

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

**CR NOS 306-307/2020
465-466/2020
486-487/2020**

POLICE

v

RENEE JAMES HAND

Date: 9 July 2021 (via Zoom)
Counsel: Ms A Maxwell-Scott for the Crown
Mr K Ahsin for the Defendant
Sentence: 9 July 2021

**SENTENCING NOTES
OF THE HONOURABLE JUSTICE DAME JUDITH POTTER (via ZOOM)**

[11:54:09]

- [1] The defendant, Mr Hand, entered guilty pleas to the following charges:
- a) Injuring with intent to cause grievous bodily harm under s 209(1) of the Crimes Act. This offence carries a maximum penalty of 10 years;
 - b) Threatening to kill under s 329; maximum penalty 7 years imprisonment;
 - c) Two charges of Assault on a female – they being assaults against his wife Chiavanni Le'Mon and his mother-in-law April Le'Mon. These offences carry a maximum penalty of 2 years' imprisonment; and
 - d) Arson under s 317(b) of the Crimes Act which carries a maximum penalty of 14 years' imprisonment.

Background

[2] It is necessary that I summarise the background facts.

[3] On 18th July 2020 the defendant and his then wife Chiavanni – I understand the couple have since been divorced – went out for the evening leaving their two sons and a friend at their home for a sleepover with Chiavanni’s mother April Le’Mon. Chiavanni, the victim, drove the family car to her friend’s place and then headed to another friend’s place for some birthday drinks. The group then took the Rehab Bus into town to the Rehab Nightclub and went to get some food.

[4] The defendant, Mr Hand, appeared to be getting upset and was in an aggressive mood, apparently over Chiavanni’s lack of attention towards him during the evening. She became embarrassed by his behaviour. He was completely drunk and she decided to drive him home, dropping off a friend at the friend’s home on the way.

[5] The defendant appeared unhappy about this and refused to get in the car but eventually he did, into the back seat with the friend in the passenger seat. The friend was dropped off and Chiavanni carried on to their home with the defendant in the rear seat of the car.

[6] When they arrived at their home, the defendant initially refused to get out of the car but he did when Chiavanni insisted because she needed to go back to pick up their friend whose birthday it was, and drive her home as arranged. Chiavanni got back in the car and put it in gear. She then felt a rope-like material being wrapped around her neck and pressure applied as the defendant stated “I’m going to fucken kill you, I’m going to fucken kill you right now”.

[7] Those facts give rise to charges 1 and 2; injuring with intent to injure and threatening to kill.

[8] Chiavanni was revving the engine to try and make a noise as all this was going on, and she was pleading with the defendant to let her go. She felt herself lose consciousness and was screaming for somebody to help her and calling for her mother. Chiavanni managed to get the rope in between her neck and fingers as the defendant leapt forward to threaten her. She pushed the rope up over her face and then managed to get out of the car and ran to the carport door screaming for help. As she got to the door, the defendant grabbed her and threw her onto the

lawn. He then jumped on top of her and grabbed her neck squeezing with both hands. Again, she felt she was losing consciousness. The defendant acknowledges that strangulation with his hands took place. Chiavanni also felt punches to her face and her eyes.

[9] At this stage, the victim's mother April Le'Mon arrived on the scene. She had been woken by screaming at about 2.30 am and, thinking it was a child screaming, went to check in the lounge where the boys were having their sleepover. Through the window she saw her daughter on the grass outside with the defendant on top, his left hand around Chiavanni's neck and his right fist punching her.

[10] Those facts give rise to the first charge of assault on a female.

[11] April Le'Mon ran to where she could see her daughter struggling to breathe and punched the defendant in the head at least three times. Chiavanni managed to kick the defendant and ran away to her neighbour's house for help.

[12] Mr Hand then turned to April Le'Mon, stating "I am going to kill you and I will kill her too". April Le'Mon grabbed her pareu which had become undone and as she did this, the defendant punched her in the left eye with his right fist. She ran back into the house.

[13] That episode gives rise to the second charge of assault on a female.

[14] In the house April Le'Mon rang the police but while doing so she saw the defendant jumping into the car, then jumping out and grabbing a petrol can. He proceeded to pour petrol inside the car leaving the can in the car. He then lit the petrol in the car with a cigarette lighter. He jumped onto his motorbike and sped off, saying "I'm going to kill myself" as he departed.

