

NOTE - SUPPRESSION ORDERS MADE AS FOLLOWS:

- (a) as to the name, occupation and address of the complainant.
- (b) any information in relation to the complainant's previous experience.

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

CR NO 219/13

POLICE

v

PETERSON TEINAKORE

Hearing: 28 November 2013
Counsel: Ms Henry for the Crown
Mr Ioane for the Defendant
Sentence: 28 November 2013

SENTENCING NOTES OF GRICE J

[FTR 10:42:50]

[1] Mr Teinakore, you have pleaded guilty to a charge of sexual intercourse with a complainant over the age of 12 and under the age of 16. As counsel has candidly indicated this is a serious offence and carries with it a maximum term of imprisonment of 7 years.

[2] The incidents occurred about nine to twelve months ago and you frankly admitted the incidents when questioned about them. The offending relates to a number of occasions over about a three month period and it seems that all parties involved indicate it was in context of a romantic relationship.

[3] Initially you said you did not realise that the complainant was under the age of 16 but it appears that once you did know the offending did not immediately cease although I understand it ceased in March and the complainant is now 16.

[4] You were aged 31 years at the time and the complainant was 15.

[5] The fact is that a 15 year old under our law in the Cook Islands is not legally able to consent in these circumstances. The law is the law and it gives special protection to girls under 16 so they are not preyed on by older men or other people. This case is made difficult because the complainant says she wants to continue the relationship with you, she is expecting a child to you, she is now 16 and you have been together and in fact your counsel tells me she is in Rarotonga today for the sentencing.

[6] Your explanations were totally borne out by the victim who indeed expressed frustration that the Police had become involved at all. She seeks leniency and she is concerned that you are around to be a father to the baby. The complainant's parents, I note from the Probation report, initially tried to stop the relationship but having seen it as inevitable they are now supportive. Initially, however, they tried to protect her.

[7] This behaviour cannot be condoned. You continued the relationship for a short time despite finding out the victim's age. I have carefully considered the situation. I accept the submissions of counsel. In particular the candid submissions of Mr Ioane who accepted that a sentence must reflect the community's denunciation of this behaviour and there must be a deterrent for similar behaviour both for you but particularly for others. That was an absolutely correct submission.

[8] There are no aggravating factors in this case and I accept that submission of counsel and the Crown.

[9] Turning to your personal circumstances which have been urged on me by your counsel and are borne out by the other reports: the first thing is that the relationship was consensual and ongoing; you are a first offender; you pleaded guilty

very early; there is no suggestion of any force or coercion involved; and you were previously of good character.

[10] I have listened carefully to the submissions about the importance of your being with your family: you came back from Australia to help them; your father is dependent on you and he cannot walk properly and you sell coconuts at the market for the family. You have shown yourself to be a good worker.

[11] I do not take into account and reject absolutely any suggestion that any victim's previous experience is ever in any way a mitigating factor. The complainant was vulnerable by virtue of her age and the law says for someone under 16 there is a presumption that she needs to be protected.

[12] Your finances are not good and I accept that. So your support of the family is important.

[13] The Crown submits you should face a custodial sentence and points to the decision of *R v Ioane* 30/3/2012; CR 682/10, 691/10 (Weston CJ) in which the Chief Justice imposed a sentence of 2½ years imprisonment on some charges relating to the same offences you are facing, but, in my view, in vastly different circumstances. In that case the victim was 12 and the offender was 39. The situation was described by the Chief Justice as "bizarre" in that there seems to be more than a suggestion that the complainant's mother had groomed the complainant for the relationship and therefore there was a preying on a very vulnerable 12 year old which was exacerbated by the grooming process.

[14] There are very different circumstances. Nevertheless the law has said it is wrong and I quote from the Chief Justice's decision which Crown counsel referred me to at paragraph 8:

"the law deems someone at that age to be subject to the law's protections and the simple point is that you should not have had sex with her. The fact that you might think that she came onto you is also not an excuse..."

[15] I turn to the sentence. Your counsel urges me to adopt the initial recommendation of the Probation Service which was a period of probation. That

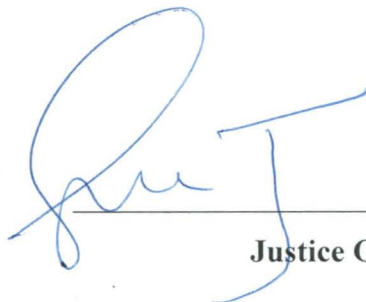
recommendation was subsequently changed this morning (not because of any amendment to the report itself but just to the recommendation) to a period of imprisonment.

[16] Taking into account the factors surrounding the offence and the offence itself I am of the view that a starting point in this offence is 12 months imprisonment. I consider the submission by the Crown of 2 years imprisonment based on the *Ioane* decision is too high given the vastly different circumstances of the cases. So as I have said I consider 12 months as a starting point. Off that I deduct a third for your early guilty plea – that brings it down to 8 months – and taking into account the factors relating to mitigation, first offence, your family circumstances which I do think are particularly relevant given you are expecting a baby and the complainant is living with you, I take 3 months off the 8 months.

[17] The result is a sentence of a period of imprisonment of 5 months.

[18] Suppression orders as follows:

- (i) as to the name, occupation and address of the complainant.
- (ii) any information in relation to the complainant's previous experience.



Justice Grice