are convicted and discharged.

[64] You may stand down.



C H Toogood, J