

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

**CR NO's 113, 819 & 292/22
820-823/22
AIT 24-25/22**

R

v

RENEE JUNIOR DANIEL

Counsel: Ms M Pittman for the Crown
Mr N George for the Defendant

Sentence: 10 August 2023

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

[9:26:46]

[1] Renee Daniel appears this morning for sentence on a raft of charges:

- (a) Assault on a female, the maximum penalty is 2 years imprisonment;
- (b) Assault with intent to injure, the maximum penalty is 3 years imprisonment;
- (c) Two charges of threatening to kill, where the maximum penalty is 7 years imprisonment. The Crown correctly, in my view, submits that this is the lead offence for sentencing;
- (d) Burglary, the maximum penalty is 10 years imprisonment but in the circumstances of this case, the threatening to kill charges are predominant.

- (e) Possession of a utensil under the Narcotics and Misuse of Drugs Act;
- (f) Possession of cannabis under the same Act;
- (g) Contempt of Court, two charges arising from breach of bail.

Background facts

[2] It is necessary that I traverse the facts of these matters and I do so in chronological order, that is the order in which they occurred.

[3] The burglary, possession of a utensil and possession of cannabis charges arise from events on 22 February 2022. At about 11.00 pm Mr Daniel drove to the Aitutaki Golf Club with another. He broke through the front door to gain entry into the clubhouse and broke the second door to the bar area. He took two bottles of Jim Beam, a JBL Party Box 100 stereo and some cans of Woodstock. Later, on 2 March, he attempted to sell the Jim Beam bottles to some locals. Some of the stolen items were subsequently found during a search of his house.

[4] The two incidents of contempt of Court arise from breaches of bail on 7 April 2022 and 4 May 2022.

[5] The assault on a female charge arises from events on 16 July 2022. The defendant was playing cards and having dinner with his niece and his partner. His partner asked the defendant to check on their one month old baby who was in their room alone, feeding on a bottle. An argument ensued. The defendant went into the room to check on the baby and the mother followed him. She asked the defendant to move to the other side of the bed so she could help feed the baby. He lost his temper. He elbowed his partner on the left arm. She retaliated by punching the defendant and she then tried to leave the room. The defendant blocked her from leaving. He provoked her by telling her to hit him but she declined and told him to move out of the way.

[6] The assault charge arises from the defendant continuing to block the victim and then punching her in the face. She managed to get outside. She went to a neighbour's address to phone her brother. He made his way to the neighbour's residence in Nikao. Both the partner and her brother then returned to the defendant's address. The defendant's mother answered the door and the brother asked to take the baby for the night and return in the morning to talk about what had happened. The defendant's mother refused to hand over the baby. The defendant and his father came to the front door of the house and challenged the partner's brother and asked him to fight. The defendant then disappeared to the side of the house and re-emerged carrying two bush knives, one in each hand. He walked towards his partner and her brother, swinging the bush knives and saying "ka mate koe iaku" (I will kill you). The victims then ran to a neighbour's address and called the Police. Those events give rise to the two threatening to kill charges.

[7] It is unnecessary to state that those events comprise a raft of charges for serious offending which bring you, Mr Daniel, before the Court today.

Crown Submissions

[8] As I have said, the Crown submits the lead offending for sentencing purposes is the domestic violence offending. The Crown submits that the threatening to kill charges would warrant a start point of 12 months imprisonment with an uplift of 12 months for the assault and a further six months uplift for the charge of assault on a female, giving a start point adjusted for totality, of two years imprisonment.

[9] Separate consideration is required for the burglary charge and the Crown submits that a standalone start point of 12 months would be warranted, and for the cannabis offending a start point of six months imprisonment.

[10] All in all, the Crown submits that a global starting point for the raft of offending would be around 2½ to 3 years imprisonment.

[11] The Crown accepts that the contempt of Court charges could be dealt with by way of conviction and discharge.

