

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

**CR NO'S 568/21, 623/21  
86, 1735, 1737/22  
915/23**

**R**

**v**

**TUPOUATIMO HAGAI NOA**

Counsel: Ms J Crawford for the Crown  
Ms L Rokoika for Defendant

Sentence: 1 August 2023

---

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

---

[0]

[1] Tupouatimo Noa, you are before the Court for sentencing on the following charges:

- (a) Burglary of Matex Trading Store, under s 263(a) of the Crimes Act 1969, the maximum penalty for this offence is 10 years imprisonment;
- (b) Wilful damage of an ANZ ATM machine, under s 321(4)(b) of the Crimes Act 1969, the maximum penalty for this offence is 3 years imprisonment;
- (c) Five charges of contempt of Court, under ss 36 and 37 of the Judicature Act 1980-81. These charges arise from breaches of bail, the most recent of which occurred on 15 July 2023. The maximum penalty for each of those charges is 6 months imprisonment or a fine of \$100.

**Facts**

[2] At approximately 4 am on Sunday 14 November 2021 the defendant and an associate parked their motorbike beside the Matex Trading Store complex in Inave, Arorangi and walked towards the back of the building. They attempted to open the back door of the store with a ko (husking-stake). When they failed to gain access they returned to the front of the store and attempted to force open the ANZ ATM machine by stabbing into the machine with the ko. The defendant then broke the glass pane of the front door of the Matex shopfront with the ko. He injured his hand in the process. Having gained access to the premises the defendant stole from the fridge area a carton of beer.

[3] The defendant left the ko behind the counter area of the shop and left a trail of blood from his injured hand as he returned to the motorbike where his associate was waiting.

**Victim impact statements**

[4] The ANZ Bank refers to the cost of remedial work to the ATM machine totalling \$7,282.23. In addition are noted staff costs and loss of revenue, and the impact on the Bank's ability to provide customer service during the time required to carry out the repairs to the ATM machine. I am advised that a settlement has been agreed with the ANZ Bank by which the defendant paid \$3,200 in August 2022, which was accepted by the Bank.

[5] Outstanding is the sum of \$305 for damage to the shopfront window at Matex Trading Store.

**Probation report**

[6] A constructive probation report refers to strong family relationships of the defendant with his parents and siblings, who provide ongoing support. He has a partner with whom he is no longer living, and a daughter approaching 1 year old.

[7] The mother of the child, as noted in the Probation report, is concerned that her daughter have a father figure in her upbringing. She notes the defendant's offending is unacceptable and his behaviour would benefit from monitoring of his professed willingness to change his habits.

[8] The Probation Service assesses Mr Noa as being of low risk of reoffending on the risk evaluation assessment conducted. The sentence recommendation from the Probation Service is 12 months probation supervision with the first six months to be served on community service and subject to specified conditions.

**Aggravating and mitigating factors of the offending**

[9] The Crown notes:

- (a) planning and premeditation, particularly the taking of the ko used in the offending, though the offending was substantially unsophisticated;
- (b) The extensive damage to the ANZ ATM machine totalling \$7,282.23, the cost of repair to the Matex shopfront window \$305, and the value of a carton of beer stolen by the defendant from the Matex refrigerator area.

[10] There are no mitigating factors of the offending.

**Aggravating and mitigating factors relating to the offender/defendant**

[11] It is noted:

- (a) Mr Noa was 21 years old at the date of the offending, now 22 years of age;
- (b) He entered guilty pleas to the principal offending after taking appropriate legal advice;
- (c) Guilty pleas to several of the contempt charges where pleas had not been entered, have been entered today through Ms Rokoika;
- (d) Mr Noa has no previous convictions;
- (e) He is genuinely remorseful for his actions and also for the embarrassment and concern he has caused his family;
- (f) He has paid \$3,200 in settlement of the costs incurred by ANZ Bank.

