

CROWN

v

TOUMITI KATUKE

Hearing date: 1 to 5 May 2017

Counsel: Messrs A Mills & T Koteka for the Crown
Mr N George for the Defendant

Sentence: 12 May 2017

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

[10:01:48]

[1] Toumiti Katuke, you are before the Court for sentence on one charge of assault under s 216 of the Crimes Act 1969 for which the maximum penalty is 1 year imprisonment, and one charge of injuring with intent to injure by assaulting around the head for which the maximum penalty is 5 years imprisonment.

[2] That charge was a representative charge and I take it as the lead charge for this sentencing. It is the charge which led to a Jury trial held last week and a verdict of guilty.

[3] The other charge of assault related to events in 2015 and you entered a guilty plea to that charge.

[4] I do not propose to reiterate the facts relating to the injuring with intent charge. I have itemised those in sentencing your husband and it is not necessary that I re-traverse them here.

[5] I refer briefly to the facts of the assault charge on 30 September. An assault was reported to the Atiu Police. Investigations revealed that on the 28 September 2015 you punched the victim Miimetua Katuke in the face after you found him in the company of your 3 years old child who was crying.

[6] As a result of the assault the victim had to have hospital treatment. He received a bruise on his right eye with minor cuts on his upper and lower eyelid and on the right side of his neck. As I have said you pleaded guilty to that charge.

[7] As the result of the offence which culminated in the Jury trial, the victim received serious injuries and was made permanently blind. Again I have itemised these in sentencing your husband and I do not repeat them now. Nor do I repeat the principles of which the Court must take account in sentencing. They are referred to in the sentencing notes for Ngatamariki Katuke.

[8] In relation to aggravating factors of the offending, I have itemised these previously but in your case I refer also to the previous assault in 2015. The events that led to your Jury trial and conviction followed very soon afterwards, in a period commencing just 2 months after the previous assault on Miimetua.

[9] As to mitigating factors the Probation report reveals no remorse though Mr George says that you are remorseful. You blame family rivalry and disputes for the predicament in which you now find yourself. You do not acknowledge your offending nor accept the Jury verdict as far as I can ascertain from a close reading of the careful Probation report prepared.

[10] I turn to sentencing, referring again to the guidance provided by the *Tauekei*¹ case in New Zealand although that case concerns much more serious offending.

[11] I take a starting point of 4 years imprisonment.

[12] Mr George has made heartfelt submissions that yours should be a non-custodial sentence which should be served on Atiu.

¹ *R v Tauekei* [2005] 3 NZLR 372 (CA)

[13] I consider such a sentence not available to the Court in the circumstances of this case. The offending is far too serious for that.

[14] To a starting point of 4 years imprisonment, I apply an uplift of 3 months to reflect the previous assault offending in 2015 to which you entered a guilty plea.

[15] Your sentence is therefore 4 years and 3 months imprisonment.

[16] On the assault charge the sentence will be 6 months imprisonment to be served concurrently.

[17] Mrs Katuke, in imposing those sentences I do not disregard that you and your husband have two young children aged 4 and 2. That is a matter of great regret. But the families of criminal offenders invariably suffer and some suffer greatly. It is not a matter of which I can properly take account in sentencing.

[18] The end sentence is 4 years and 3 months imprisonment.

[19] Please stand down.



Judith Potter, J