

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

**CR NO'S 669-674/18
693-697/18**

POLICE

v

IOVANE LANGATULE PAERAU

Date: 18 September 2019

Appearances: Ms K Bell for the Crown
Mr N George for the Defendant

SENTENCING NOTES OF THE HONOURABLE JUSTICE PATRICK KEANE

[13:56:40]

[1] Iovane Paerau, you appear for sentence for ten offences committed within the span 9 July – 13 November 2018: seven burglaries, arson, and possession of cannabis seeds and an unregistered firearm. You became accountable for those offences as a result of a search warrant executed at your home on 13 November 2018.

[2] You have been in custody on remand since 14 November 2018, your name suppressed to protect your right to a fair trial. You were for trial at this session. Two weeks ago you pleaded guilty to all offences on which you were for trial. Your remand in custody and your plea are both relevant to the sentence I must now impose on you.

[3] Your sentence must reflect firstly and finally, of course, the seriousness of your offences as they are set out in the statement of facts on the basis of which you pleaded, and which you do not dispute.

Offences

[4] Your first offence, a burglary at the Cook Islands Printing Office at Parekura, occurred between 4pm on 8 July 2018 and 6.30am on 9 July. You forced a louvre window, and pulled back the back door latch.

[5] You stole electronic devices including mobile phones and iPads, and left through the main door. You stored the stolen items at your home and the majority, it appears, were recovered on the search on 13 November 2018. The owners however suffered as it seems an insurance excess of \$2,500.

Golf club burglary

[6] Your second offence, a burglary at the golf club in Nikao, occurred between 23 – 24 July 2018. You forced the door and ransacked the building. You forced open a safe.

[7] You stole \$8,000 cash, a black hard drive, six bottles of wine and a bottle of whiskey, and a Bose speaker and its charger. The cash has not been recovered. Some of the alcohol may have been. The speaker and charger were apparently recovered.

First Vaimaanga burglary

[8] Your third offence, a burglary at a holiday rental property at Vaimaanga on 31 July 2018, was the first of three offences relating to that property. As I shall say shortly, you burgled that property a second time, and set fire to it.

[9] On 31 July between 7 – 10pm you forced a bedroom louvre window. You stole several electronic items including an external hard drive, a Surface Book, an iPod, a portable phone charger, a laptop mouse and a bag, two sets of sunglasses, perfume and car keys.

[10] The hard drive, as it seems, was recovered on the search of your property on 13 November 2018. Perhaps some of the other items. What I have is not precise.

Palm Grove burglary

[11] Your fourth offence, a burglary of the main office of Palm Grove at Vaimaanga, occurred at some time between 19 – 20 September 2018. You entered by removing an exterior window screen and several louvres.

[12] You stole \$2,200 from a safe in a cupboard, which may or may not be a cashbox but is described as a safe in the victim impact statement. Whether you had to force it to take the cash is not evident to me on the statement of facts or any victim impact statement. You may indeed have taken the safe away with you because that is referred to in the victim impact statement.

[13] The cash was not recovered when your property was searched on 13 November 2008. The costs incurred by the owners were slightly in excess of \$4,000, according to the victim impact statement.

South Seas International burglary

[14] Your fifth offence, a burglary at the South Seas International building at Ruatonga on 17 October 2018, between 8.30 – 11.30pm, took place when you entered through a kitchen window, using bolt cutters to cut iron bars, and removing louvres.

[15] Inside, you were captured by a security video camera near the counter. You used a broom to turn it away. You stole electronic devices to a total value of \$34,489. Of those, it seems, a large proportion were recovered on 13 November 2018.

Second burglary and arson

[16] Your sixth offence, your second burglary of the Vaimaanga rental property, happened on 19 – 20 October 2018. You forced the kitchen window by cracking holes in the glass panel directly beneath the door locks.

[17] You stole a 55 inch Samsung television, a Blu-ray DVD player and remote and a Bose sound bar remote. Of these, the TV certainly and perhaps the DVD player were recovered on 13 November 2018. Also, before you left this property you committed

your seventh offence. You set on fire to a bed in a bedroom. The property was extensively damaged. The cost of repair was of the order of \$550,000. The loss of contents was also considerable.

