

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

**CR NO'S 820/12 & 821/12**

**POLICE**

v

**MAU NGATOKORUA KAOKAO**

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

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**SENTENCING NOTES OF GRICE J**

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[10:53:07]

[1] Mr Kaokao you have pleaded guilty to one charge of assault on a female and one charge of cultivation of cannabis. The first results from an assault on your partner and on that charge a maximum penalty could be imposed of 2 years jail.

[2] The second charge of cultivating cannabis is also serious and can involve a penalty of 20 years imprisonment. In this case it relates to one cannabis plant and is at the lower end of the scale which has been acknowledged by the Crown.

[3] The background to the incident is that you lost your temper with your wife. You had an argument with her. You had been drinking. You came home for dinner,

your wife had prepared dinner for the children, asked you not to eat it. There was an argument. You lost your temper, hit her, shoved her to the ground, slapped and kicked her. Very fortunately for everybody her injuries were minor but she was bruised. The Police arrived and that is when the cannabis plant was found.

[4] There is no excuse for your behaviour with your partner. Alcohol is certainly not an excuse, and that you have a bad temper is not an excuse.

[5] On the cannabis matter you said you found the seeds, planted it, did not expect to see it growing but there it was. Nevertheless you clearly knew what it was. And again that does not do you any credit.

[6] The behaviour that we have just heard about is in contrast with the reports of your general behaviour, both the report I received from the Probation Service, from the comments from your partner, and the victim impact report and from the comments of Mr Petero. Those say and your partner in particular says you have been a good father, she sees you as a humble loving and supportive person toward her and the children in the past year. You have two young children and you are the only financial support the family has. Your partner says life is now back to normal.

[7] And also Counsel and the Probation report refer to your good work in the community. You are a keen sportsman and a supporter of the Tautu Sports Club. A reference has been provided by Mr Tuaiti who is the president, and he comments on your being a "multitalented sportsman and a role model for young children in sports and religious activities through your love for singing and instrumental guitar skills". There is also a reference by the Deacon Secretary for the Tautu Cook Islands Christian Church at Aitutaki. He gives you a good reference saying you work well, you are mature, you hold family responsibilities for your children, care for your family home, and your external family house and land. You are a role model. Now you have got this incident against your name, is very sad.

[8] Your partner in particular asks that you are given a second chance. The impact on her and the family if you are sentenced to imprisonment would be substantial. She will be responsible for supporting everybody.

[9] As to the previous conviction for theft, I have put aside. It was over 3 years ago and it is not similar to the offences I am looking at, at the moment.

[10] You are still only 26, you have a supportive family, two young children who no doubt look up to you. You are held up as a role model in Tautu and this sort of behaviour is no credit to you.

[11] The Probation Service in its report and Mr Petero fulsomely outlined your background. You have been a hard worker, looking after a family home, struggling with finance, and you lost your father just two years ago whom you miss him greatly.

[12] You have seen the victim impact report: your partner suffered bruising, but is adamant that she wants to move on, that you are reconciled, and that you are a good man.

[13] I note you are currently employed with Safari Tours in Aitutaki earning \$250 a week and I would not want any sentence to get in the way of that work.

[14] The Crown urged me that the position of domestic assault and the way the Courts here have treated it, cannot be continued. It can no longer be that domestic violence is swept under the carpet. I understand they routinely attract suspended sentences from the Justices. That is not appropriate, - domestic violence cannot continue to be treated lightly. A line needs to be drawn. You were in Court when I sentenced the previous prisoner and made the same comments.

[15] Imprisonment is a real possibility for these offences and you have heard that in what the maximum penalties are.

[16] The Crown has submitted that probation, perhaps 18 months, is a suitable sentence in these circumstances. Mr Petero also put everything before me in his helpful submissions. I take those into account including the fact that this is your first offence of this type, you have been cooperative with the authorities, you pleaded guilty early to these offences, you have shown remorse, you have positive

testimonials, you are turning things around with your partner, and you should be given a second chance.

[17] Clearly finances are tight so a fine or other costs order is not realistic, it would impact on you the children and your partner disproportionately. Ordinarily on a first charge on cannabis offending of this nature a fine would be imposed.

[18] I also note what the Crown says about the need to deal with cannabis offending in the Cook Islands. Recently there has been a spate of this type of offence and the Courts have got tough with the offending in the islands. This recognises society's condemnation of this type of offending in the Cook Islands. In this case it is at the minor end of the scale as the Crown and Mr Petero submit.

[19] Mr Petero also says that this was fuelled by alcohol but that is not excuse for this. Any further offending of this nature would almost certainly attract serious consideration of imprisonment.

[20] I have limited options available here. As I have said, a fine is not appropriate. Accordingly I propose making the sentences concurrent for each of the sentences on indecent assault and cultivation. That means they will be dealt with as one sentence and you will serve only one sentence.

[21] So I sentence you to a term of 12 months probationary supervision with the first 6 months on community service, with a special condition:

- that you not enter any licensed premises without the approval of the chief probation officer;
- that you not purchase or consume alcohol;
- and that you attend any training workshop recommended by the Probation Service.

[22] I have also considered the application by the Crown to pay a contribution toward the costs of the airfare to bring you here. As I said I am concerned about the

finances of yourself and your family, and you have now got a job, so I do not propose ordering the full amount of the airfares but I do order you to pay the prosecution a half or one-way airfare, and as I understand it that is \$264. And also Court costs of \$30.

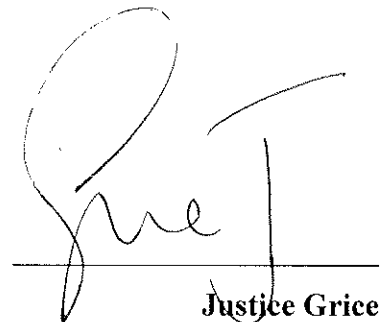
[23] I understand that you will need to make instalment arrangements for that payment. You cannot pay all at once. So I urge you to make those arrangements as soon as possible and get those payments dealt with.

[24] Mr Kaokao you have another chance, make the most of it, I hope the conditions, the alcohol conditions make a difference. Good luck to you and your family.

[25] I also make an order for the destruction of the cannabis plant.

#### **Addendums**

[26] After making the order for payment to the prosecution of half of the airfare toward costs, Crown and Defence counsel advised that the Police had only paid for a one-way air ticket from Aitutaki for the prisoner. Mr Kaokao must pay for his airfare back to Aitutaki. The Crown agreed the order for payment of costs of \$264 was on the mistaken assumption a return fare had been paid by Police. The matter was recalled and the Crown do not oppose the revocation of the order. Accordingly I make the order for payment of \$264 prosecution costs.



Justice Grice