[12] The defendant is entitled to a discount which the Crown acknowledges as 33% for the guilty plea. The Crown's submission is that a sentence of imprisonment of 20 months to 2 years is appropriate in relation to this offending.

Principles and Purposes

[13] The Crown notes the principles and purposes of sentencing, which the Court must take into account: to hold the offender, Mr Daniel, accountable for the harm he has done by the offending. To promote in him a sense of responsibility and acknowledgement of the harm he has done. Mr George, on behalf of Mr Daniel, this morning has emphasised the necessity for this young man to develop a sense of responsibility.

[14] The sentence must denounce his conduct and deter him and others from this type of offending and provide for the interests of the victims.

[15] The sentence should also assist to the extent that is possible, in the rehabilitation and reintegration of the offender, Mr Daniel. The Court must consider the gravity of the offending and the seriousness of the offending but must look to impose a sentence that is the least restrictive available in the circumstances.

Aggravating Factors of Offending

[16] There are a number of aggravating factors of the domestic violence offending which are not disputed by the defence. The offending was ongoing over the course of an evening and involved two incidents of violence and two victims. The violence occurred within a family setting and the defendant punched his partner in the face; an assault to the head. There were the threats to kill and the use of a weapon.

[17] Inherent in the offending is the breach of trust that arises from the domestic situation and the vulnerability of his partner in the circumstances into which she was forced on that night.

[18] It is noted by the Crown that this violence offending occurred while the offender was on bail for the cannabis offending.

[19] There are no mitigating features of the violence offending.

[20] The Crown notes a degree of pre-meditation in relation to the burglary offending. There is no victim impact statement from the golf club in assessing the extent of the damage.

Mitigating Features of Offender : Defence Submissions

[21] Turning to the aggravating and mitigating features of the offender as distinct from the offending, I note the offender was between 21 and 22 years old when the offending occurred. A relatively young man, as Mr George has emphasised, with a relatively unblemished record. He has one previous conviction for wilful damage.

[22] The early guilty plea which entitles him to a discount of 33%.

[23] Mr George, for Mr Daniel, has made earnest submissions that Mr Daniel needs to grow up and act responsibly as a father to his new born child and another child aged 1 year. Mr George notes that Mr Daniel is the provider for his parents, his partner and child, and that a lengthy sentence of imprisonment would be damaging to the family.

[24] Mr George referred to the alcohol and drug abuse in which Mr Daniel has been involved and for Mr Daniel submitted that a sentence should give him a chance to sit back and reflect on his behaviour and to chart a new way forward in his life, which will be beneficial to him and his family for which he must take responsibility.

Probation report

[25] I have received a helpful Probation report which notes many of the factors in relation to Mr Daniel's personal circumstances to which I have referred. Also noted is the support of his family and the continuing support of his partner. The Probation Service recommend a short custodial sentence followed by 12 months probation supervision subject to conditions.

[26] The Crown do not oppose a sentence of that nature, notwithstanding the perfectly proper recommendations by the Crown in relation to starting points and an end sentence of 20 months to 2 years imprisonment as being appropriate on a global basis.

Sentence

[27] I have considered carefully the submissions of counsel and grappled with what is a raft of serious offending. I propose to impose on you a sentence which I regard as lenient, Mr Daniel.

[28] The sentence I impose on you is six months imprisonment to be followed by 12 months probation supervision. That will be subject to the following conditions:

- (a) You are not to purchase or consume alcohol;
- (b) You are not to enter any liquor licenced premises such as bars and nightclubs;
- (c) You are not to leave the Cook Islands without the approval of the High Court;
- (d) You are to surrender your passport to the Court;
- (e) You are to comply with any directions of the Probation Service in relation to alcohol and anger management in particular.

[29] That sentence will be imposed concurrently on all except the Contempt of Court charges on which you are convicted and discharged.

[30] You may stand down.



Judith Potter, J