[18] The repair and perhaps owners loss were met by the insurer. But the owners were deprived of the property as an income source for a matter of months. They could not let it.

Aroa Nui BSP burglary

[19] Your eighth offence, a burglary relating to the Aroa Nui BSP ATM, happened on 6 – 7 November 2018. You broke into the Aroa Nui Hall to gain access to the ATM. You cut a hole in the casing for the ATM, using a power tool, and attempted to cut into the metal door of the safe. You failed and you left.

Two possession offences

[20] Your ninth and 10th offences, possession offences, came to light when your property was searched on 13 November 2018. You possessed a firearm not registered to you, and the police also found 952 cannabis seeds.

Effect on victims

[21] I have victim impact statements for four of the properties, the most detailed of which concerns your offences at the Vaimaanga rental property. The effect on the owners was very considerable. The property was less than a year old. The repair, as I say, cost \$550,000 and the contents had largely to be replaced.

[22] The owners lost rental income between October 2018 and April 2019. They also suffered significant distress, and disruption to their lives, across that extensive period. They now have to pay increased premiums to obtain house insurance. But that is as much attributable to earlier offending by another and more prolific arsonist than you. Your offence, however, did not assist.

[23] I have mentioned, as I have spoken about each burglary in turn, the losses as I understand them to be which are referred to in the victim impact statements, the three

other statements I have. I need not refer to them further except to say that they too involved disruption and expense and uninsured losses.

Pre-sentence report

[24] Your presentence report confirms that you began this spate of offending four months after you were deported in March 2018 from Australia, where you have lived for most of your life, and where your parents and other family members still are.

[25] You were deported back to the Cook Islands, where you were born, because you had acquired, in Australia, by age 31, an extensive history of property offending in the main, but other troubling offending also in respect of which you first began to appear in the Children's Court, Queensland, in 2004.

[26] According to the Crown you committed in Australia six burglaries, one possession of instruments, seven thefts, numerous dishonesty offences relating to vehicles; and receiving twice. You have three drug convictions and one of possessing explosives about authority.

[27] Your report says that you attributed your offending to a traumatic experience when young, which you did not describe. (Your counsel has mentioned the suicide of a friend, it may be that experience to which the report writer was referring.) That apart, your report attributes your offending to three factors – lack of family support here in the Cook Islands, extreme financial hardship when you arrived, and what it describes as "old habits".

[28] Your report says that you were cooperative and showed remorse, and accepted responsibility for your offences. It also said that you are especially concerned about your partner who has recently given birth to your child. She had been working reduced hours and, on the birth of your child, she will now be very hard pressed.

[29] Your report recommends however, because of the seriousness of your offending, a deterrent sentence of imprisonment.

Sentencing principles

[30] In sentencing you I take account of the principles, which always apply on sentence, and which have been identified to me principally in the Crown submissions.

[31] Essentially what I must do is impose a sentence on you which protects the community, holds you accountable for your offending, and deters others as well as you. I must also, to the extent I can, impose a sentence which enables you to rehabilitate and reintegrate with your family as soon as that may be practicable.

[32] In your case, however, the balance that has to be struck derives from the inherent seriousness of your offending as well as the maximum sentences capable of being imposed set against similar cases.

[33] Your principal offences for sentence, the seven burglaries attract maximum sentences of 10 years imprisonment, and the very fact that you committed seven burglaries, set against your related history in Australia, suggests, despite your counsel's submission, that you are to be sentenced as a recidivist burglar who steals for a living.

[34] In other words, you are for sentence as what is described as a category 2 burglar, according to *Police v Senior*¹, a decision of the full High Court in New Zealand often relied on here. And, as the Crown suggests, you are to be equated with the offender in *Police v Kakino*², though his offending was less serious than yours.

