

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

**CR NO's 715/19  
100-101/2020**

**POLICE**

v

**JAPHET MANUEL**

Date: 1 September 2020

Appearances: Snr Sgt T Manavaroa for prosecution  
Mr W Rasmussen for defendant

Sentence: 1 September 2020

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**SENTENCING NOTES OF THE HONOURABLE JUSTICE PATRICK KEANE**

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[1:04:19]

[1] Japhet Manuel, you appear for sentence for three offences. You unlawfully entered two houses, the first at Titikaveka on 3 December 2019 and the second at Turangi, Ngatangia, on 8 February 2020. On that second date you were in breach of your court imposed curfew.

[2] On Tuesday, 3 December 2019, shortly after 1am, you pulled open the locked main door of the Titikaveka house, after first looking through the windows using your phone flashlight, and first attempting entry through a locked seaward side sliding door.

[3] You then went into an unoccupied room where you were confronted by the victim and her flatmate and escorted from the house. When interviewed, you admitted what you had done. I do not have a victim impact statement.

[4] On Saturday 2 February 2020 at about 2am you entered the second house at Turangi, Ngatangia, again unlawfully. How you were able to effect entry is not set out in the agreed summary, and I note that your offence was not reported until 8am that day. Once again I do not have a victim impact statement.

[5] The summaries do disclose that you committed these two offences on your way home after you had been nightclubbing, and consumed alcohol. When you committed the second offence, you were in breach of bail, imposed on 19 December 2019 for your first offence. You were subject to a curfew between 7pm – 7am.

### **Prior similar offences**

[6] At age 35 this is the fourth time that you have appeared for sentence for this form of offending.

[7] Your first such offence was on 16 June 2011, when you were aged 26. At some time during the night you entered a resort bedroom, by pushing open a sliding door. You indecently assaulted a guest, a sleeping woman. You touched her hip, breasts and shoulder before she woke and screamed.

[8] On 4 April 2012 three Justices sentenced you for burglary, to which you pleaded guilty early, to 6 months imprisonment and 12 months probation. On 22 June 2012 Williams J imprisoned you, concurrently, for 12 months for indecent assault, to which you had pleaded later.

[9] On 14 March 2012, a month before the Justices sentenced you, you entered the resort guest room of another woman. You asked if you could touch her and perform oral sex on her. She demanded that you leave and you did. As result you were charged with unlawful entry.

[10] On 15 March 2012 at 3am you entered a Titikaveka house, and the bedroom of the woman whose house it was, who was seven months pregnant. She was sleeping by herself. Her partner was sleeping in the next room. While she was asleep you performed oral sex on her and, when she woke, continued touching her. You left when she screamed. You were charged with unlawful entry and indecent assault.

[11] At 4.30am on 15 March 2012 you tried to enter yet another house. You did not succeed and when yelled at you left.

[12] On 17 March 2012 at 4am you entered tourist accommodation, where a honeymoon couple were sleeping. You touched the woman on her inner thigh. She screamed and you ran away. You were charged with unlawful entry and assault on a female.

[13] On 29 August 2012 Weston CJ sentenced you for all these offences to imprisonment for 3½ years, to be served concurrently with your then existing prison sentence.

[14] In 2016, on a date I do not have, you entered a house unlawfully in the early hours of the morning, and then a woman's bedroom. You touched her on the stomach and thigh and stroked her. You turned on her mobile phone flashlight so that you could look at her. She woke and chased you out, but it seems you returned.

[15] On 2 December 2016 Grice J imprisoned you for 2½ years for the indecent assault and two months, concurrently, for being found unlawfully on property. You were released in June 2019 on 12 months statutory supervision, which expired two months ago.

### **Pre-sentence report**

[16] Your pre-sentence report says that at the date of your offences now for sentence you were living with your mother, and younger sister, at your family home in Turoa, Titikaveka, and that she had recently returned from Australia, where she had taken your sister to be assessed by a psychologist.

[17] Your report says you suffer mental and emotional instability, which I see was the subject of a psychiatric report when you were last for sentence, to which I will refer. I do not have that report, but have its essence from Grice J's remarks on sentence. I do have a February 2019 psychological assessment made for the Parole Board, to which I will also refer.

[18] Your report goes on to say that you rely on your mother for structure and support and that she said you had been more stable before your present offences. You had got a job with a builder. But you could still change suddenly. You could appear quite stable, and then quite unstable. She considers you need counselling, not a further prison term.

[19] Your report says you had before your recent offences complied with your 12 month statutory supervision terms, which had taken effect on 1 June 2019. You had seen your supervising officer weekly. But in breach of those terms, of course, you have further offended.

[20] Your report says that you were forthcoming about your first offence for sentence. It does not refer to your second or third which happened after it was prepared.

[21] You said you first saw your victim on the beach, and began talking to her as a friend. You entered her house, to tell her about your feelings for her. You knew that it was wrong to enter uninvited.

[22] Your report describes you as a high risk offender with a persistent instinct to assault women indecently. You have not been deterred by imprisonment, and it has not helped you, but that is the only sentence apt for your offences. It recommends accordingly.

### **Psychiatric assessment**

[23] On sentence on 2 December 2016 Grice J said that your fitness to plead to the offences then for sentence had been confirmed by a psychiatrist.

[24] He said, Grice J says, that you began to display psychotic symptoms in 2010 as a result of heavy bouts of alcohol and cannabis. You became inappropriately sexual, and aggressive, and your judgment became impaired. You reported hearing controlling voices. You met the criteria for a DSM-5 diagnosis of schizophrenia coupled with poly-substance abuse.

