

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

**CRN 443, 489/2020
479, 1194, 2069, 2070/22
143-146/23**

R

v

IORAMA NGATAUA

Trial: 21-22 March 2023
Verdicts and reasons: 22 March 2023
Appearances: J Crawford and M Pittman for the Crown
LL Rokoika for Mr Ngataua
Sentence hearing: 22 May 2023 (via Zoom)

SENTENCING NOTES OF TOOGOOD J

[10:17:13]

[1] Iorama Ngataua, you appear for sentence after having been convicted, following a trial before me, of six charges; namely:

- (a) Two charges of wilful damage;¹
- (b) One charge of committing a threatening act;²
- (c) One charge of assault on a female;³ and
- (d) Two charges of contempt of court.⁴

¹ Crimes Act 1969, s 321(4)(b), maximum penalty three years' imprisonment.

² Section 331(a), , maximum penalty three years' imprisonment.

³ Section 214(b), , maximum penalty two years' imprisonment.

⁴ Judicature Act 1980-81, s 36(a) and 37, maximum penalty six months' imprisonment or fine of \$100.

[2] You also appear for sentence on three charges to which you have pleaded guilty; namely:

- (a) One charge of threatening to kill;⁵
- (b) One charge of assault with intent to injure;⁶ and
- (c) One charge of contempt of court.⁷

The facts

[3] All but one of the charges relate to alleged violent offending against your former partner, D, and her family, and associated breaches of bail conditions that had been imposed on Mr Ngataua. D and you were together for some 13 years. You have two children together: a five-year-old son and a two-year-old daughter. D also has a child from a previous relationship, K, who is 16 years old.

[4] The first incident took place on 14 September 2020. D and you arrived at D's parents place after work. Your son had been looked after by D's father, M, during the day and there was to be a handover. You became angry with D after observing a wet patch on the back of her shorts. I inferred from that evidence about an admission of past infidelity by D that you were jealously suspicious of her. She explained to you that the wet patch was the result of her having washed mats as part of her duties in her father's business; you were not placated. You became irrational and began yelling loudly at D, calling her a "fat slut" and making other abusive comments.

[5] D ran down the driveway away from her parents' house. By this time, her father had left the property to go the supermarket, but he returned immediately after D phoned him. D also returned to the property with a neighbour who lived some 300 metres distant and who tried to engage with you. You smashed the right rear window of D's car. Seizing a nearby petrol canister, you began pouring petrol through the open driver's window of the car and then you turned your attention to M's van which was parked nearby. You poured petrol

⁵ Crimes Act 1969, s 329(a), maximum penalty seven years' imprisonment.

⁶ Section 213, maximum penalty three years' imprisonment.

⁷ Judicature Act 1980-81, ss 36(a) and 37.

through the van and then moved over to the house. You threw the petrol canister into the living area, where it struck a wall, spilling more petrol inside the house. You then began looking in the Toyota for a lighter or matches, saying you were going to burn the house down.

[6] The next offending occurred on 26 September 2021. There had been tension between D and you, and you took the children and K to Wigmore's for breakfast. Afterwards, K drove the family members towards your home. D was sitting in the passenger seat and you were in the back seat with the young children. Things were still tense and D asked K to stop the car so she could get out, because of the arguing that was taking place. K refused and D then pulled on the handbrake. When the car stopped, D got out and ran down the road.

[7] You got even angrier, yelling at K to get out of the car. Eventually she ran around the front of the car towards the beach, but you caught up with her and struck her across the face. You then drove off in the car with the other children inside.

[8] Despite these incidents, the relationship between D and you continued. Almost a year later, on 7 July 2022, the bail conditions for your remand on the charges resulting from what had occurred in September 2020 and September 2021 were amalgamated and amended. You signed a bail bond that included conditions that you were not to purchase or consume alcohol and you were forbidden to contact or interfere with witnesses or complainants relating to the matters before the Court.