[35] On sentence for five burglaries Grice J took a starting point of 4 years, added 6 months for aggravating factors, and deducted 15 months, the period that the offender had spent in prison on remand. As I shall say shortly, and as you know, the Crown contends for a greater sentence in your case.

[36] There is no tariff for the offence of arson, which attracts a maximum sentence of imprisonment of 14 years. As the New Zealand Court of Appeal said in *R v Z*³,

¹ 18 CRNZ 340.

² 8 November 2012, CKHC, Grice J.

³ CA 138/00, 27 June 2000.

sentences can vary from lengthy prison terms to sentences in the community designed to assist and reintegrate. As the Court said:

Each case will depend on its own facts which will involve a consideration of the property damaged, danger to life both of occupants and firefighters and often the mental state of the offender will be of significance.

[37] In *Police v Maruaau*⁴ Williams CJ had to sentence a 16-year-old offender for the arson of a residential property in Aitutaki valued at \$580,000. This offender had initially been sentenced to a suspended sentence, but had offended further.

[38] Williams CJ took a 4 – 5 year starting point, taking into account the value of the property, the effect on the owners, the risk to them, the offender's motive – to escape conviction for a burglary of the property – and premeditation. The offender's age and his plea resulted in a sentence of imprisonment for 2 years 6 months.

[39] There is no tariff for possession of cannabis seeds, which attracts a maximum sentence of imprisonment of 5 years. As the Court of Appeal of the Cook Islands recently confirmed in *Hunt v R*⁵, under the law in the Cook Islands deterrence remains the paramount principle. Personal circumstances remain secondary.

[40] In that case the Court affirmed, for the offence of possession of 193 cannabis seeds, a sentence of 6 months imprisonment. I have not been referred to any authority relating to possession of an unregistered firearm which attracts a maximum sentence of imprisonment for one year.

[41] Finally I must take into account the principle of totality. Each of your burglaries is a serious offence. Your arson offence is even more serious. Possession of cannabis seeds in the number you had is also significant in the Cook Islands. I must, however, stand back and impose on you a sentence proportionate to your total criminality.

⁴ [2016] CKHC 13, Williams CJ.

⁵ CA 4/18, 30 October 2018.

Crown submission

[42] The Crown invites me to take your seven burglary offences as your lead offences for sentence and to sentence you concurrently for those offences from a starting point of 7 years. In this the Crown relies on *Kakino*, where Grice J said that a deterrent sentence was called for because of the severe impact burglaries have on those directly affected and on the economy.

[43] Secondly, the Crown invites me, relying on *Maranna*, where the property destroyed by arson was of much the same value as the one you set fire to, and where your motive may have been same as the offender there, concealment of the related burglary, to take a starting point of 4 – 5 years.

[44] Thirdly, the Crown invites me, relying on *Hunt*, where the quantity of seeds was significantly less than the quantity you possessed, to take a 12 month starting point.

[45] Finally, the Crown submits, that your offending as a whole, justifies a global starting point of 8 – 10 years, and having regard to your Australian previous related convictions, and the need to protect community, a starting point close to 10 years would be justifiable.

[46] The Crown accepts that you are entitled to a discount for plea. But because you did not plead until two weeks before trial, submits that it cannot be a full one-third discount. The Crown proposes a discount of 20%.

[47] The Crown also accepts that your sentence must be reduced by no less than 10 months to take into account your time in custody on remand, which is not automatically credited to you as time served.

Defence submission

[48] Your counsel began by acknowledging, on your behalf, how serious your offending is. But, as he explained to me, it arose from the fact that you had been deported from Australia from custody at the last sentence of imprisonment imposed on you there.

[49] As he explained, you grew up in Queensland but became estranged from your family when you were young and a street kid. By the age of 14 or earlier you became addicted to cannabis and methamphetamine and you offended to feed your habit. You are then, he said, to be regarded as a recovering addict now.

[50] Furthermore when you were deported to Rarotonga you came without any resources and you were unable to call in aid any relative here. Your family was in Australia and, if you had relatives here, you did not know who they were.