[15] Those facts are the basis for the arson charge.

[16] April Le'Mon shouted for her daughter to come home from the neighbour's place. Chiavanni ran home and saw the fire in the car. She ran to get her children and her mother out of the house. The car was on fire and the smoke was by then going in the house and the smell of burning plastic was apparent. April Le'Mon had woken the children and was moving them towards the back of the house. They got out of the house as the neighbours and the Police

arrived. The fire was seen and heard to explode with flames rising high and burning embers landing around. In the carport next to the car was a 44 gallon drum of coconut oil and three gas bottles, which fortunately were not ignited.

[17] As the neighbours and the Police arrived, some people tried to put out the fire which was now spreading to the timber around the house. The Fire Service arrived and started to put out the fire. The car and surrounding areas were severely damaged. The Fire Service reported a hard to control fast burning fire that would have burnt the house down within a matter of minutes had the Fire Service not arrived.

[18] The Police found the victim Chiavanni very upset and with visible injuries to her eyes, scratches to her face and marks to her neck consistent with the strangulation attempts. She was taken to hospital where the following injuries were noted: bruises and abrasions to her neck consistent with strangulation; tenderness on tilting her head; swelling to her cheeks; difficulties in opening her mouth; and in the left eye a subconjunctival haemorrhage with preserved vision. Photographs taken of the victim show these external injuries.

[19] The defendant, having fled from the scene, spent two days in the mountains before handing himself in to Police. He made admissions as to the assaults when interviewed. He accepted trying to strangle his wife with both his hands, and tackling her to the ground when she tried to run away. He stated that he did not recall setting the car on fire but accepted if others said he did, then it was possible. He apologised for his actions saying he lost control. A number of photographs were taken of the fire damage. They show the car completely destroyed.

Victim Impact Statement

[20] I turn to the victim impact statement made by Chiavanni. As mentioned, she sustained severe physical injuries as a result of these incidents, which left her weak and unable to properly care for her children for three weeks following the events.

[21] Her mother suffered a bruised eye after being punched by the defendant while she was trying to get him off Chiavanni, as he was on top of her trying to strangle her.

[22] The family's Volkswagen car was destroyed by the fire lit by the defendant. In the car was Chiavanni's wallet with two weeks wages, her laptop and cell phone, they were all destroyed. Chiavanni and her children had to live in rental accommodation. Their Honda Wave motorcycle, which was their only other means of transport, was taken by the defendant when he debunked after the incident. The actual financial loss Chiavanni suffered exceeded \$24,000 plus legal fees. That includes the value of the car, estimated at \$11,500.

[23] Chiavanni reports that the emotional impact was extremely extensive. She was traumatised, distraught and unable to cope with the numerous issues confronting her following these events. The financial burden that resulted in July 2020 still remains a serious concern for her. She has been apprehensive about her presence in public and at work with concerns about what the community and the public would say about the violence that happened in her family. She constantly wakes from her sleep with nightmares and has had to have medication to help her sleep.

[24] April Le'Mon was also traumatised, watching her daughter being strangled by the defendant and aware of the injuries that her daughter sustained from him. She, too, has been having nightmares.

[25] The three children – aged 15, 11 and 9 – have all suffered anxiety and emotional upset in varying ways and degrees, which is hardly surprising.

[26] Many of Chiavanni's friends were distraught by what has happened. Chiavanni has found it exhausting constantly being asked questions and trying to find answers for what has occurred. She has had to develop a risk management plan to try to remain safe in her workplace and her residence.

Probation Report

[27] The Probation report records an initially happy marriage between the defendant and Chiavanni but stresses arose from a business venture in 2015. The business was sold in 2020. The couple attended counselling but the relationship deteriorated. The defendant became increasingly possessive and jealous of Chiavanni. The defendant took no issue with the summary of facts on which his guilty pleas were entered. But in the Probation report he

attributes some blame to Chiavanni, claiming she “cheated on him”. Mr Hand has a previous conviction for assault in a domestic situation.

Mental Health Services Report dated 30 June 2021

[28] Dr Fariu assesses Mr Hand as having no mental illness but likely to be suffering acute grief from the marriage breakdown. He recommends that anger management therapy and continuation with the alcoholics anonymous programme which Mr Hand has been undertaking in prison, be continued.