[9] On 5 September 2022, D was visiting a friend. By then she and you had separated and you were living on a boat supplied by your employer. You arrived at a friend's house on a motorbike; you were stumbling and appeared to be intoxicated. You got angry, again because you were apparently jealous, shouting abuse and calling D "a slut". D ran away and you smashed the window of her car. You left the property before the Police arrived.

[10] On 17 December 2022, you sent D several threatening text messages. They were full of obscenities and abuse and included threats to kill D and her family. They scared D and she was worried about what you would do to her family.

[11] Later that day, you were at home on the boat. Mr Robert Wichman, who co-owned the boat, stopped by to check on you. He called out, asking how you were. You came out

and started shouting and swearing at Mr Wichman, abusing him in obscene terms. Mr Wichman thought you were joking but you started punching him in the head and face, around 10 to 15 times, while Mr Wichman was still sitting on the bike. Although his helmet protected him from some of the punches, Mr Wichman was hit in the face a number of times. He managed to get away from you on his bike but suffered cuts and bruising.

[12] When the Police located you and arrested you for that offending a short time later, it was apparent that you had been drinking alcohol in breach of your bail condition.

Victim impacts

[13] I have read the statements made by the various victims of your offending. D and K did not suffer any injuries in the incidents involving them, but they were both very fearful of you at the time of your offending and they are concerned about how you might behave in the future. It was obvious from his evidence that D's father was particularly upset by your offending at his home. He genuinely feared serious damage to his house and a risk of harm to the family members, including his grandson B, if you found some means of setting fire to the vehicles or the house. He says that he does not want you anywhere near his family or him, because he believes you pose a threat to their safety. He says the family have had to sleep with the lights on to ensure they have extra security; they are very conscious that they should not be alone and that they have locked their vehicles and store nightly. He thinks you should be sent to New Zealand for proper treatment.

[14] Mr Wichman was out of work for three weeks as a result of the injuries you inflicted on him and he received no wages during that period. He says he still gets mocked by people who know what happened. He has lost trust in people because he trusted you and you turned on him.

Personal matters

[15] I have read the probation report that has been provided, and Dr Evangelene Daniela-Wong's psychological report.

[16] You are a Cook Islander aged 34 years, having been born in New Zealand in November 1988 and brought up in South Auckland by parents whom you admire. But your childhood lacked guidance and purpose and you associated with other children who were similarly defiant and lawless. You began smoking cigarettes and then cannabis at 11 years of age and you were 12 when you started consuming alcohol. You roamed the streets with other children and habitually stole from family and neighbours. Beatings from your father brought no change to your behaviour and engagement with Child, Youth and Family Services led to your being placed in boy's homes or residential homes for delinquent children. In 2003, it was considered you should be removed from the environment in New Zealand and sent to Rarotonga to live with family members. However you did not get or appreciate the family support that was anticipated and you made your first appearance on a criminal charge, aged 16, when you were convicted of burglary and sentenced to 12 months probationary supervision. That did not appear to have the desired effect because within three months you were convicted of another burglary and sentenced to six months' imprisonment followed by 12 months' probation. Only six months later however in September 2005 you were sentenced to 3 years imprisonment for escaping from lawful custody and theft. That sentence was followed by a period of 12 months' probation but the futility of the sentence as a means of amending and correcting your behaviour is underlined by the sentence of 2 ½ years imprisonment imposed in March 2008 after you committed serious violent offending against a partner with whom you had begun a relationship as I understand it.

[17] It is significant, however, that after having served that sentence, you were guilty of only relatively minor offences in 2012, 2016 and 2019 before you committed the offences for which you are now to be sentenced.

[18] Dr Wong is satisfied that you are not suffering from any mental illness although she reports that you have experienced some perceptual disturbances as a result of alcohol and drug abuse. She says your substance dependence disorder is currently in remission because you have been in custody.

