

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

CR NO 553/13

CROWN

v

TAINA MAUNGAATI

Hearing: 26 November 2013

Counsel: Mr Manavaroa for the Crown
Mr Rasmussen for the Defendant

Sentence: 26 November 2013

SENTENCING NOTES OF GRICE J

[FTR 16:17:06]

[1] Taina Maungaati, you appear for sentencing today on one charge of burglary and that is a charge that you broke into a dwelling house at Matavera with intent to commit a crime and in fact you did steal an ipad. This is a serious offence. It has a maximum term of imprisonment of 10 years.

[2] The facts have been read out by the Police and commented on by your counsel. I propose to summarise those facts: The offence occurred on 8th September 2013. After investigations, following the owner discovering some things missing in his house it was found that you had broken into the house by getting in through a window that had been left half open. You used a block to gain height to enter the window. The complainant had been out. He returned in the afternoon and discovered the ipad was missing.

[3] The neighbours told the complainant that they had seen your motorbike and that was how he found out who it was. The Police then interviewed you and a couple of weeks later executed a search warrant on your house in Nikao. That was when they recovered the ipad.

[4] After an interview you admitted the burglary and you said you had seen the ipad on the bed and just taken it. You went outside through the door and locked it after you. You apologised for your actions.

[5] As issue of disputed facts has now been dealt with and the charge now relates to one ipad only, which is what I will deal with.

[6] You have been interviewed for the Probation report and you said to the Probation Service that you went to see the Defendant. In contrast it is alleged that this was an offence committed when you knew the complainant was out. The complainant has also been interviewed and was a friend of yours at that time.

[7] You have no previous convictions and you are aged 22 years of age. As I have said I have before me a Probation report, the Service interviewed you and your mother and the complainant. It says that you were cooperative and apologised to the Court and you say also to the victim, but he disputes that you apologised to him.

[8] Your mother endorses that you are good. Mr Rasmussen elaborates on this. You have disgraced your parents. To your credit, when you were living in New Zealand you studied there and completed levels 3 and 4 of the Business Administration qualification but you had to come back and so could not go any further at that time. Mr Rasmussen tells me you were going to pursue your studies. You did well at school and you now have a job and you are contributing to your mother's household.

[9] The Probation report recognises the seriousness of the offence, it says it is your first offence and recommends that it might be appropriate to consider supervision.

[10] As I said the victim does not accept that you apologised to him, he said he offered you friendship, he knew you had problems and was disappointed and frustrated by your action.

[11] The Prosecution in this case has quoted the principles of sentencing it considers appropriate. In this case being your being held accountable for breaking into the house, deterrence of similar crimes in this country (and I am aware that it has been a concern on the island) as well as denunciation of the crime are relevant. The Police accept it is your first offence, referred to your youth, that you pleaded guilty at a very early stage and that you are apologetic.

[12] Turning now to counsel's submissions, Mr Rasmussen made some careful submissions on your behalf. He candidly accepted that burglary is a serious offence and while you initially denied responsibility after the search warrant found the stolen ipad you admitted it. He says it was an opportunistic crime. There is some doubt about that but is not here nor there for this purpose.

[13] Mr Rasmussen points to the factors in mitigation: your age and that it is your first offence; that you are working, earning approximately \$150-\$200 a week and points to your other achievements that I have listed above. He submitted first that it would be appropriate for you to be convicted in order to come up for sentence if called upon with six months. As an alternative submission, he submitted that a fine might be appropriate and in that respect suggested a fine in the range of \$150-\$200.

[14] In reviewing all the material and submissions I have heard I must take into account the principles of sentencing. They are well established and conveniently set out in the New Zealand Sentencing Act. The principles that are particularly relevant in this case are accountability and a promotion of sense of awareness and deterrence as well as denunciation of his behaviour. The message to others is that burglary will be treated seriously by the Courts and the community must be protected from this type of offending.

[15] On the other hand, while burglary is serious this is at the lower end of the scale of seriousness and that should be taken into account. Also in your favour as I have said, you age, an early stage guilty plea, and the fact that you are working and

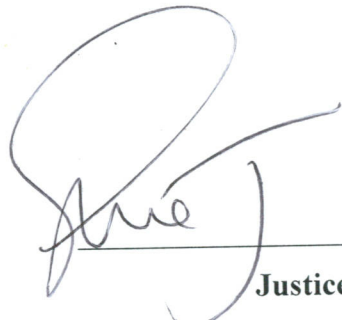
have got an education behind you as well as being apologetic. These factors count for you.

[16] I have before me a list of sentences for burglary for 2012 and 2013 which counsel have also had the opportunity of having a look at. Most of those sentences were in relation to offenders who had committed more than one burglary or who had previous convictions and they were almost uniformly imprisoned. In this case I do not think it is appropriate that you be convicted and your sentence suspended for 6 months if called upon as submitted. Initially I was of the view that supervision (which was the Crown's initial view) was appropriate. I have thought about that carefully and weighed up the factors. In the circumstances supervision would have been appropriate for a period of 12 months. However, the mitigating factors that weigh against this including the first offence, your youth, the fact that there are no specific aggravating factors in this burglary and an early guilty plea have, as well as the submissions by counsel for the Crown and Mr Rasmussen, have led me to conclude that a fine is appropriate in these circumstances.

[17] I have considered the submissions of your counsel in relation to a fine. I consider his suggestion of \$150 to \$200 is too low. The offence of burglary is serious and I consider the minimum fine is \$500.

[18] Therefore I impose a fine of \$500 together with Court costs of \$30.

[19] You can see the Court office to make arrangements for payment if necessary. I hope that you take advantage of the real opportunity that you have here to ensure that you never again come before this Court.



Justice Grice