Purposes and principles of sentencing

[29] The principal purposes applicable here are to hold the defendant accountable for the harm he has done by his offending, to promote in him a sense of responsibility, to provide for the interest of the victims, and to denounce and deter as well as assisting as far as is possible in rehabilitation and reintegration of the defendant. The relevant principles need to take into account the gravity of this offending, its seriousness, and the effect of the offending on the victim. The Court is also required to impose the least restrictive sentence available in the circumstances.

Aggravating and Mitigating Factors

[30] The aggravating and mitigating features of the offending are summarised in the Crown’s submissions and no issue is taken with them.

[31] Harm to the victim – as I have stated, Chiavanni sustained multiple injuries and April Le’Mon also sustained an injury to the left side of her face.

[32] Prolonged violence – the violence was not particularly prolonged but it is significant that there was more than a single one-off episode. Indeed, there were two episodes of attempted strangulation. Then after the assaults to the person of Chiavanni and her mother, the defendant went about setting fire to the car in a very dangerous situation.

[33] Vulnerability of the victim – Chiavanni, the defendant’s wife, was in a very vulnerable situation. The offending commenced in the car from which she had limited opportunity to

escape. The Courts have had quite a lot to say about domestic violence, described as a scourge on our community. In the case of the *Solicitor General v. Hutchinson*¹, the New Zealand Court of Appeal discussed the treatment of domestic violence as an aggravating factor in the context of grievous bodily harm offending. The Court said:

[26] Before turning further to the present offending we wish to deal briefly with how this Court dealt with the significance of a domestic setting to sentencing in the case of *R v. Taueki*. The Court recognised that “offending [involving] the invasion of the sanctity of the home is a particular factor aggravating the seriousness of the offending...”

[27] The family home is a place where an occupant is entitled to feel, and be, safe. The Courts have repeatedly emphasised the importance of respect for the sanctity of the home...

On the night in question, Chiavanni drove the defendant to their home where two of their children and her mother were sleeping, also another child. She was entitled to be able to rely on the safety and security of her home and when there, to feel and to be, safe.

[34] Breach of trust – the defendant abused his position of trust in relation to his wife. They had been in a long term domestic relationship. Chiavanni was dependent on the defendant for emotional, physical and, to at least some extent, financial support.

[35] The Crown refers to premeditation. I do not regard premeditation as an aggravating factor in this offending. Overall, I would describe the offending as calculated rather than premeditated.

Submissions

[36] I refer briefly to the submissions of counsel which were very responsibly presented in writing.

[37] The Crown submitted that an overall starting point for sentencing of eight years imprisonment is appropriate. The Crown took as the lead offence, injuring with intent to cause grievous bodily harm, and referred to the sentencing bands established by the New Zealand

¹ *Solicitor General v. Hutchinson* [2018] NZCA 162.

Court of Appeal in the Judgment of *R v. Taueki*², a case which involved grievous bodily harm offending with a maximum penalty of 14 years imprisonment. The Crown acknowledged that the starting point needs to be adjusted to take account of the lower maximum sentence for the offending of which the defendant has been convicted. But the written submissions do not refer to the important and relevant judgment of the Cook Islands Court of Appeal in the case of *R v. Goodwin*³ in 2019. In that case, the Court adjusted downwards the *Taueki* bands for grievous bodily harm offending to take account of the more lenient sentencing regime for grievous bodily harm offending in the Cook Islands. Mr Ahsin properly noted that case in his submissions.

[38] The Prosecution referred to *Davidson v. R*⁴, a decision of the New Zealand Court of Appeal which involved a charge of injuring with intent to cause grievous bodily harm and has factual similarities with the violent offending in this case, particularly in that there were two attempts of strangulation. In *Davidson*, the second strangulation caused the victim to lose consciousness. A five year starting point was upheld on appeal with an uplift of 12 months for offences additional to the offence of injuring with intent to cause grievous bodily harm. On the basis of *Davidson*, the Crown submitted that a starting point of at least five years imprisonment was justified on the charge of injuring with intent to cause grievous bodily harm. I note that *Davidson* is a New Zealand Court of Appeal decision, so adjustment is required for the impact of the Cook Islands Court of Appeal judgment in *Goodwin* on the bands and starting points for sentencing in the Cook Islands.

