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

CR NO 358/12

POLICE

v

KAPU TIANOA JOSEPH

Hearing: 9 November 2012
Counsel: Mr N Ngatokorua for the Crown
Mr N George for the Defendant
Sentence: 9 November 2012

SENTENCING NOTES OF GRICE J

[15:08:13]

[1] Mr Joseph you are charged today with some serious burglary offences. These burglaries occurred while you were on probation for other charges including burglary.

[2] We have heard this morning about the circumstances. You say you were not the leader and Mr George has put the best possible slant on it for you. It is clear you were a full participant, in not just one burglary but a series of them. The Crown has outlined them:

- (a) On the 6th April 2012 Taranis Craft Shop: you forced or you were part of a group that forced the door with a screwdriver and there a laptop, a speaker, jewellery and cash was taken. Restitution of over \$800 is sought, that is your share of it.

- (b) Then the Empire Theatre: you broke into the Theatre, stole a laptop – or were part of a group that did – and coke drink and ice-cream. You forced the door to get in, and ultimately the goods were not recovered. Again the Crown seek restitution of \$300. Your co-offenders have been dealt with in the Children’s Court.
- (c) You broke into the Cook Islands Pharmacy. This was with another two co-offenders. You took a list of things which make no sense – laptops, lotions, stud earrings, sunglasses – it just seems as though it anything you could get your hands on. But they all up come to \$2527.60. And perhaps it was irony that the goods were then stolen from where you had hidden them.
- (d) Then you broke into Supersaver: you again broke in through the louvers. You say you were the lookout and received the property as it came out. On this occasion cash was taken from a safe of over \$1000, chocolates and a laptop. The laptop was retrieved but the other items were not recovered. The Crown again seek restitution of one-third of the value of the stolen property, over \$400.

Your co-offenders are appearing in various Courts on these matters including one immediately after you.

[3] The Crown submission urges that the sentence recognise the need to make burglars accountable, to denounce that conduct and to deter other people in the community from similar offending..

[4] The Court has indicated that it will no longer tolerate the level of burglaries that are occurring here. The community demands that the Court imposes appropriate sentences on these burglars to show its concern for this behaviour. The security and safety of not only the islanders but tourists, is crucial. Recently Justice Williams in Maka said there is such a prevalence of burglary on the island that in his view, the Court should consider a short term of imprisonment just as a starting point in sentencing. This session I have sentenced a parade of burglars.

[5] Your counsel candidly acknowledges the problem in the Cook Islands and condemns this behaviour in general terms. He accepts that custody is inevitable in the circumstances. He submits, the group that you were with led you astray. At least a custodial sentence might keep you off the streets and your unsuitable friends, while you are in prison you have a chance to think about what you are doing, what you want to do with your life and maybe get some training and help to get a decent job when you get out to allow you can grow into a strong man with a good family.

[6] As Mr George put it, the island is awash with burglaries and it cannot continue. You were only recently sentenced on a burglary charge, a theft charge, and two cannabis charges. You were only 16 then when you committed those offences and had recently started work at a resort. You have your full life ahead of you and step by step you are wrecking it. The Chief Justice in sentencing you then expressed his concern that the offences occurred in a sequence and it was an escalating problem for you. He said if you were left to your own devices you would continue to engage in crimes of that sort. He mentioned the problem of burglary generally in Rarotonga and said that he had considered sending you to prison then but gave you a chance which you just then abused.

[7] It was only on the intervention of your mother, the submissions of your counsel and your age that persuaded him to put you on probation.

[8] The Crown has submitted that an appropriate sentence is a short term of imprisonment.

[9] Your counsel has a hope that in the future you will get on with putting your life in order. He says he has a little contact with your family, Mr George is a good friend of your grandfather whom he respects. Your family are good reputable people here and in Aitutaki and you have let them down. Your grandfather is disappointed and despondent.

[10] Your counsel says you have been associating with a group of active burglars, who have been active in Avarua over the past 12 months or so. He says you are not needy for the things you steal, you are stealing them for the sake of stealing and just

so you can have a taste of criminality, the wild life. He says you need to be kept busy or at least someone to keep an eye on you.

[11] The Probation report says that you have had family difficulties but the people caring for you at the moment and supervising you including Ms Mareta Angene says that you have been behaving well but it seems that at night you are getting out and doing these burglaries. She also said that you find communication difficulty and it is time to recognise that. This is a cause for concern and I propose requesting as part of in any sentence that you be assessed.

[12] Your Probation report suggests that some of the problems you have with communication are due to problems with your upbringing. You were given alcohol and cigarettes when you were young..

[13] The Probation report summarises the reasons for the offences as poor decision making, peer pressure and slow thinking. It seems that it is no thinking at all. The problem is, how do you stop that pattern, how do you get out of this, how do you stop the escalation of offending? Counsel says you are quietly spoken, answer when you are spoken to.

[14] There is no escape from a custodial sentence here. I have limited options. The aggravating factors here are offending while on probation, persistent offending, a series of burglaries, premeditation in relation to some of the break-ins, your use of instruments to get into these buildings, similar previous offending.

[15] In mitigation your counsel has said you entered an early guilty plea, no violence involved, you were not the ringleader here and you were just following your peers, you were just running wild. I have listened to those submissions.

[16] I must take as a starting point a term of imprisonment and that is 6 months. I do not think the aggravating factors warrant an uplift from that 6 months. So I take that as a starting point, from which I will deduct time for mitigating factors. The fact of your age, your youth is a significant factor, You pleaded guilty early and I take into account the other matters your counsel submitted.

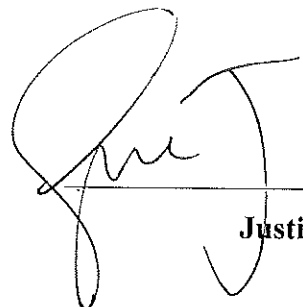
[17] In those circumstances and allowing a percentage for the early guilty plea, I am left with 4 months imprisonment. I accept the submissions of your counsel and the Crown that from that should be deducted the 2 months you have spent in custody, so you have 2 months left to serve.

[18] I consider looking at the offending as whole, that this should be concurrent, that you should serve one term of a total 4 of months with a deduction of 2 months for the time you have already served. A terms of 2 months to be concurrent.

[19] I have considered the issue of reparation. You have been in jail 2 months, you are not going to earn any money for the next couple of months at least as you are going to be in jail. You never paid reparation or returned the property from the March 2012 offences, as I understand it. An an order for reparation as Mr George submits is just pointless. It is bound to fail. Similarly an order for Court costs is pointless. So I do not propose to make those orders.

[20] I direct the Prison Service in conjunction with such authority as appropriate to take steps to have Mr Joseph examined for mental health issues and put in place such treatment as is appropriate.

[21] I hope that you do take the time to reflect as Mr George suggests because this is not a good start to your life.



Justice Grice