

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

CR NO's 102-103/2020

POLICE

v

TAPUNI TANGATAPOTO

Hearing dates: 22 and 23 March 2021

Counsel: Messrs M Williams and J Epati for the Crown
Mr N George for defendant

Sentence: 26 March 2021

SENTENCING NOTES OF HUGH WILLIAMS, CJ

[1.51-34]

[1] Mr Tangatapoto, you appear for sentence having been found guilty by the jury on two counts of indecent assault on a girl, one of indecently assaulting her yourself and the other of inducing an indecent act on her part on your person.

[2] Both charges involve a maximum sentence of 10 years imprisonment.

[3] The facts are that the girl concerned was biking home from school, a 10 year old carrying out what ought to have been an innocent journey in order to get to her home after being at school. You flagged her down and led her to a secluded spot. You put your hand inside her underwear. You put her hand on your penis. You assaulted her in the ear. You endeavoured to persuade her not to tell on you as for the activities you had undertaken.

[4] You were only able to do this because each day you took time off work from about 1.30 or thereabouts, travel from your workplace to your son's school, pick him up, take him home and then return to work. On this day in question your return was about 3pm, a little later than usual.

[5] It is perhaps fortunate and fortuitous that the following day after the girl had complained to her mother and the complaint had been laid with the police, she with the police officers went back to the scene of the indecent assault in order to carry out further investigations and by chance you were again out on the road. She recognised you instantly. The police then knew who you were and were able to apprehend you. You went through an identification process by way of a montage and I reject the suggestion that this was in some way a "set up" by the police. It was simply a recognised means of identification.

[6] I also reject the suggestion that she voluntarily went with you from the roadside down to the secluded spot. True, she may not have resisted but that is scarcely unusual on the part of a 10 year old girl and an adult man. So she did not go voluntarily with you, you took her to the secluded spot and offended against her.

[7] You continue to deny your involvement in the matter right from the time the police first apprehended you until trial.

[8] Probation Service have filed the usual helpful report giving details of your family background, including the fact that you have a wife and four children aged 17 to 1. Your wife and both yourself seek to have me impose a lenient sentence because of the consequences on the family of your being in jail. In fact your wife asks me not to jail you but as Mr George accepts that is an unrealistic stance in the circumstances.

[9] You acknowledged to Probation that you are well aware that what you did was wrong, that you gave in to temptation and you apologised to the victim and her family, both through the Probation Service and again today from Mr George.

[10] You also recognise that your actions will have not only brought shame on your family but on the theological college where you have been studying.

[11] As is to be expected, what you did to the girl on this occasion has had a profound effect on her. Fortunately, she suffered no physical damage at your hands but she certainly encountered and still encounters significant psychological damage. She is afraid to now go outside of her own home; afraid to walk to places she normally visits by herself; she has suffered changes in temperament; she is now not keen to join in sports and community clubs and is afraid to go to the beach alone. She has had to change her daily routines to get to and from school, mainly by her parents now taking her on those journeys. And it is said that she has lost much of the independence that she showed beforehand. All of that is most unfortunate but inevitable because of the things you visited on her.

[12] Mr Williams for the Crown suggests that the starting point in a sentence should be the order of 5 to 6 years imprisonment. He points to the fact that there were in fact two incidents here – we cannot bring them both together as one, there are two charges in two separate incidents. He points to the vulnerability of the girl, the premeditation and planning in your putting yourself at the side of the road at a time when you must have known unaccompanied children were likely to be passing. He directs my attention to two cases, *Tuao*¹ and *Tebano*². But the circumstances of these offences vary widely and is not a great deal of assistance to be derived from those cases, although in *Tuao* the starting of 7 years imprisonment was chosen.

[13] I need to try and fashion a sentence which reflects the gravity of your offending and this is grave offending against a vulnerable and innocent member of the community. It is a serious offence. I need to factor in the effect on the victim. I need to try and instil the sense of accountability on your part for the harm done to her and promote a sense of responsibility.

[14] One factor which makes this difficult sentencing is that you have a previous conviction in 1996 for rape³. We do not know anything of the circumstances which led to that offending but you were sentenced to 7 ½ years' imprisonment. That suggests to me that it was a particularly bad rape – there is no other kind – and that

¹ CR 579/19, 27 November 2019, Woodhouse J.

² CR 887-9/16, 27 July 2017, Doherty J.

³ Under the name of Tapuni Raeputa.

conviction needs to be taken into account alongside these indecent assaults. But knowing nothing of the circumstance of that offence, it is necessary to exercise caution so that you are not being sentenced twice for that earlier offence.

[15] Nonetheless it is definitely a worrying and disturbing feature in this matter, even though in the period since your release from jail, you have married, have raised a family and apparently reformed yourself. Nonetheless it is a very worrying aspect of the case.

[16] You are facing a maximum of 10 years imprisonment on each of these charges. The charge is indecent assault on a girl under 10. That class of offending has a separate offence in the Crimes Act and when one stands back and looks at your offending, to adopt a starting point of at least half the maximum does not seem in any way untoward. In *Tuao* I note there was a starting point of 7 years imprisonment.

[17] The aggravating features in this case are the youth of the girl, she was only 10. She was unknown to you. She was simply doing what innocent 10 year old should be able to do, bike home from school. But she suffered severely as a result of what you did to her on that day.

[18] Mitigating features, those which reduce the severity of the sentence. Frankly there are none.

[19] If one takes a starting point of about half the maximum, increases that for the aggravating features that I have mentioned, that brings us to about 6 years imprisonment. There is no basis for reducing that figure for mitigating circumstances and you are accordingly sent to jail for 6 years on each of these charges. The sentences are to run concurrently.

[20] Stand down.

A handwritten signature in black ink, appearing to read 'Hugh Williams', written in a cursive style. The signature is positioned above a horizontal line.

Hugh Williams, CJ