

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

**CR NOs 503-504,  
506-509, 511-513,  
596-600/2021**

**POLICE**

v

**MOE PIRANGI**

Counsel: Ms A Maxwell-Scott and Ms J Crawford for Prosecution  
Mr N George for Defendant

Sentence: 27 September 2022 (via Zoom)

---

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

---

[09:05:49]

[1] Moe Pirangi, you are before the Court for sentencing on 13 charges of which you were found guilty following trial by jury in June of this year. Your offending relates to four young girls under the age of 12 whom I shall refer to as victims A, B, C and D. I have made an Order for name suppression in respect of these four girls.

[2] Moe Pirangi, you are to be sentenced for the following offences:

- (a) Five charges of sexual intercourse with a girl under 12 under s 145 of the Crimes Act 1969. The maximum sentence is 14 years imprisonment. These charges are effectively of rape except that the age of the victim, being under 12 years, removes the element of consent. The crimes are therefore charged under s 145.

- (b) Six charges of indecent assault of a girl under 12 under s 147(2)(a) of the Crimes Act: three charges against victim A, one against victim B, one against victim C and one against victim D. The maximum sentence on these charges is seven years imprisonment.
- (c) Two charges of entering the building with intent to commit a crime under s 264 of the Crimes Act. The maximum sentence is five years imprisonment.

[3] These offences occurred between March 2018 and August 2021. The most serious offending was against victim A, who was subject to serious abuse over approximately two and a half years.

### **The Offending – facts**

[4] A summary of the facts relating to this offending as given in evidence at the trial, needs to be recorded.

[5] Victim A is 11 years old but at the time of the offending she would have been eight to ten years old. Victim B, is 8 years old and at the time of the offending she would have been six or seven years old. She is the younger sister of victim A. Victim C is 14 years old and at the time of the offending, she was 11 years old. Victim D is 13 years old, and at the time of the offending, she was 11. All four girls lived in Arorangi with their families and were attending Apii Arorangi during the period when the offending occurred.

[6] Mr Pirangi, you were a taxi driver. You drove Uncle Moe's taxi van during the period of offending. The victims knew you as Uncle Moe.

[7] Mr Pirangi was a close family friend known to victims A and B and their brother as their uncle Moe. Sometimes he stopped by home to visit, to discuss land matters or to help out with things around the home. He helped with some renovation work at the home. Sometimes he would give the girls money and take them out for rides in his taxi van.

In relation to the charges of sexual intercourse with a girl under 12 (victim A), five-occasions.

*Charge 1.*

[8] Victim A recounted the first time the defendant had sex with her. He stopped by her great-grandmother's house, her great-grandmother was sitting outside the house at the time. The two sisters, victims A and B, were watching TV in the sitting room. The defendant told the great-grandmother that he was going into the house to see what needed to be fixed. He then went into the house and told victim A to follow him into one of the bedrooms. He took her pants off, he took his pants off, then he climbed on top of her and had sex with her. She said she felt scared and sore and the defendant was saying "shh" to her. She heard victim B, her sister, calling her name. The defendant then quickly stopped, got off victim A, told her to put her pants back on and left the room.

*Charge 2.*

[9] The defendant arrived at the family home and asked to take victim A with him. He took her to some bushes in an unknown, unspecified area on his motorbike. He took her pants off and when she tried to stop him he told her "no". He had sex with her. She described ejaculation and feeling sore. While the defendant was doing this, he was telling victim A that he loved her and asked her if she missed him.

*Charge 3.*

[10] The defendant was on shift as a security guard at Apii Arorangi. On the night in question, victim A followed her brother to see the defendant at the school to fix their bike. The defendant sent victim A's brother to get another bike chain leaving him alone with victim A. It was late and dark. He had sex with her on the form chair outside one of the classrooms. This did not last long because they soon heard victim A's aunt shouting her name looking for her. Victim A ran to her aunty. Her aunty asked her if Moe had touched her. Victim A lied and said no. She said she was scared to tell her aunty. She thought her aunty might give her a hiding as she was late returning home.

*Charge 4.*

[11] The defendant picked up victim A from home in his taxi van and drove her to another house. She was not sure where this was. He took her into the house where there was a bed and told her to lie on the bed, then he hopped on top of her and had sex with her. He was moving up and down on her. She asked him to stop, she said she could not breathe under him. She said he finally stopped when in her words, “his wet slimy thingy” went inside her.