[39] For the arson offence, the Crown submitted a starting point of at least four years imprisonment, noting that there is no tariff for arson and that sentences vary greatly because of the differences in circumstances and motives. Counsel cited several New Zealand arson cases as providing guidance. I have referred to them all.

² *R v. Taueki* [2005] 3 NZLR 372 (CA).

³ *R v. Goodwin* [2019] CKCA 1.

⁴ *Davidson v. R* [2020] NZCA 230.

[40] In *R v. Munro*⁵, the New Zealand Court of Appeal stated⁶:

Where ... the offence involved domestic premises which were occupied at the relevant time and where, as a result there was a risk to life ... a starting point of five years' imprisonment was well justified.

[41] The Crown noted that while the defendant did not set fire to the house, he clearly would have known his family was sleeping inside and it was only the quick action of the Fire Service that saved the burning of the car parked near to the house taking full hold.

[42] The Crown submitted that the sentence for arson should be cumulative on the sentence for injuring with intent to cause grievous bodily harm, and that on a totality basis a starting point of eight years is appropriate.

[43] I turn to the defence submissions.

[44] On the injuring with intent charge, Mr Ahsin referred to the *Taueki* bands and to the case of *Davidson*. He accepted that the offending falls at the higher end of *Taueki* band 1 or the lower end of band 2.

[45] Counsel referred to the case of *Goodwin* in the Cook Islands Court of Appeal and the reduction by that Court of the *Taueki* bands to reflect the more lenient sentencing regime for grievous bodily harm offending in the Cook Islands. He noted that the Court of Appeal applied a reduction of approximately 50 percent to bands 1 and 2 resulting in a starting point range of one to three years in band 1 and three to five years in band 2. Consequently, the higher point in band 1 and the lower point in band 2 coincide.

[46] Counsel submitted an appropriate starting point for this offending is 2 to 2 ½ years' imprisonment, perhaps factoring in that offending in this case involves a lesser maximum penalty, seven years, than the grievous bodily harm offending, 14 years, with which *Goodwin* was concerned.

⁵ *R v. Munro*, CA132/02, 24 July 2002.

⁶ At [11].

[47] On the arson charge, comparing and contrasting aspects of the factual situations in many of the cases referred to by the Crown, Mr Ahsin submitted a starting point of two years two months imprisonment is appropriate. He sought concurrent sentences but accepted the Court may determine that one or more of the sentences should be served consecutively – the word used in the New Zealand Sentencing Act is cumulatively.

[48] Counsel listed numerous mitigating factors related to the defendant as distinct from the offending. Counsel referred to the early guilty pleas, the defendant's deep remorse, the apology he has made to Chiavanni and April Le'Mon, his acknowledgement for his wrongdoing, and his full acceptance of responsibility. He noted the defendant has been in prison on remand for about a year and has good reports of his behaviour in custody. He has attended counselling sessions and received mentoring from pastors and church members. Mr Ahsin sought a substantial discount for these mitigating factors.

Sentencing approach

[49] I propose to approach sentencing by taking as the lead offence arson, which carries a maximum penalty of 14 years imprisonment. The sentence for arson, which I will determine and explain, shall be served cumulatively with the sentence for injuring with intent to cause grievous bodily harm, which has a maximum penalty of 10 years imprisonment.

[50] The New Zealand Sentencing Act 2002 provides guidance on the use of cumulative and concurrent sentences in s 84. Cumulative sentences are generally appropriate if the offences for which the offender is being sentenced are different in kind, whether or not they are a connected series of offences. The offences for which Mr Hand is to be sentenced arose essentially from a single incident, and, to that extent, were connected. But the offences against the person are different in kind from the arson offending which was against property.

[51] As to arson, in the case of *Erickson v. R*⁷, the New Zealand Court of Appeal noted that appellate authorities generally adopted starting points in the three to five years of range for arson, although particular circumstances might dictate a lower starting point.

⁷ *Erickson v. R* [2012] NZCA 449.

