

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

**CR NO'S 577-578/12**

**POLICE**

v

**NIA NGAMARAMA PETERS**

Hearing: 25 July 2013

Counsel: Ms Henry for the Crown  
Mr Mason for the Defendant

Sentence: 25 July 2013

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**SENTENCING NOTES OF HUGH WILLIAMS J**

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[1] Nia Ngamarama Peters, at the age of 51 and as a first offender in the Cook Islands you have pleaded guilty to two counts of assisting an escape of three jail inmates whilst you were a Prison officer. The two escapes took place a month apart and involved the same three inmates. On each of those charges, the maximum sentence is one of 7 years imprisonment.

[2] According to the file, this case has had a slightly chequered history in the sense that you were initially remanded in custody for a week in August 2012 but were then released on bail. You pleaded guilty but then successfully applied to set aside that plea in February this year. You pleaded guilty again on 4 April 2013 and were to be sentenced by Potter J on 10 May 2013 but the matter had to be adjourned.

[3] Some aspects of the facts of the matter are still unclear. You were a third officer in the Prison Service at Arorangi employed by the Ministry of Justice. On the first occasion, 20-21 May 2012, at about midnight you texted the inmates listed in the charge to escape. They did so, going out of the prison by the closed gate you had left that unlocked at the time. They committed offences while they were at large, principally it seems burglaries, but there may have been drug offences as well. That is uncertain. And about 3.00 am the next morning you texted them and you had sufficient control over them to ensure they returned to the Prison.

[4] Essentially the same thing happened about a month later, 24-25 June 2012. It is suggested that, again they left the prison by the same means because you had left the gate unlocked. Again they were absent for about three hours. Again they committed offences and again you had sufficient control over them that they returned after their period of liberty.

[5] All of that is certain. What is less certain is whether you may have given them a mobile phone as a means of communication and whether you made transport – a motorbike and a car – available to them.

[6] Unsurprisingly, given that two of these three were in prison for murder and the third was a burglar, they have told the authorities that it was you who initiated these incidents and that they committed offences while at liberty at your direction and that you repaid them with alcohol and cannabis.

[7] The suggestion is that these incidents occurred because you had decided to embark on some private investigation into the sources of cannabis in the Cook Islands community and particularly to try and identify the persons who, it was said, were plying the inmates with cannabis and alcohol. If that is correct, and you wanted to undertake such an investigation, what you should have done as a Prison officer was arrange that with the Prison authorities. It is at least possible if that had occurred that those supplying the inmates with these illicit drugs might have been identified in Court, in which case that would have been a praiseworthy matter on your behalf but you did nothing of the sort in advising the authorities. So if this

offending occurred as a result of some investigation that went wrong it would have been very obvious to you right from the outset that it had no chance of success.

[8] For the purpose of sentencing, I think the suggested investigation is a matter that can be taken into account, although plays little part in the ultimate outcome. And in fairness to you it is my view that the prisoners' views as to how this offending occurred – mainly that you instigated it – should be put to one side. It is not in evidence. It has not been tested in a Court. And the word of convicted murderers and burglars may not be worth taking into account.

[9] What is certain and what is implicit in the offences to which you pleaded guilty is that you voluntarily and intentionally permitted three convicted criminals to escape from jail on two occasions and commit offences while they were at liberty.

[10] The Probation Service and Mr Mason on your behalf emphasise your family circumstances. You have a 2 year old child of your latest relationship and are caring for two stepchildren. They say that despite, understandably, having been dismissed from the Prison Service as a result of this offending, you have managed to get yourself a job in hydroponics. Mr Mason has handed in a testimonial to the fact that you are doing well in that job.

[11] The Probation Service say that you strongly deny initiating the offending and discuss other aspects of the facts. In view of the view of the facts on which I intend to sentence you I do not need to elaborate on those matters again.

[12] The Probation Service suggest that the appropriate sentence to be imposed is one of 12 months community service order. I need to tell you at the outset that I think that substantially understates the seriousness of what you did.

[13] Ms Henry for the Crown submits that this was “relatively” serious offending. In my view it is a bit more than “relatively” serious. She elaborated on the facts, emphasising that the safety of the community was compromised by having a couple of murderers and a burglar deliberately let loose in their midst for three hours at a time on two occasions, thus enabling them to commit further offences. But she

acknowledges that, despite the seriousness of this matter, you are entitled to a credit for your plea and for your family circumstances and for the fact that in the Cook Islands at least you have never offended before. Perhaps for completeness I should say that you offended in a minor way in New Zealand many years but and that plays no part in today's sentencing.

[14] Ms Henry suggests that, although there is no precedent for sentences in this regard, a starting point should be of the order of 1½ years in jail. The reason there is no precedent for offending of this sort is, of course, that the Prison Service is a service of integrity and that incidents such as a rise to this offending are thankfully almost non-existent. They are certainly rare.

[15] On your behalf Mr Mason stresses your good work history, your family circumstances - including children of previous relationships - and suggests, in his words, that this offending was "unfathomable", a description I accept as apt.

[16] In sentencing you I need to try and impose a sentence that will make you accountable for the harm that you have done to the community and to denounce your conduct and deter any other Prison officers who might be similarly minded to go against the basic obligation of their profession and release prisoners whose sworn duty it is to keep them in custody.

[17] There is no tariff for sentencing for this sort of offence because, as I said, it is rare, but Parliament has decreed a maximum sentence of 7 years jail on each of these offences. That shows that Parliament regards offending of this sort as extremely grave.

[18] In my view, given the offence to which you pleaded guilty is specifically directed at preventing actions by Prison officers such as you undertook, the starting point should be at least 25 percent of the maximum. That is to say about 1½ to 2 years in prison, roughly what Ms Henry suggests.

[19] The aggravating features - those making it worse - are first, of course, that it was an offence by a Prison officer. That is part of the charge but even so, for a

Prison officer to initiate or at least to assist in a jailbreak by three prisoners who are dangerous to the community, and to do that on two occasions, is a flagrant breach of the trust and authority the community is entitled to expect from Prison officers.

[20] The circumstances of the offences warrant an increase in that starting point. Even if you did not initiate these jailbreaks you certainly facilitated them. You left the gate unlocked. You texted the inmates when it was safe for them to break out. You texted them to come back. You must have know with these three inmates – two murderers and a burglar – that the chances of them committing serious offences while at large in the community was very high. The community was entitled to be protected from the activities of these three men and yet you assisted their getting back out into the community, not once but twice. So that, I suggest, would nearly double the possible sentence to be imposed on you to something like 3 or 4 years imprisonment.

[21] You are, of course, entitled, as I said, to a reduction in that possible sentence. You pleaded guilty and thus avoided the cost and the necessity for a trial. You do have significant family circumstances which play their part in reducing the sentence. You do have a good work record and apart from this extremely foolish action on your part, it seems that you have done a good job as a Prison officer. All of that, in my view, means that the possible aggravated sentence should be reduced by about 20 or 25 percent.

[22] I need to take into account however that there were not just one but two offences.

[23] At the end of that assessment, my view of the matter is that the appropriate sentence to impose on you, on each charge, is one of 2½ years imprisonment with the terms to be served concurrently.

[24] As a postscript, Mr Mason asks that the Probation Report not go to the Justices of the Peace who are to hear a defended third charge brought against you. They will not see the Probation Report unless and until you are convicted.

[25] For the moment however you are sentenced to 2½ years imprisonment on each charge.

[26] Stand down.

A handwritten signature in black ink, appearing to read "Williams", written in a cursive style. The signature is positioned above a horizontal line.

**Hugh Williams, J**