[12] There are no personal aggravating factors relating to the offender. He is, as I have said, a first offender.

### **Crown submissions**

[13] The Crown referred to the case of *R v. Maoate*<sup>1</sup> which referred to the categories for burglary offending defined in *R v. Senior*<sup>2</sup>. The Crown accepts the defendant's offending falls into category 1, first time burglar, when, depending on the aggravating and mitigating factors present, imprisonment may be imposed, although not necessarily. In *Maoate*, where the stolen property had a value of \$31,461.60, the Court sentenced the first time offender to 18 months probation and six months community service.

[14] The Crown submitted that a starting point for sentencing would be in the region of 12 to 18 months imprisonment with uplifts of one month for each of the contempt charges resulting in a starting point for sentencing around 2 years imprisonment. To this, appropriate discounts totalling, on Crown's assessment, approximately 50% would be applied. Those discounts recognising the youth, the remorse, the guilty pleas and the payment of an agreed sum for reparation.

[15] However, recognising the defendant is relatively young and that this is his first offence, the Crown acknowledges the discretion of the Court to impose a probation sentence in lieu of a sentence of imprisonment.

### **Defence submissions**

[16] Ms Rokoika, for the defendant, submitted the Court should adopt the prevention and rehabilitation principles in sentencing, in order to deter the defendant from future offending and to give him another chance in life. I note in respect of that submission the Court must also take into account the principle of general deterrence.

---

<sup>1</sup> *R v. Maoate* (2016) CKHC 19/2015, 11 March 2016.

<sup>2</sup> *Senior v. Police* (2000) 18 CRNZ 340.

[17] Counsel acknowledged that although prison is usually a response to serious burglaries the Court has a discretion to impose a lesser sentence in the case of a first time burglar. She submitted the discretion should be exercised in favour of the defendant.

[18] She referred to the mitigating factors I have previously identified, noting that the two charges or the two principal charges for which the defendant is to be sentenced, stem from the same incident.

[19] She also noted that the total value of the items stolen in the *Maoate* case was considerably greater at approximately \$31,461.60 than in this case.

### **Sentencing**

[20] Mr Noa, you are at a crossroads in your life. Your counsel urges that the Court exercise its discretion to impose on you a sentence short of imprisonment. The Crown responsibly does not oppose this approach, while noting that imprisonment is the usual response to burglary offending.

[21] You have the advantage of a supportive family. You have the responsibility of a beautiful young daughter but only if you can straighten out your life will you go forward. You are employed and you have the support of your employer. There is a lot going for you. You have a real opportunity to turn your life around and benefit those of your family who love you and whom you love, including importantly your little daughter. On the other hand, you can choose a downward track and you have been doing that too successfully I have to say. That will result in frequent breaches and brushes with the law, grief, disappointment and worse, for you and your family. The choice is yours. I will give you a chance today. It is a last chance, Mr Noa. You cannot expect leniency from the Court should you offend again. It is entirely up to you.

[22] The sentence I impose, Mr Noa, is one of 12 months probation supervision with the first six months to be served on community service. There will be the following conditions:

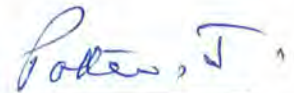
- (a) You are not to purchase or consume alcohol;
- (b) You are not to enter any liquor licensed premises such as bars or nightclubs;

- (c) You are not to leave the Cook Islands without the approval of the High Court;
- (d) You are to take the recommendations of the Probation Service concerning ongoing counselling, particularly in relation to alcohol.

[23] You must comply with those conditions for the 12 months of your sentence of probation supervision. By then I hope you will have learned to manage yourself and your lifestyle responsibly, in a way that cares for others, particularly your family and your young daughter.

[24] On each of the five charges of contempt arising from breach of bail conditions, you are convicted and discharged.

[25] There will be an order for payment of reparation of \$305 for damage to the Matex shop window.



---

**Judith Potter, J**