*Charge 5.*

[12] In August 2021 victims A and B and their mama, their grandmother, were selling produce on the side of the road by Aroa Nui in Arorangi. The defendant pulled up at the stall in his taxi van. He told the girls to follow him in the van to the shop. Neither girl wanted to go but their mama told victim A to follow him. He took her to his house, and on the way he told her to duck down. When they arrived at his house, he took her to his bedroom, removed his and her clothing and hopped on top of her. He told her he missed her, he loved her, and while he was having sex with her he was repeating her name again and again in what she described as a “sexy way”. She said “his wet thingy” went inside her this time as well. After he finished, he gave her \$60.00, told her not to tell anyone, then dropped her back to her mama’s stall.

[13] Victim A said in evidence that most times, the defendant had sex with her, he would give her money so that she would not tell anyone.

Indecent assaults on a girl under 12, six occasions.*Charge 6.*

[14] The defendant kissed victim A on the lips when they were on his motorbike.

*Charge 7.*

[15] Digital penetration of victim A. On one occasion the defendant inserted his fingers in victim A’s vagina when they were in his van and she was in the front passenger seat. She described how he held the steering wheel with his right hand and used his left hand on her. This went on for the entire journey, she said.

*Charge 8.*

[16] Oral sex. On one occasion the victim went to victim A's home late at night. Everyone was asleep. He woke up victim A, who was sleeping in the lounge with other family members. He took her outside to a couch, he made her lie down then started licking her vagina. When her aunt came out to use the toilet, he carried on, but left shortly after leaving her on the sofa outside, where she fell asleep.

[17] Eventually, the grandmother of victims A and B was prompted to take victim A aside and question her. She asked victim A, had anyone ever touched her inappropriately. Victim A told her mama about the most recent incident, that the man responsible was her uncle Moe and this was not the first time he had done things to her.

*Charge 9.*

[18] Victim B, indecent assault on a girl under 12. The defendant came to the family home of victim B while nobody else was present. The defendant told victim B to sit on his lap and he started touching her body, her breast area and her vagina, all on top of her clothing.

*Charge 10.*

[19] Victim C, indecent assault on a girl under 12. In 2019 victim C and some friends, after school went to the dump area near the defendant's house. The defendant spotted them and called the children to come inside his house and watch cartoons. Then he called victim C to come to him when the others were not looking, and he kissed her mouth. Victim C described the kiss as long and like – in her words – “how boyfriends and girlfriends kiss”. She pushed him away. He told her to grab chocolate from the fridge and share it with the others. He told her not to tell anybody.

*Charge 11.*

[20] Indecent assault on Victim D; and

*Charges 12 and 13.*

[21] Entering a building with intent to commit a crime.

[22] In 2019 or 2020 there were two instances when victim D was asleep in her home, the CICC Mission house in Arorangi. She woke up because she felt that her mouth was wet and when she opened her eyes, she saw uncle Moe sitting right in front of her. He told her, “uncle loves you”. He gave her \$15.00. He tried to kiss her again but she pushed him and called out for his sister. He then got up and left quickly and told her he had come back.

[23] A few days later victim D was sleeping in a room with her siblings when he entered the room and started kissing her face. She woke up and called out to her sister, he ran from the house. This time he left \$10.00 for her.

[24] She told her grandmother uncle Moe had come in to the house while she was sleeping in the early hours of the morning and that he had given her money. Victim D confirmed that on both occasions, Moe had put his tongue into her mouth.

### **Pre-sentence Report**

[25] A pre-sentence report dated 18 July 2022 indicates no change in the position of the defendant at trial. He continues to deny the offending and disputes the accounts of the victims.

[26] Mr George confirmed in submissions today, that this remains the defendant’s position.

### **Victim Impact Statements**

[27] Ms Maxwell-Scott for the Crown has referred to the Victim Impact Statements prepared by family members and I have read them. They reflect grave impacts and concerns for the victims and their families. But the long term effects of this type of serious sexual abuse cannot be known at the time of the offending.

### **Sentencing Principles**

[28] The principles in sentencing that I must take into account are to hold the offender, Mr Pirangi, accountable for the harm he has done to the victims and to the community by his offending; to promote in him a sense of responsibility for his conduct – this is a challenge when he is in complete denial; to provide in so far as it is possible to do, for the interests of the

victims; to denounce the conduct of the offender and to deter him and others who might be minded to commit similar or like offences, protect the community.

