

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

CR NO. 1042/07

POLICE

V

TATA NGATOKORUA SAMUEL
Defendant

Mr Elikana for Police
Mr George for Defendant
Date: 30 May 2008

SENTENCE OF GRICE J

Mr Samuel, you pleaded guilty to manslaughter of your partner's baby, that baby was about 2 ½ years of age. The statement of facts that Mr Elikana has read out states that you were left looking after the baby while your partner went to work. During that time you were drinking and now you say you cannot remember what happened. The injuries to this baby were terrible. The only good thing that can be said about it is that they were all inflicted, according to the post mortem report, in the same incident and it was not a case of this child having suffered injuries for a long period of time. Nevertheless, the injuries were horrific and showed considerable violence had been rendered to this child.

When his mother came home she found the baby dead, you woke up and said you could not remember anything. You have got no idea what happened and you have told Mr George, you still do not know what happened. Whatever happened you say you are now remorseful for it and feel very guilty for what happened.

There is a psychiatric report on the file which appears to indicate the possibility of an alcoholic blackout and it certainly underlines problems that you had with alcohol since you were young.

As Mr George said and the Probation Report backs up, you had a difficult upbringing. You have been in trouble since you were young, you got into drinking alcohol young and your previous offences, according to your counsel's submission, appear to be driven by your abuse of alcohol or your drinking.

Your previous offences date back to 1996. You have served time in prison. The only thing that can be said about the offence list is they don't appear to have involved high degrees of violence.

Most recently, you served 12 months imprisonment for theft and fraud charges. You returned to Aitutaki to serve probation for that.

The fact that this child was killed at a time when you were probably severely under the influence of alcohol does not make it any better. As I said, the only redeeming factor is that it was a one-off incident according to the Police summary.

You have pleaded guilty and you must be given credit for that. You have taken responsibility and that has saved your partner, the mother of the child, and the child's natural father as well as the maternal family whose grandmother looked after the baby when he was little from having to come to Court and go through a trial.

You have been in custody since the 14th of December last. This matter apparently has been hanging over your head since the baby was killed in 2005. So for some two years, as Mr George has said, the matter was hanging over you until you were arrested. I think that is also a factor that must be considered.

Your partner, the mother of the child, has suffered terribly over this child's death and no doubt feels guilty herself. Since then you two have had a child who is probably now about two. You want to continue the relationship and

your partner also wants to continue the relationship, particularly so that your son can get to know his father.

The Probation Report appears to indicate that you recognised your problems with alcohol and given it up. Although that is also possibly because you are now in jail. These are all factors that I will take into account. As Mr George has said, it is inevitable that you will face a term of imprisonment.

The range of terms of imprisonment for manslaughter charges is large and depends on the circumstances. In the Cook Islands that range according to the information I have been able to obtain, is from a sentence of two and a half years. This is the shortest I have on the list and was for a 1993 manslaughter sentence. Seven years imprisonment was ordered in a case called Maurangi where the accused had committed manslaughter twice. So it is within that range of imprisonment that you must be sentenced to.

Taking all the factors into account, including the vulnerability of the child, the circumstances, the fact that it was a one-off incident but a horrendous one, the fact that you pleaded guilty and that the fact that you recognised and had come to terms or attempting to come to terms with the fact that you did this.

The sentence that I would impose is five years but taking into account your pleading guilty and the time that you spent in custody, I will discount that sentence by one year and accordingly I sentence you to four years imprisonment on the charge of manslaughter.



Grice J