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

CR NOs 549/2021
121/2022

POLICE

v

NGAMETUA TIATOA

Hearing date: 6 May 2022 (via Zoom)

Counsel: Ms M Pittman for the Crown
Mr N George for defendant

Sentence: 6 May 2022

SENTENCING NOTES OF HUGH WILLIAMS, CJ

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[1] Ngametua Tiatoa, at the age of 25 you come before the Court, yet again. This time, it has now been established, you having pleaded guilty to a charge under s 213 of the Crimes Act 1969 of assaulting your father with intent to injure him.

[2] The offence took place on 30 October 2021. There was an argument broke out in the home in which you were living on Atiu, where your father and grandmother live. The argument following your grandmother ordering you out of the house for your bad behaviour.

[3] You punched your father in the face five or six times then ran away. He chased you. You threw a stick at him but missed. Your father grabbed a spear gun, you grabbed a mattress and threw it over your father as he came at you. You grabbed the

spear gun which broke in two; put your father on the ground and then hit him over the head about four times with a part of the spear gun which had broken off. You grabbed a rake and hit him on the collarbone with that, and as a result your father suffered deep cuts to the back of the head, about 14mm long and elsewhere, plus bruising. He had to be taken to Te Marae Ora on Atiu where his wound was cleaned, dressed, and stitched.

[4] On this charge you face a maximum sentence of 3 years' imprisonment compared with the 14 years' imprisonment you initially faced when you were charged with an offence under s 208(2) of wounding with intent.

[5] Your record is deplorable. The Probation Service has filed a list of your previous convictions and discussed those convictions in its report. I think the list that they have attached to their report is incomplete, which is scarcely surprising: it would be hard for the record to keep up with the number of convictions you have amassed.

[6] You started out in 2014 with a charge of being unlawfully found; then of theft, which was withdrawn.

[7] On 12 November 2015, you were convicted on your first violence offence, a male assaults female, and given 12 months' probation.

[8] In 2016, you were convicted of a number of charges - theft, breach of probation, wilful damage, and assisting or escaping - and were first sentenced to jail, this time for three months. However, that was after six months was deducted from what would otherwise have been the sentence because of the time you had spent in custody on remand.

[9] On 23 March 2018, you were convicted of burglary, assault - your second violent offence - and contempt, and were jailed for seven months, with the presiding Judge not allowing you any time off for the amount of time you had spent in custody.

[10] Then on 24 January 2019, you were convicted of assaulting the police and ordered to come up for sentence if called on.

[11] In July 2019, there was another charge of unlawfully found.

[12] In December 2019 there was dangerous driving, drunk in a public place and contempt.

[13] Then on 20 February 2020, you were again charged with assault, and ordered to come up for sentence if called upon.

[14] And later that year, 17 November 2020, you were convicted of theft and sentenced to eight months in jail, with a deduction having being given for four months for your being in custody on remand.

[15] Then there was this offence which was committed on 30 October 2021. You were remanded in custody until 18 March when a supervisor was found by Mr George and you were admitted to bail. But on 7 April, you broke your bail and were charged with resisting arrest and being drunk in a public place, on which the Justices of the Peace, on a plea of guilty, sentenced you to three weeks in jail. That sentence has now expired but you have been in custody on remand on the s 213 charge ever since, so that, in addition to deductions for your time in custody on several previous occasions that I have just outlined, you have also been in custody on this matter for about four and a half months. As I have said, that is a deplorable record.

[16] Mr George has graphically outlined the problems from which you suffer which have led to your offending, principally indulgence in alcohol and petrol, kerosene or glue sniffing.

[17] The Probation Service whose report was prepared when you were charged with the s 208 offence discusses your conviction history, and notes when you were returned to Atiu last year you were "encouraged - seeing that his father had given him a chance and had agreed to take him in - to refrain from his wayward behaviour and earn his father's trust by helping around the home". But they say all the encouragement went to waste when you played up when you were in Atiu. And they also detail disciplinary difficulties when you have been in custody on remand.

[18] It also seems clear that some of the remands in custody have been simply because no accommodation could be found which would be satisfactory. So they submit that you ought to go to jail for this, and Mr George on your behalf concurs with that result.

[19] Ms Pittman's helpful submissions on sentence point to two New Zealand cases, which classify the sentencing that ought to be imposed for offences involving violence. They are *R v. Taueki*[1] and *Nuku v. R.*[2] She submits that here, the aggravating circumstances, the matters in your offending which make the outcome worse, are the high level of violence resulting in quite severe injuries to your father, the prolonged level of violence - obviously this row with your father went on for some time - the use of the weapons, and the attack to his head which always draws a more severe sentence.

[20] Ms Pittman submits that of the bands of offending set out in the New Zealand case of *Nuku*, yours is in Band 3, that for more severe violence. Ms Pittman submits that the starting point for you should be 16 months' imprisonment with an uplift to an increase of one month for your record, and then a reduction of a third for your plea.