[19] Your current offending arises from the dysfunctionality of your relationship with D, driven by jealousy that was fuelled by alcohol abuse. Dr Wong says that you presented to her as being logical, coherent and fully aware of the processes occurring. You had no gross deficit

relating to cognition, language or attention and you were able to fully participate in the interview, question her when you did not understand and you were articulate. Those observations reflected my own in my dealings with you during your Court appearances before me. I have found you to be intelligent, and you have been entirely respectful of the Court and its procedures. It strikes me, Mr Ngataua, that you have the potential to be a good citizen but that you will need considerable help to realise that potential. I accept Dr Wong's view that you have failed to recognise that you have been engaged in a pattern of behaviour that will remain the same when you are returned to the community unless you actively address it. It is encouraging to read that you have recognised the impact of substance abuse and alcohol on your relationship with D and that you are apologetic about it. You have recognised that your emotional state was underlying many of your problems but, as Dr Wong says, you lack the tools to actually manage your emotions. In Dr Wong's opinion you will benefit from specific support relating to:

- (a) mood management to address depression and anger;
- (b) alcohol and drug abuse;
- (c) offending dispositions – that means having a disposition to commit offences, particularly those with a violent element; and
- (d) you need assistance to address healthy relationships and friendships that will assist you.

Sentencing approach

[20] In approaching the appropriate sentence to impose upon you, I take into account the purposes and principles of sentencing set out in the relevant legislation, including the New Zealand Sentencing Act 2002. The sentencing purposes that I consider to be important in your case are:

- (a) Holding you accountable for the harm done to your victims and the community by your offending;⁸

⁸ Sentencing Act 2002 (NZ), s 7(1)(a).

- (b) Promoting in you a sense of responsibility for, and an acknowledgement of, that harm;⁹
- (c) Denouncing your conduct;¹⁰
- (d) Protecting the community and those who have been close to you by deterring you and others from offending in this way;¹¹ and
- (e) Assisting, as far as is possible, your rehabilitation and reintegration.¹²

[21] In sentencing you, I need to take account of the gravity and seriousness of the offending and your degree of culpability or blameworthiness.¹³ I bear in mind that I should impose the least restrictive outcome that is appropriate in the circumstances and in doing so to take account of your personal circumstances.¹⁴

[22] The approach that the Court usually follows in these cases is, first, to calculate a starting point incorporating all aggravating and mitigating features of the offending, and then to consider all aggravating and mitigating factors personal to you with a discount for any guilty plea. Any discounts from the starting point are calculated as a total percentage of that starting point and an end sentence is then reached.¹⁵

Crown submissions

[23] On behalf of the Crown, Ms Crawford submits that the lead offending should be that which arose from the incident on 14 September 2020 in which you damaged the cars and committed the threatening acts related to the pouring of petrol and the threat to set fire to the vehicles and the house. Counsel submits that the other offences against D and K – being assault on a female, a further wilful damage charge, and the charge of threatening to kill – justify uplifts to the start point adopted for the lead offending with the corresponding contempt

⁹ Sentencing Act 2002 (NZ), s 7(1)(b).

¹⁰ Section 7(1)(e).

¹¹ Sections 7(1)(f) & (g).

¹² Section 7(1)(h).

¹³ Section 8(a) and (b).

¹⁴ Section 8(g).

¹⁵ *R v Kamana* CA 504/22, 28 June 2022.

of court charges to be treated as aggravating factors. Counsel submits that a standalone start point for the offending against Mr Wichman and the end sentence, after taking into account aggravating or mitigating factors in that offending, should be added as a cumulative sentence.

[24] The aggravating factors the Crown points to include:

- (a) The offending was ongoing and prolonged having taken place over a period of two years and involving four separate incidents.
- (b) The domestic nature of the violence, including that your son was inside D's father's house when you poured petrol into the vehicles and threw the can into the house saying you were going to burn it down.
- (c) Your young children were also witnesses to the violence against K.
- (d) The assault on K involved a punch to her face and head, the most vulnerable part of the body.
- (e) The threats to burn down the house were particularly frightening for the family and the threatening text messages were graphic and extremely abusive and sent in the context of previous actual violence, giving the threats even greater significance, because you clearly had the ability to carry them out.

