

POLICE

v

TRAVEL ENGU

Date: 02 December 2015

Counsel: Ms A Mills for the Police  
Mr W Rasmussen for Defendant

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**SENTENCING NOTES OF THE HONOURABLE JUSTICE CHRISTINE GRICE**

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[1] Mr Engu, you are appearing here for sentencing on one charge of rape. That is a very serious offence. It carries a maximum term of imprisonment of 14 years.

[2] This incident occurred in the early hours of the morning in late 2014. The complainant, the victim, was alone in her home and came into the kitchen after being disturbed. She saw you hiding behind the door and you attacked her. You grabbed her around the throat and pulled her to the ground and raped her. You used violence as she struggled to escape and you both fell to the floor. After you raped her, she managed to escape to a neighbour's home to get assistance.

[3] You are known to the victim who is an elderly woman.

[4] As both Counsel have recognised, the Courts in the Cook Islands have looked at the New Zealand Sentencing Act for guidance and adopted its principles.

[5] In this offence the pertinent principles or purposes behind the sentence must reflect as both Counsel traversed, holding you accountable and punishing you, providing for the interests of the victim, denouncing your conduct, promoting a sense of responsibility for your conduct and protecting the community against you.

[6] The community requires that these types of offences be denounced. I am required to pass a sentence that not only punishes you but deters others from similar offending. The sentence must reflect the gravity and seriousness of this offence, holding you accountable as well as taking into account the effect on the victim. Nevertheless, as Mr Rasmussen said on your behalf, at the same time it must take into account your particular circumstances.

[7] I must impose the least restrictive sentence that is appropriate on the circumstances and also consider rehabilitation.

[8] Both counsel referred me to the Court of Appeal decision in *R v Katuke*<sup>1</sup>. In that decision, the Court of Appeal noted that in New Zealand when the maximum term of imprisonment for rape was 14 years, the starting point for sentencing in a contested sexual violation was 5 years. Since then, the maximum penalty in New Zealand for this offence has increased to 20 years. So the starting point in New Zealand is considerably higher now.

[9] In *Katuke* the Court of Appeal indicated that in an non contested rape with no aggravating factors, the starting point would be 4 years imprisonment. This was in line with the trend for sentencing of these types of offences in the Cook Islands since 1983.

[10] Ms Mills submits that while the Court of Appeal said 4 years, and the Court of Appeal is of course binding on this Court, that was some time ago and perhaps it is on the low side.

[11] In this case the aggravating factors include the use of force for violence although there was no weapon produced by you. You struggled with the victim and pulled her to the ground, she could not escape, you jumped on her and held her down. It is only luck that her physical injuries were not more severe. Additionally, this was an invasion of her home. You came into the house and you did so in the early hours of the morning when she was asleep. She should have been safe in her own home. This particularly undermines the sense of safety

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<sup>1</sup> (2008)2 CKCA 9

and security that the Cook Islands people should have when they are in their homes. No one knows whether this offence was premeditated, whether you planned it or whether it was just because you happened to be there and you had broken into the house. But nevertheless, you knew the victim she knew you. The victim was very vulnerable not only due to her age, she was elderly but she had had health problems. She was alone in the house. She was at an age where she deserved some respect. The community is outraged by this type of offending.

[12] I now turn to the impact on the victim. This information is provided by her family. The victim is respected in the community. She holds a traditional title. She is looked to by the community and her family with respect for her standing and wisdom. Since the attack, she has become withdrawn. She refuses to leave the house, sometimes not eating and spending time alone in her room. Her family says her joy and strength have gone. The attack crippled her physically, mentally and emotionally. It was traumatic for not only her but also has affected her family who are sad and angry that their beloved nena was subjected to this. In addition, the victim had a heart condition. She is on the road to recovery but it will be difficult and long.

[13] I now turn to consider your personal circumstances. As counsel pointed out you have a number of previous convictions these include burglary offences, the most recent in 2014 as well as a conviction for assault in 2011 and some driving related offences and failure to serve community service offences. The burglaries are relevant to this type of offending, I put to one side the assault on a female as there is some doubt about the facts surrounding that assault and neither counsel was able to assist on that. It was dealt with in 2011 by a Justice of the Peace. I therefore do not take that into account but the burglary offences are relevant.