[21] In a sense, you have already had a reduction by the sensible discussions between Mr George and Ms Pittman which have resulted in the reduction of the maximum sentence of imprisonment to which you might have been sentenced from seven years to three. So the result, Ms Pittman suggests, should be a short term of imprisonment plus probation.

[22] Mr George agrees. In thoughtful submissions he points out that you are one of a class of young people who simply pay little attention to Court orders and the like, indulge in alcohol, indulge in substance abuse, show no discipline, no respect for your elders, and little respect for Court orders. Mr George proposes that what he calls a compliance workshop system be set up. It is a commendable suggestion but it is not a matter we can deal with this morning on sentence.

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[1] [2005] 3 NZLR 372.
[2] [2012] NZCA 584.

[23] In sentencing you, I need to pay attention to the gravity of the offending. This was serious violence. Your record of course - no doubt as with all the previous Court sentencings - have tried to instil in you a sense of responsibility and to denounce your conduct and try to deter others from behaving similarly.

[24] In terms of *Taueki*, as I have said, the classification of sentencing for violent offending is into three bands; and Ms Pittman is correct that making matters worse for you are the use of violence, the use of a weapon, the attack on your father's head, and the injuries that resulted.

[25] Band 1 is violence at the lower end of the spectrum where a starting point is about 3 years' imprisonment. Band 2 is 5 to 10 years. Band 3 is 9 to 14 years.

[26] However, those are the New Zealand starting points. The Court of Appeal in *Goodwin v. R*[3] considered how the *Taueki* and *Nuku* classifications should be applied in the Cook Islands; and also considered and adjusted the attempt made in *Police v. Viriviris ai*[4] to set out starting points for those bands as they should be applied in the Cook Islands. *Goodwin* is not directly applicable here in that the charges there were more serious than those you face. The Court of Appeal[5] increased the *Viririsai* starting points to say that Band 1 of the *Taueki* and *Nuku* categorisation should attract 1 to 3 years' imprisonment; Band 2, 3 to 5 years; and Band 3, 5 years and upwards. And as Justice Potter said in *Police v Moekapiti*[6] recently, the *Goodwin* levels mean that sentences for violent offences in the Cook Islands will need to increase by comparison with those which were imposed prior to *Goodwin*.

[27] I also need to take into account the reduction in the maximum term of imprisonment, which is now available from 7 years as you were originally charged, to 3 years' imprisonment now.

[28] I agree with the Crown that the starting point in your case should be about half the 3 year maximum, that is to say about 18 months' imprisonment. Your terrible

3 CA 11/2018, 3 May 2019.
4 CR 277/18, 597/18, 22 March 2019, Hugh Williams, CJ.
5 At [51].
6 CR 728-731/19, 25 June 2021, Potter, J.

record of convictions means that that should be increased by about 3 months to approximately 21 months in jail. You are entitled to a third off for pleading guilty, if not quite at the first opportunity, certainly not too long after you were charged, which would bring the appropriate sentence down to about 14 months' in jail.

[29] But, as we finally established in discussions, it seems you have spent about 4½ months in custody on remand on the main charge and accordingly the problem then becomes to what term of imprisonment you should be sentenced and, in particular, whether it should be more or less than a year, because everybody agrees that you are at a sort of crossroads. There is still the chance that with appropriate help from the Probation Service, you might stop offending in the way which has characterised your life for the last eight years.

[30] I think that the appropriate term of imprisonment to which you should be sentenced on the s 213 charge is one year, which means that under s 6(1) of the Criminal Justice Act 1967, the maximum term of probation to which you can be sentenced following release from prison on that charge is 3 years.

[31] I order you to be subject to probationary supervision for the maximum term on your release from prison. And under s 8(1) of the Criminal Justice Act, in addition to the statutory conditions, there will be a further condition that you abstain from intoxicating liquor or drugs. That means you cannot drink, and it means you cannot sniff petrol or kerosene or glue or take any other drugs. If you do, it will be a breach of probation and you will be back before the Court for that.

[32] I also order that you only live where the Probation Service approves. That means if you can find somewhere to live which the Probation Service approves of, that is fine, you must stay there and not shift. If you breach that condition, you will be back.

[33] So that is the sentence on the s 213 charge. On the contempt of Court charge you will be convicted and discharged.

Hugh Williams, CJ

Addendum on editing

[34] Paragraph [30] is in error. The intention was to imprison Mr Tiatoa for 364 days, in which case the maximum period of Probation to which he could have been sentenced was 1 year under s 6(3) of the Criminal Justice Act 1967. The sentence imposed being unable to be legally passed, a further hearing will be necessary to correct the sentence under s 115 of the Criminal Procedure Act 1908-1. Those appearing at the hearing on 6 May 2022 will be advised by the Registry of the date and time of that further hearing.