

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

CR NO. 350/2021

POLICE

v

HYRUM MULINU’U ULBERG

Hearing date: 17 March 2022

Counsel: Snr Sgt F Tararo, for prosecution
Mr M Short, for defendant

Sentence: 17 March 2022

SENTENCING NOTES OF HUGH WILLIAMS, CJ

[9:32:46]

[1] Hyrum Mulinu’u Ulberg, at the age of 29 and with no previous convictions, you appear here for sentence this morning on a charge of indecent assault on a woman, in fact a cousin, on 7 July last year. You were charged the next day, and pleaded guilty the next day.

[2] A psychological report was ordered. Unfortunately, because there were difficulties in arranging accommodation for you, you spent nearly three months in custody before the terms of bail could be complied with and you could be released. And there have been further delays since that time until sentencing could be arranged, because Dr Wong has a significant workload and we needed a psychological report in order to consider the best outcome for this case as far as you are concerned.

[3] Effectively what happened was that on 7th July in the early morning you walked into the victim’s room. According to Dr Wong’s report you “started thinking dirty”

and then you went into the room, put your hand on her inner thigh, down her leg to her knee. She woke, told you to get out. You did. And that was all that was involved. In terms of the range of actions which can amount to indecent assault, this is clearly one of the less serious examples.

[4] There is a victim impact report which says, understandably enough, that although there was no injury she has lost trust in you and has concerns about the possibility of recurrence.

[5] Dr Wong's helpful report gives a lot of your background and notes that you are intelligent, but you have "little motivation to take responsibility" and "you are not really wanting anything in life". You have no psychosis, no other mental health problems, but you have had a rather transient upbringing. You have never been in a long term relationship. You have abused alcohol. You misconceived what you thought was some attraction on the part of your cousin and completely got it wrong.

[6] Dr Wong says, "You have no internal incentive to change" and so prison is not a deterrent, and I would certainly accept that prison is not the outcome which should be imposed on you today.

[7] For the prosecution, the Senior Sergeant points to the background of the matter, your very early plea and the fact that you have no previous convictions and recommends some 12-18 months' probation. And the Probation Service itself recommends probation of a rather shorter period.

[8] I have read the probation report. Because a lot of its contents are also in the psychological report I do not intend to cover them in detail.

[9] Indecent assault of course is a serious offence, and the sentence to be imposed must try and promote some sense of accountability for the harm you have done, promote a sense of responsibility, and deter you, and others from further offending.

[10] In this case, although a jail sentence is a possibility, it is not a common outcome in the span of other cases of indecent assault. There are really no aggravating features


– ones making it worse – and against that there is the plea and the time you have already spent in custody.

[11] So clearly you are a young man who needs some help, some assistance, some guidance, and in my view the appropriate sentence to impose on you is probation but a little longer than is suggested.

[12] So I sentence you to probation for two years, with the first nine months to be on community service. You are to take such counselling or other medical assessment or assistance as the Probation Service directs you. If the Service directs, you should apply for a prohibition order or, and abstain from alcohol.

[13] There is a suggestion from your mother's letter in Mr Short's submissions that you should go to New Zealand for expert assistance. I cannot make that order. If arrangements can be made and if Probation agrees, then it is possible that you could serve your probationary term in New Zealand but that is a matter for Probation and you to work out with your family, and it may require some endorsement from a Judge. If those arrangements can increase the chance of your getting the kind of guidance and assistance that it seems you need, then I will happy to endorse it.

[14] But your sentence is probation for two years on the conditions I have announced.

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

Hugh Williams, CJ