[25] It was equally clear, he said, that you had no wish to give up alcohol and cannabis. You had declined antipsychotic medication a number of times. He did not think you would benefit from treatment in New Zealand. He recommended you be treated with depot anti-psychotic medication in Rarotonga.

### **Psychological assessment**

[26] On 23 February 2019 the psychologist, who assessed you for the Parole Board, was concerned to establish the extent to which you were at risk of reoffending on release. (I note that the 2016 psychiatric assessment was not amongst the materials on which she relied.)

[27] She found you reserved, but able to speak easily with a developed vocabulary. You refused to speak about your previous offences and your childhood and family. By contrast, you spoke openly about your sexual behaviour.

[28] She said you became disjointed at times. Also that you looked round the room intently to establish whether there was any camera. Occasionally, you explicitly sexualised your answers, as if to engage with her sexually.

[29] She was unable to establish whether you were remorseful and considered you lacked insight into your risk factors and the family and religious supports you needed to avoid further offending. She also noted, as the psychiatrist had, the link between your alcohol and cannabis use and your offending. Also your vulnerability to controlling voices.

[30] She assessed you, using two psychometric measures, to be at high risk of general reoffending and at well above average risk of sexual reoffending, and you apparently agreed. She also noted you displayed a high level of sexual preoccupation.

[31] She was concerned that on your release you would return to the environment in which you had offended, and would have easy access to your usual victims. You were to be released at a time of high tourist volumes.

[32] She recommended you receive counselling and be assessed further to establish what treatment you needed for any psychotic tendencies. Also that, on release, you not leave home at night when you were at highest risk of reoffending.

### **Sentencing principles**

[33] In sentencing you I take account of the principles, which always apply on sentence, and which counsel have identified to me.

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

[35] In the balance I strike I must recognise that your offences, though separated by weeks, and involving different victims, are simply the most recent expressions of your entrenched propensity to break into homes and resorts at night to assault indecently women, who are often asleep. I must put their safety first.

### **Submissions**

[36] The police contend that your offending requires a sentence of imprisonment to hold you accountable and to deter you and others from entering homes and resorts at night.

[37] Several factors aggravate your offending, the police contend. Your history of offending, mostly especially the same way. Offending while on bail. Acting with premeditation after nightclubbing. Invading your victims homes at night. The effect on your victims.

[38] No other sentence than imprisonment will serve, police contend. You offend persistently in the same very concerning way, despite sentences of imprisonment and probation. There is little prospect you will rehabilitate.

[39] Your own counsel accepts, responsibly, that no sentence short of imprisonment would serve to answer your offending, and protect the community. He does invite me to consider your need to rehabilitate. He points out that you are a model prisoner.

[40] He asks me also to take into account that you come from a dysfunctional family as result of which you suffered abuse. He invites me to give you credit for your plea, and for your time in custody, which I calculate to be of the order of seven months.

### **Conclusions**

[41] To my mind, your two principal offences, unlawfully entering the two houses in the early hours of the morning, are serious offences requiring a significant term of imprisonment.

[42] As you yourself confirmed, when you were assessed for your probation report, the only reason you entered the first house in December 2019 was because you were attracted to the woman living there, whom you had met however casually on the beach.

[43] The reason why you entered the second house in February this year is not set out in the agreed summary. Nor is it referred to in your report. But I am told the occupant was a woman and the fact that you entered her house in the early hours of the morning, just as you did the first, suggests strongly she was the target.

[44] As I said, furthermore, when setting out the principles I am to apply on sentence, since 2011 all your convictions and sentences arise out of the same persistent form of offending.

[45] Invariably, at the clubs alcohol and perhaps cannabis disinhibit you. You enter a house, or resort unit, where you know a woman lives or expect a woman is staying. If they are asleep you assault them indecently. If they are awake, and by themselves, you try to convince them to have sex with you.

[46] Even if they know you they must find this very frightening, especially when you assault them while they are asleep. Mostly, and highly fortunately, they have not been altogether alone. But that is completely fortuitous. Your offending could so easily have escalated to an even more serious level.

[47] Of great concern, furthermore, is how entrenched your propensity to offend is. You have not been deterred by three sentences of imprisonment. You have not been assisted by probation. You have refused medication for your apparent psychoses. You have continued to drink alcohol to excess. You may have continued to use cannabis. You have ignored court orders.

[48] In sentencing you for your two principal offences, therefore, I intend to impose concurrent sentences from a heightened starting point, recognising that each is an expression of the same troubling propensity, and that each was in breach of your statutory supervision terms, and the second in breach of bail. That starting point is imprisonment for 2.5 years.

[49] Aggravating your principal offences is your recent history of persistent similar offending, coupled with your complete unwillingness to accept treatment, or alter your conduct in any way, as a result of which I add one year, resulting potentially in a sentence of imprisonment of 3.5 years.

[50] You are entitled to a credit for plea. It is usual to allow a one third credit, where a plea is consistent with remorse, saves the cost of trial, and spares a complainant. But you have shown no obvious remorse, and your guilt was immediately obvious and simple to establish. The fact that you re-offended while on bail is also concerning. A lesser credit is proper. I allow you 25 percent.

[51] Your resulting sentence is 2 years, 7 months. But finally, as I have said you have been in custody on remand, first between 3-19 December 2019, 16 days, and then since 13 February 2020, a further 6.5 months. I reduce your sentence by 7 months to 2 years.

[52] For your principal offences I sentence you to imprisonment for 2 years. For your third offence, the breach of bail, I sentence you concurrently to imprisonment for one month. Your effective sentence remains 2 years.



**Patrick Keane, J**