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**SUPPRESSION ORDER, ORDER PROHIBITING PUBLICATION OF  
VICTIMS NAME, PLACE OF OFFENCE OR PARTICULARS  
IDENTIFYING THE VICTIM**

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

**CR NO'S 139/11, 381/10, 415/10**

**CROWN**

v

**NIKOIA, TAUIRA**

Hearing: 15 December 2011  
Counsel: Ms Henry for the Crown  
Mr Petero for the Defendant  
Sentence: 15 December 2011

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**SENTENCING NOTES OF GRICE J**

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[1] I am now required to pass sentence on those offences and I will do so. There are a number of matters I need to cover so it may take a bit of time and you can always check with Mr Petero if you do not understand all of it. But I will make sure you understand the sentence.

[2] So Mr Nikoia the charges that you face are serious. The most serious is the rape charge that you raped **[suppressed]** on the 19<sup>th</sup> June 2010. For that charge you could go to prison for fourteen years. On the other charges, the indecent assault that

you committed an indecent assault by forceably inserting your fingers into her vagina, again a serious charge for which you could go to prison for seven years. And the final charge that you threatened to kill her in the same incident is also a serious charge and carries with it imprisonment of seven years.

[3] Mr Nikoia I have heard the statement of facts and I have heard from your counsel Mr Petero who has put your case to me. Essentially you attacked **[suppressed]** and subjected her to a harrowing time. You repeatedly abused her, you raped her, and you threatened to kill her. You both lived in an outer island and following counselling she told you she wanted to break the relationship up. The argument followed, and then you grabbed her and pushed her head against the doorway, threw her into a corner and threatened to kill her. She says she was having problems breathing. Then you threatened her if she wouldn't allow you to have with her and you forced her to have sex, you put your hand into her vagina and forced your fingers despite the pain she was suffering and had your elbow over her face to hold her down. Then you raped her.

[4] When she went outside you followed her and again threw her on the bed, again indecently assaulted her, she was in pain, and you threatened to kill her if she didn't cooperate. And in the end she had no choice.

[5] Now we have heard about the effects on the victim, **[suppressed]**. She's not only being physically affected and injured by the rape, but she continues to suffer from psychological affects. She recently spoke to the Probation Service and said the relationship had not been good and it was abusive, you had become jealous and obsessive about her, that you hit her. She says she is scarred for life. She has been to counselling at **[suppressed]** and in February when the psychiatric nurse reported on her she said that she was suffering from post-traumatic stress syndrome, said she doesn't like to be alone anymore, she has become reclusive, and she is trying to heal the emotional scars and get on with her life. She believes you have shown no remorse for the attack.

[6] And I have read the Probation Report which tells me that you are happy at your work that you are continuing to work on the island, that you are obliging and

willing and a hard worker, and that he believes that it is out of character for you to do this. You didn't want to talk about the offence but you said to the Probation Service that you truly regret what happened and you are very apologetic and you want leniency and just want to get on with life. The Probation Service itself considers this a very serious offence as indeed it is. The Cook Islands community has a right to demand that it is free from this sort of incident.

[7] The law requires me in sentencing an offence like this to punish you for it, to make you accountable, and also take into account that a sentence must deter others from doing the same sort of thing. I must express the concern of the community and protect society and women from these attacks. I have to consider under the law the seriousness of the offence and while this was serious it wasn't in the most serious category of rape. I must consider the effect on the victim but at the same time I must consider what is the least imposition of a restriction on your freedom in the circumstances given your particular family circumstances.

[8] But I am bound by what the Court of Appeal has said in the decision of *R v Katuke* (2008) CKCA 9 which both counsel had referred to. The Court of Appeal have made it clear that a starting point for a rape sentence is four years and then to that must be added aggravating factors and taken off mitigating factors.

[9] In this case the aggravating factors are the violence with which this was carried out, the threats which accompanied the rape, that's a substantial factor and it was a prolonged period of time. In addition it was [suppressed] who should be able to trust you. It is no excuse to say this is domestic violence, it just will not be tolerated. Domestic violence is not acceptable in the outer islands any more than it's acceptable in Rarotonga.

[10] To the four years I therefore add another two years for the aggravating factors, for the violence, the prolonged attack on [suppressed].

[11] On the plus side you are working, you are working hard, it is your first offence. I can take that into account. I can take into account your plea of guilty although that wasn't very early, counsel for the crown have indicated they feel it is

appropriate for the full one-third discount to be taken into account. But you did plead guilty and you saved the victim from having to re-live the offence in the Court room in a trial.

[12] I note that one of the reasons for delay may well have been you were waiting for a lawyer on legal aid, so that is why you couldn't get advice to change your plea.

[13] This offence now happened seventeen months ago.

[14] As I said I started with a starting point of six years, that is four years and two years for the aggravation. Off that I propose discounting for the guilty plea at the third that the Crown has urged me to and Mr Petero has urged me to, and I'm going to pause for a moment for counsel to assist me with that calculation. Taking that into account, I will proceed on that basis that 30 percent discount is one year eight months which takes the sentence down to four years four months, the Court of Appeal has suggested that the discount for guilty plea should be taken off first and quantified in a recent decision. I calculate a discount for a guilty plea as being 30 percent because I don't think the full amount should go on of which is one year eight months leaving a sentence of four years four months. And from that I then look at the fact that you are a first offender, you are a hard worker, there are a number of other factors of general application which mean you have never been before the Courts. So I propose discounting that four years four months to four years, so that the totality of the sentence is four years. If I am mistaken on the exact percentage of the discount nevertheless the total sentence will be four years.

[15] On the other charges they were linked to the incident, they were part of the incident. So it is appropriate that they be served concurrently. On each of those incidents, I take the indecent assault first, to the indecent assault I take a starting point of two years and add a year for the aggravating factors and reduce that by four months for the mitigating factors, and the guilty plea in the same proportions as earlier, leaving a period of imprisonment of two years and eight months. And on the threatening to kill, again I start with the two years add a year for the aggravating factors and reduce it again by four months for the other factors including the guilty plea, leaving two years eight months.

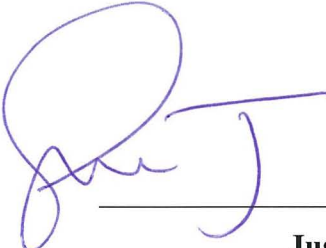
[16] So in the totality of things those will be sentenced concurrently, that means at the same time so they are not added on to the sentence.

[17] On the rape charge you are sentenced to imprisonment for a period of four years.

[18] On the indecent assault charge you are sentenced to a period of imprisonment for two years eight months.

[19] On the threatening to kill charge for a period of imprisonment of two years eight months.

[20] To be served concurrently.



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**Justice Grice**