[14] To your credit as Mr Rasmussen pointed out you pleaded guilty early in the piece, so you saved the victim the further trauma of a trial. Counsel candidly admitted that it was the strength of the DNA evidence that led you to this but nevertheless you are entitled to a credit.

[15] The Crown urged that the starting point should be 4 years in line with *R v Katuke* with an uplift of 3 years to take into account the aggravating factors. The Crown therefore suggests a total sentence of 7 years imprisonment. Ms Mills submits that a discount has already been taken into account in the starting point of 4 years in *R v Katuke*. This is a

reference to the remark in *R v Katuke* that the appropriate starting point in a non contested rape case with no aggravating features is 4 years imprisonment.

[16] Mr Rasmussen notes that the New Zealand case of *Clark* which was referred to in *R v Katuke* took 5 years as a starting point for a contested rape case with no aggravating or mitigating factors.

[17] Mr Rasmussen candidly accepts the serious nature of the offending and the fact that prison is inevitable, indeed prison for some time. He recognises the community concern about these types of offences but tasks me to take into account the actual circumstances and your individual circumstances, which I must do. He also points to the early guilty plea and urges a discount for that. He says there are no previous sexual offences, although admits the previous burglaries, but there is no pattern of sexual offending showing up. He points out that you are still young. He hopes that prison will have a rehabilitative effect on you and there will be programs to assist you gain some skills and manage yourself. He says you said that you had a difficult home and family life with no sense of a fixed family situation.

[18] Mr Rasmussen suggests that you be allowed to undertake programs in prison and on work release if possible as well as achieving an early parole. That will be up to you and that will depend on your behaviour in prison. Those issues will be considered by the appropriate authorities in due course.

[19] I come to the conclusion that the starting point in this case should be 5 years imprisonment. I take this as a starting point as I propose taking into account the early guilty plea. The approach of the Court in *R v Katuke* predates the widespread use of the sentencing methodology. The New Zealand methodology takes a starting point then considers the aggravating and mitigating factors personal to the offender, and then moves on to consider a reduction for a guilty plea.

[20] This case is in the serious category. It was an invasion into someone's home in the early hours of the morning, an attack on an elderly woman who was defenceless and alone. It involved a forcible rape and there is a suggestion, although it is not clear, of premeditation. The best that can be said in relation to circumstances is that you did not carry a weapon and it was not more violent.

[21] Taking into account those factors I take as a starting point 5 years and add 3 years for those aggravating factors.

[22] Factors of aggravation and mitigation personal to you include the previous offending which I take into account. I have noted the mitigation mentioned by Mr Rasmussen: that it is a first sexual offence for you; that you have pleaded guilty early and I also note from the probation report that you have support from your grandmother who you have looked after and supported. She says this is out of character for you. Nevertheless, you show little remorse.

[23] These factors balance each other out in terms of favourable and unfavourable personal factors. Therefore I start with the 8 years being the five years starting point plus the three years for aggravating factors. To that I apply a discount for the early plea in the range of 10% to 15%.

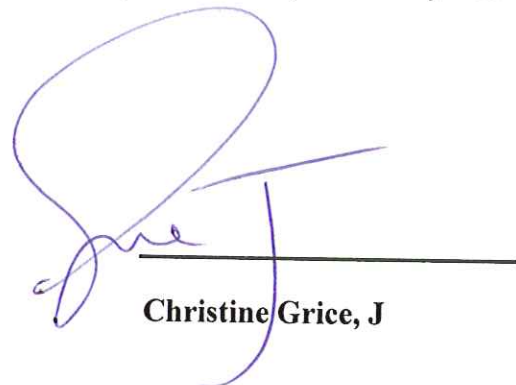
[24] In this case I propose to discount for the early guilty plea by 12 months. Standing back and looking at the offending and the factors I have already mentioned, I have come to the conclusion that a term of imprisonment of 7 years in total is appropriate.

[25] I therefore:

a) sentence you to 7 years imprisonment.

[26] I make an Order suppressing the victim's name and any details likely to identify her.

[27] You may stand down.



Christine Grice, J