[52] In *Munro*, a five year starting point was upheld when the offenders intentionally set fire to a residential house when they knew it to be occupied, thus involving a risk to life. In this case, Mr Hand did not set fire to the house but he set fire to the family car parked nearby, surely aware of the potential for the fire to spread to the house. He clearly knew his own sons were sleeping in the house and his mother-in-law and another person were also in occupation. The fascia boarding of the house was on fire and had not the Fire Service arrived and taken swift action, the house would have rapidly burnt down. In setting fire to the car, the defendant acted in revenge against his wife whom he had assaulted and injured. In all those circumstances, a starting point of four years imprisonment for the arson offence is justified.

[53] I turn to set the band and the starting point within that band for sentencing on the charge of injuring with intent to cause grievous bodily harm. I identify the *Taueki* factors as violence, but not at the extreme end. The violence was prolonged in that the initial violence in the car was followed up with subsequent acts of violence against Chiavanni and also an assault on her mother. The violence was unprovoked and gratuitous. Any jealousy Mr Hand may have felt in relation to his wife does not amount to provocation.

[54] Injuries – Chiavanni suffered multiple injuries, fortunately none life threatening. April Le'Mon also suffered a black eye.

[55] Vulnerability of the victim – I have previously referred to this when addressing aggravating factors. Chiavanni was returning to her home with her husband where her children lay sleeping. She was entitled to feel and be, safe in her home. She was especially vulnerable to the unprovoked vicious assaults by the defendant – he breached the trust he owed to his wife.

[56] I do not assess premeditation as a relevant factor. The offending was certainly not opportunistic but there is no evidence of prior planning or preparation; rather the offending was deliberate and calculated by the defendant to take revenge against his wife.

[57] I assess this offending at the top of band 1 in *Goodwin* which, like the lower end of band 2, indicates a starting point of three years imprisonment. This needs to be adjusted downwards to take account of the lesser penalty under s 209(1), ten years imprisonment. I take

an adjusted starting point of 2 ½ years' imprisonment. To this, I apply an uplift of one year for the other violent offending, threatening to kill and two assaults on a female.

[58] The sentence for the charge of injuring with intent to cause grievous bodily harm is thus 3 ½ years.

[59] The sentence for threatening to kill is four months imprisonment, and on each of the assault charges five months imprisonment. These sentences are to be served concurrently with the sentence for injuring with intent to cause grievous bodily harm, 3 ½ years.

[60] The sentence for arson, 4 years imprisonment and the sentence for injuring with intent, 3 ½ years, are to be served cumulatively, resulting in an end sentence, before any discount, of 7 ½ years' imprisonment.

[61] I consider this sentence proportionate to the gravity of the overall offending.

[62] Finally, I turn to consider whether there are circumstances relating to the defendant which justify a discount on that sentence.

[63] The Crown accepts the guilty pleas were entered at the first available opportunity. I note that Mr Hand is remorseful and accepts full responsibility for his wrongdoing and criminal conduct. These factors justify a discount of approximately 25 percent. I set the discount at two years, just over 25 percent, resulting in a reduced end sentence of five and a half years imprisonment. The discount will be applied to the two cumulative sentences by reducing each by one year, to 3 years and 2 ½ years respectively.

[64] The defendant is also entitled to credit for the period he has spent on remand in prison. I direct the Court to obtain exact details and an appropriate reduction from the five and a half years sentence of imprisonment will be recorded in my written sentencing notes.

Sentence

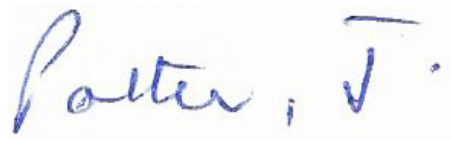
[65] Mr Hand, the sentences imposed on you are as follows:

- a) Charge 1, injuring with intent to cause grievous bodily harm – two years, six months;
- b) Charge 2, threatening to kill – four months;
- c) Charge 3, assault on a female – five months;
- d) Charge 4, assault on a female – five months;
- e) Charge 5, arson – three years.

[66] The sentences on charges 1 and 5 are to be served cumulatively – five and half years. From this sentence are to be deducted 11 months and 9 days for the period Mr Hand spent in prison on remand prior to sentencing. The balance of the sentence is therefore 4 years 6 months and 21 days.

[67] The sentences on charges 2, 3 and 4 are to be served concurrently with the sentence of two years, six months imprisonment on charge 1.

[68] You may stand down.

A handwritten signature in blue ink that reads "Potter, J." with a horizontal line underneath.

Judith Potter, J