[25] The Crown also considers to be aggravating the fact that the offending against your family members involved a significant breach of trust and that your victims were vulnerable.

[26] Actual damage was caused to D's motor vehicle on two occasions, and you also damaged her father's car and the house in committing the lead offences.

[27] The aggravating factors of your offending against Mr Wichman were these:

- (a) The offending being prolonged and that the assault involved 10 to 15 punches.

- (b) Punches were directed at your victim's head and face. Although he was wearing a helmet at the time, Mr Wichman suffered injuries so significant that he was unable to work for three weeks. He received cuts and bruises requiring medical treatment and lost wages.

[28] I accept those submissions about the aggravating factors, except that I would not regard it as significant aggravation that the offences occurred over a two-year period. In fact, the incidents were separated by a year on each occasion, your offending occurring in September 2020, September 2021, and September 2022. That indicates to me that at times you are capable, and were capable, of behaving reasonably and responsibly within your domestic arrangements. Your behaviour was influenced on each of those occasions of offending by a combination of alcohol and circumstances in which you were frustrated and unable to control violent influences, rather than being a pattern of continued abuse over that period.

Submissions on behalf of offender

[29] It was wise of you to agree to obtain the advice and assistance of counsel in the sentencing process. Ms Rokoika acknowledges that your offending must be regarded as serious, but points to several mitigating factors which she invites the Court to take into account. First, she says that while your offending on 14 September 2020 involved pouring petrol on two vehicles and throwing the can into the house it was not alleged or held out that you had actual intent to set fire to the property. I note, however, that I considered on the evidence that you had in fact voiced threats to set fire to the property. Moreover, Ms Rokoika points out that you have paid for the damage that was caused to D's vehicle on both occasions. So far as the assault of K is concerned, counsel notes that there is no evidence of other offending against K in this way and she argues that it should be regarded as an isolated and uncharacteristic impulsive act. She points out that you have acknowledged your wrongdoing and that you are remorseful because you consider K to be your own child.

[30] Acknowledging that intoxication does not afford any defence or excuse for your offending, Ms Rokoika emphasises the impulsive nature of it and in absence of premeditation. The Court is invited by your Counsel to provide appropriate discounts for your guilty pleas on the charge of threatening to kill D, and the charge of assaulting Mr Wichman. She submits

that after, taking into account the time you have spent in custody or on restricted bail terms on the present charges, you should be sentenced to 12 months' probation including six months community service. That contrasts with the Crown's submission for a lengthy term of imprisonment; I note that the probation officer recommends also that you be sentenced to imprisonment.

Sentence assessment

[31] In assessing the appropriate starting point for sentence on the lead offences (that is the wilful damage of D's car and the threatening acts in relation to the vehicles and the house in September 2020), I have had regard to the cases referred to by counsel.¹⁶ They include recognising that no tariff for such offences has been suggested by the Courts but it is necessary to impose sentences that are consistent with sentences imposed in other like cases, bearing in mind the infinite variety of sentences for this type of offending. Although the threats were not aimed directly at the family members who were present, threatening to burn the vehicles and the house naturally made them fearful for their own safety. I have regard also to the family violence context in which the offending occurred, noting the Court's disapproval of offending of this kind against those who are in a trusting and vulnerable relationship with the offender.

[32] Taking those factors into account but bearing in mind also sentences imposed in other cases, I consider a period of six months' imprisonment to be the appropriate starting point for that offending.

[33] I am not satisfied that the assault on K was more than a slap, rather than a punch, but your victim was in a trusting family relationship with you and only 14 or 15 years old at the time. I accept that the assault was impulsive rather than premeditated. An uplift of six months' imprisonment for that offending is appropriate in my view.