[51] Your counsel invited me to set your Australian convictions to one side and to sentence you for your offending here without undue regard to those convictions even if as a matter of reality you do have them and they conditioned your remand in custody.

[52] You have, he said, since you have been here, one very positive development in your life. You have met your partner. You now have a 2 month old son. You accept that while you must now serve a sentence of imprisonment that is a reason to turn your life to a more positive course.

[53] A factor which assists you, your counsel says, is that, very fortunately, at least 50% of the property you took was recovered on 13 November 2018. And, even if you pleaded late, you pleaded; and the Crown was spared having to prove its case at trial.

[54] As to your particular offences, he submits that Crown has inflated the starting point to be taken for your lead offences, the burglaries. Significantly lesser sentences are imposed for individual burglaries in the Cook Islands. He also submits that the starting point I should take for your arson offence ought to be that taken for the arsonist to whom I had referred in the decision relied on by the Crown.

[55] He appeals ultimately to the totality principle. The sentence must, he submits, reflect your offending here and ought to be geared to assist you to a better life.

Conclusion

[56] In now sentencing you Mr Paerau, I wish to say at the outset your presentence report, to my mind, succinctly and accurately captures the three reasons why you have

offended so rapidly and seriously on your arrival in the Cook Islands. Your counsel's submission confirms to me that to be so.

[57] As I understand it, and as he has confirmed, you were deported from Australia in March 2018 from custody, after completing a sentence of imprisonment of 2 years 9 months, imposed on you on 24 February 2015 for offences including burglaries, not dissimilar to those for which you now appear.

[58] When you arrived here, you were without any family support, though on your own account you had drifted away from your family in Queensland at an early age. You were unquestionably in a state of financial hardship. And that led you to pick up where you had left off in Australia. You resumed breaking and entering business and residential properties, to survive.

[59] Evidence of your offending was fortuitously discovered on 13 November 2018, when the search warrant was executed at your home, and the home of your partner. Some property was recovered. Perhaps as much as 50% of the electronic goods. But not everything and the cash has not been recovered. Your victims have suffered irrecoverable losses.

[60] Your arson offence was especially serious. It was highly destructive and even though repair was covered by insurance in main part, the owners suffered irrecoverable losses, most especially loss of rental income. Very fortunately they appear not to have been at risk themselves. But firefighters could have been, as is often said. The emotional cost to the owners cannot be discounted.

[61] Your two possession offences are in themselves independently significant and all of a piece with the range of offences, which led to your ultimate sentence of imprisonment in Queensland. And that spectrum of offending in Queensland I have to say, despite your counsel's submissions, cannot be ignored as a matter of reality.

[62] You brought a level of sophistication to your offending here, you could only have obtained there. And your propensity was well established there before you ever arrived here. That was the reason why you were deported. It is not an aggravating

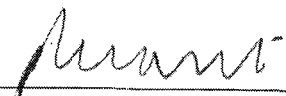
factor in itself. The Crown does not suggest this. But it does confirm your offending profile. That must be relevant to the sentence I now impose on you.

[63] I consider the global starting point range, 8 – 10 years imprisonment, proposed by the Crown, is warranted in your case. Standing back, however, and mindful of the principle of totality, I take a starting point of 9 years imprisonment for your lead offences, the seven burglaries, and will impose concurrent sentences for your other offences.

[64] I agree with the Crown that your relatively late pleas, justify at most a 20% discount. If I were to allow you a full one-third discount that would erode the inducement that discount offers to plead at the earliest reasonable point. On that account I reduce your lead sentence by 22 months. I reduce it further by 10 months on account of your period on remand.

[65] In the result, I sentence you for your lead offences, the burglaries, to imprisonment for 6 years 4 months. I sentence you concurrently for the arson to imprisonment for 4 years, for the possession of seeds concurrently to imprisonment for 9 months, and for possession of the unregistered firearm to imprisonment concurrently for 4 months. Your effective sentence remains 6 years 4 months.

[66] The suppression order is now able to be lifted, and I do so.



Patrick Keane, J