[29] I must look to impose the sentence which will respect these principles, but be the least punitive as far as Mr Pirangi is concerned.

### **Aggravating features**

[30] The Crown have identified aggravating features of the offending, as follows:

- (a) Age and vulnerability of the victims.

Victim A was eight years old when the offending began and 10 years old when the defendant was arrested shortly after the last incident. She was very young and a quiet, compliant child. Victim B was six or seven at the time of the time of the indecent assault against her. Victims C and D were both 11 years at the time of the offending.

- (b) Planning and deliberate targeting of a vulnerable person.

(i) The defendant had sex with victim A on a number of occasions when he either got her alone in an area of her home or had taken her to another location on either his motorbike or in his taxi van. He was manipulative and deliberate in creating opportunities to have sexual intercourse with victim A and to indecently assault her. They went well beyond opportunistic offending. He took advantage of the trust the family placed in him.

(ii) He had cash with him which he invariably carried and gave to victim A after he had sex with her to ensure his silence and complicity. He expressed emotions of love and missing her.

(iii) In relation to victim C, the defendant invited her and her friends into his house and targeted her by calling her over to his kitchen area and giving chocolate to her after he kissed her.

(iv) In relation to Victim D, this involved deliberate targeting of a girl he knew was in a house without a supervising adult, around 5 am in the morning. She was not only young, but in bed and asleep when he entered the house and her bedroom, sat on her bed and kissed her. He returned and did the same thing later in the week. Again, he took cash with him, gave it to her and expressed emotions to her.

(c) Breach of trust.

There as a significant breach of trust involved in this offending. The family of victims A and B regarded uncle Moe as a trusted family friend. He came to their house and he was allowed to take victim A on trips on his bike and his taxi.

(d) The physical and repetitive nature of the assaults.

Victim A was subjected to full sexual intercourse on five occasions and separate indecent assaults on three occasions. She described feeling scared and sore. She described ejaculation. He would tell her that he loved her. He gave her money after each assault.

(e) The disparity in age between the offender and the victims.

He was 45 to 48 years old at the time of the offending. The victims were very young, mere children.

(f) The effects on the victims.

The potential for sexual abuse to have long term effects on victims is well known. This has, and will continue to have a huge impact on the victims, in



particular victim A, as well as on the victims' families. Time will only tell how this may affect their ongoing life and development.

[31] I accept the aggravating factors submitted by the Crown.

### **Authorities**

[32] The lead offending are the charges of sexual intercourse with a child under 12, five such charges spanning a two and a half year time frame. There is no tariff for sexual offending in the Cook Islands.

[33] The Crown referred to the guideline case in New Zealand of *R v. AM* [2010] NZCA 114 as providing possible assistance. But the maximum sentence for rape and sexual intercourse with a child under 12 in the Cook Islands remains at the 14 year maximum rather than the 20 year maximum in New Zealand. The comments and bands referred to in *R v. AM* must be adjusted in this light.

[34] Referring to the bands of sentence in *R v. AM* the Court of Appeal referred at [79] to the assessment of culpability as an "evaluative exercise of judgment and a reasonable degree of latitude ... in assessing the gravity of the offending ... in a fact-specific way focusing on the culpability of the offender, and the effect on the victim."

[35] In *R v. AM*, the Court of Appeal set four bands of offending in regards to both rape and unlawful sexual intercourse. Bands one and two relate to offending at the lower end of the spectrum where there are no, or limited, aggravating factors.

[36] Bands three and four relate to more serious offending. For band three the Court adopted a starting point in a wide range of 12 to 18 years, applicable when the offending was accompanied by aggravating features at a serious level, two or more factors increasing culpability to a higher degree such as a particularly vulnerable victim, serious violence, pre-meditation, degrading activity.

[37] For band four, the Court adopted a starting point in the range of 16 to 20 years where there was present multiple offending over a considerable time frame and the cases involved children, gang rape, sustained and wide rage offending.

[38] The starting points identified by the New Zealand Court of Appeal have to be adjusted down to take account of the lower maximum penalty in the Cook Islands, 14 years as against 20 years in New Zealand. Further, the wide range of the starting points indicated in each band reflects the Court of Appeal's emphasis on the evaluative exercise in sentencing.