[34] The threat to kill D was one of the several offences you committed on 17 December 2022 when you were affected by alcohol and plainly in an angry mood. The threat was part

¹⁶ Including *Police v Kaokao* [2012] CKHC 42 at [14], *Haynes v Police* [2022] NZHC 950, *Richmond v Police* [2019] NZHC 2001, *Faaleaga v R* [2011] NZHC 495 at [13], *Goodwin v R* [2019] CKCA 1, *Police v Dauvois* [2006] CKHC 8, *Police v Tangapoto* [2006] CKHC 39, *Police v Hand* [2021] CKHC 16.

of a foul-mouthed and abusive rant by text messages. D was not nearby you at the time of the threat but in the context of your prior violent offending and offending against her previously the threat must have given rise to a greater appreciation of your ability to carry it out. Having regard to the authorities referred to, an uplift of nine months' imprisonment would be appropriate on the threat to kill. Having regard to totality principles, I consider that a total sentence of 18 months' imprisonment would be appropriate for the offending against your family members.

[35] Although the assault of Mr Wichman occurred on the same day as the threats to kill, it is separate offending. It involved a prolonged attack to the head and injuries that were serious enough to keep Mr Wichman off work for three weeks. Having regard to your history of violence albeit that you had not offended by serious violent offending for some years, a deterrent sentence is merited. I consider a sentence of nine months' imprisonment should be imposed cumulatively upon the sentences for the offending against the family. That means that a total of 27 months imprisonment is the appropriate starting point for your offending overall.

Mitigating factors

[36] You are entitled to credit for your guilty pleas to the charges of threatening to kill and assaulting Mr Wichman, which are serious charges, and I consider that a deduction of 20 per cent to reflect not only your pleas but your remorse and the payment you made to cover the costs of repairs to D's vehicle should be applied to the total sentence. That produces an end sentence of approximately 22 months in prison. From that I deduct a further seven months for the time you have spent in custody and for the restrictive bail conditions which have applied to you prior to trial.

Discussion

[37] I acknowledge that you present a high risk of reoffending. And it may seem that in those circumstances an end sentence of 15 months imprisonment does not adequately reflect the threat you pose to those who deal with you.

[38] However, the end sentence of 15 months' imprisonment that I intend to impose reflects my view that you should receive a sentence that appropriately acknowledges the nature and seriousness of your offending but gives you some hope for rehabilitation and an opportunity to do so. I know that you wish to return to New Zealand, Mr Ngataua, but I consider that before you do that, you must receive the help that Dr Wong refers to. Otherwise sentencing you to any length of imprisonment will simply prove to be just another futile exercise.

[39] Whether you are able to change your ways, Mr Ngataua, as is so obviously necessary, is entirely in your hands. And you must make good use of the opportunity provided to you during the term of imprisonment that you must serve. But you must also take advantage of the counselling and treatment which I will direct as part of a period of probation following the service of your sentence.

[40] Will you please go into the dock, Mr Ngataua.

Sentences

[41] On each of the charges of wilful damage on which you were convicted, you are sentenced to six months' imprisonment.

[42] On the charge of committing a threatening act and on the charge of assault on a female, you are also sentenced to terms of six months' imprisonment, to be served concurrently with the sentence on the wilful damage charges.

[43] On the charge of threatening to kill, you are sentenced to six months' imprisonment, again to be served concurrently with your other sentences.

[44] On the charge of assault with intent to injure Mr Wichman, you are sentenced to nine months' imprisonment to be served cumulatively upon the other sentences.

[45] On each of the charges of contempt of Court on which you have been convicted, I order that you be convicted and discharged.

[46] That means that the total effective sentence you are to serve is one of 15 months' imprisonment. Following your release from prison, you will serve a period of 12 months' probationary supervision during which you shall undergo such counselling or treatment as your probation officer may consider appropriate to address the issues of:

- (a) mood management relating to depression and anger;
- (b) alcohol and drug abuse;
- (c) offending dispositions; and
- (d) healthy relationships and friendships.

[47] I am grateful to counsel for their assistance, particularly to Ms Rokoika for undertaking the assignment of representing you at the request of the Court.

[48] You may stand down.



C H Toogood, J