[39] The Crown also referred to the Cook Islands sentencing decision in *R v. Andrew Marsters* (CRN 495/17). The defendant was found guilty at trial of ten charges of indecent assault against three children aged between 5 and 12. The defendant was a trusted part of the extended family. The children were subjected to a number of indecent acts including digital penetration.

[40] The offending was considerably less serious than that of Mr Pirangi, especially his offending in relation to victim A.

[41] This Court sentenced Mr Marsters to a sentence of 20 years reduced for totality to a sentence of 14 years imprisonment. This sentence was reduced on appeal to ten years imprisonment. The Court of Appeal (*Marsters v. Crown*, CA No. 3/18) referred to the age and poor health of Mr Marsters, the maximum penalty for the offences being ten years and that Mr Marsters was acquitted by the jury of the most serious charge of sexual intercourse with one of the complainants.

### **Submissions**

[42] The Crown submitted that the sexual intercourse offending against victim A would put this case in band four of *R v. AM* and near the top of the maximum for this type of offending, 14 years in the Cook Islands. Ms Maxwell-Scott submitted that given the aggravating features of the offending, a sentence of 12 to 13 years is warranted for the sexual intercourse offending against victim A.

[43] The Crown made careful, detailed submissions as to the appropriate sentence for each offence and as to the application of concurrent and cumulative sentencing. Ms Maxwell-Scott submitted that overall, the combination of sentences for the 13 offences would be in the range of 20 to 21 years imprisonment but she accepted the sentencing exercise is not purely mathematical and that judicial discretion is required in applying the totality principle. She submitted a final sentence in the region of 16 to 17 years imprisonment to be appropriate.

[44] Mr George, for the defendant could offer little in mitigation given the intransigent position of the defendant. He proposed overall a sentence of seven years imprisonment, but this submission was not supported by any authority.

### **Sentencing**

[45] The offending, particularly the sexual intercourse offending in respect of victim A, is very serious with the aggravating features I have previously identified. But while this offending is of itself degrading and an extreme violation of the very young and vulnerable victim, serious violence and degradation as referred to in relation to in bands three and four, offending in the case of the *R v. AM*, are not additional factors in this case.

[46] Taking into account the aggravating factors of this offending and the absence of any mitigating factors of the offending or the offender, I reach sentences of imprisonment as follows.

[47] On charges 1, 2, 3, 4 and 5, the sexual intercourse offences, the sentence on each charge is 11 years, to be served concurrently.

[48] On charges 6, 7 and 8, the indecent assaults against victim A, a sentence on each charge in the range of 3 to 4 years would be justified. This offending is most appropriately treated by way of an uplift of three years to the sentence for the sexual intercourse offending to produce the revised sentence of 14 years for the offending against victim A.

[49] On charge 9, Indecent assault against victim B, the sentence is 6 months.

[50] On charge 10, Indecent assault against victim C, the sentence of 6 months.

[51] On charge 11, Indecent assault against victim D, the sentence is three years.

[52] On charges 12 and 13, Entering a building with intent to commit a crime, the sentence on each charge is one year to be served concurrently.

[53] The accumulation or combination of those sentences is 19 years imprisonment.

[54] I turn to the application for the totality principle. I must stand back and ensure the final sentence imposed is not wholly out of proportion to the gravity of the overall offending. In the case of *Marsters v. Crown* (CA No.3/18), to which I have already referred, the Court of Appeal noted, at [55], the key principles when sentencing for multiple offending:

- a) With multiple offences the sentence must reflect the totality of the offending;
- b) In respect of multiple offences, the Court will not insist that the total sentence be arrived at in any particular way;
- c) The total sentence must represent the overall criminality of the offending and the offender.

[55] I consider a reduction is required to ensure the final sentence is proportionate to the criminality of the overall offending.

[56] Mr Pirangi, I reach an overall sentence of 14 years imprisonment for your offending. That is the sentence I impose upon you.

[57] You are entitled to a credit for the period you have spent in custody. I do not have details of the particular days in custody, but if those details are provided to me I will confirm them by addendum to my sentencing notes.

[58] Please stand down Mr Pirangi.

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

**Judith Potter, J**

**ADDENDUM:**

[59] I am informed that Mr Pirangi has been in custody on remand from 29 June 2022 until he was sentenced on 27 September 2022. He is entitled to a credit against his sentence of 14 years imprisonment passed on 27 September 2022, of one month (30 days).

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

**Judith Potter, J**