

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

CR NO'S 887/16 – 889/16

CROWN

v

NUBONO TEBANO

Hearing: 19 to 21 July 2017

Counsel: Mesdames A Mills and A Herman for the Crown
Mr W Rasmussen for the Defendant

Sentence: 27 July 2017

SENTENCING NOTES OF DOHERTY J

[9:43:29]

[1] Nubono Tebano, you are now for sentence having been found guilty by a jury of three crimes. They are all similar in that they alleged that you did an indecent act on a young girl – she was aged 14 at the time.

[2] Firstly, on the 18th December by touching her on her breast and secondly, on the 19th December, again touching her on her breast and also on her vagina. This all occurred when you were taking her as a passenger on a voyage to Palmerston. She was 14, you are 61.

[3] You are the captain of the boat, or were on this occasion. You have been employed in that regard for some 17 years here in the islands and you have long experience as a seafarer and captain internationally.

[4] She was travelling alone. She was going to visit the family in Palmerston travelling from here in Rarotonga. You knew the family that she was going to, you were a friend of her aunt, and the aunt specifically called you to ask you to take care of her niece and look out for her.

[5] During the voyage which was some eight or nine days she became unwell – seasickness – and in response to that you ultimately offered her the top bunk in your cabin. That was to make her more comfortable.

[6] On the Sunday night, the 18th December, she awoke to find a hand touching her around her right breast. She identified that hand as belonging to you, and that was an issue for the jury.

[7] The next night she was again woken and she identified you as standing up facing her with one hand on her breast and the other on her genitalia. You had lifted her t-shirt and bra and started to touch and rub her breast. You removed her pants and her undies and placed your hands on her genitalia rubbing that area. She did say in evidence to the jury that you attempted to insert your finger into her vagina but she squeezed her legs and then turned away to prevent that. You are not charged with that in the sense of there being an attempted sexual violation, it is part of the indecency that the Crown alleges.

[8] Ultimately, in a frightened state, she left your cabin and ran to a person who was sleeping in an adjacent cabin. She remained there until you got to Palmerston. You were ultimately interviewed and then charged.

[9] This offending seems to be completely out of character for you. You have no previous convictions in this country at least, and I have got no information as to whether or not you have convictions anywhere else; so I treat you as a first offender.

[10] The Probation Service provided a report to the Court. It is an in-depth report. It tells me that you were born and raised in Kiribati. You attained well as a young man. You had a fully funded scholarship with the South Pacific Marine Service in Kiribati and you studied there to become a captain. You worked and studied overseas again, particularly in Europe. And then in June 2000 you took up the position with a local shipping company as a captain and you have retained that position ever since.

[11] You have made this country your home and in 2008 you and your wife received citizenship of the Cook Islands. You are a devoted family man. You are a devoted and devout Catholic and you luckily have the support through all of this from your family.

[12] You were described in evidence by your employer as being a skilful and honest captain, one who worked well. And I am advised in the Probation report that crew members praise you, your skills particularly, on the seas. You are described as an intelligent hardworking individual with a positive and excellent work ethic. In talking to the Probation Service you seem to continue to deny these crimes.

[13] I have also had the benefit of significant detailed submissions from both the Crown representing the government and from your counsel who has gone to some length in Court today and I am grateful for their assistance. In particular your counsel has taken issue with one or two matters raised by the Crown relating to aggravating features and I will come back to that. But counsel has emphasised your personal history, your personal worth to the community, your family, and asks me that this should tend me to the view that you are basically a good man. He also emphasises that rehabilitation should play the primary role in the sentencing exercise and in particular that you should not be imprisoned.

[14] The purposes of sentencing in cases like this is to denounce your conduct, to make you responsible for it, to hold you accountable for it, to take into account you and any rehabilitation, to take into account the welfare of the victim and her interests, and also to deter not only you from future offending like this but others in the community who might be likeminded.

[15] One of the principles of sentencing is that I should impose the least restrictive sentence that is possible. But also that I have to take into account what Parliament has decided about these types of crimes and the Cook Islands Parliament has decided that this crime is particularly reprehensible and therefore has set a maximum sentence of 7 years imprisonment.

[16] Another principle of sentencing is that those crimes that come within this category, that come towards the worst possible in the category, should get the worst possible or the highest sentence. In that case would be 7 years.

[17] There are a number of significant aggravating features in your offending and the first is the age of the victim. She was a young girl, she was 14 and – I venture to suggest – a relatively unsophisticated 14. It is a huge disparity in age between you and her. She was also particularly vulnerable at the time for a number of reasons. Firstly her age. Secondly, that

she was travelling under your care without her family and with her family thinking that you were going to take care of her. She was confined to a boat, there was nowhere she could go. Luckily, ultimately, she took sanctuary with another passenger.

[18] Because of those features or some of those features your offending was a significant breach of trust. You were in that position of looking out for her and rather than do that you exploited her.

[19] The Crown has asked me to take the view that you manipulated the situation by gaining her trust and then getting her into your cabin. I am not sure on the evidence that I heard that I could go that far. It might be a cynical view and it might be a truthful view, but I do not think that I should approach it on that basis. My own view was that this was more opportunistic, certainly to begin with, rather than a grooming or manipulative position.

[20] You have had a significant impact on this young girl and I have had the benefit of a statement from her prepared after discussions with her and her family by the appropriate arm of the police. In short she isolated herself from her family and her friends. She was a normal outgoing bubbly person. She is described as losing interest in everything that she loves to do. She is described as being traumatised and getting flashback memories of what happened to her, and that creates emotion. Luckily towards the end of this report it says that she is now happy knowing that the person who did this to her has been held to account.

[21] As a sentencing judge of some experience I am aware of what appears generally to be long term effects of this type of offending on young women even when they grow older, and while I cannot read too much into that in this case it is certainly a factor.

[22] A further aggravating feature was that there were three separate offences here – a continued course of conduct on two consecutive days. And finally there is the nature of the acts – this was skin on skin touching, this was touching in a manner which was invasive indeed.

[23] In mitigation there are a number of facts. The first is that you are a first offender and it is indeed sad to see you here at your age for this type of offending in this exercise.

[24] I have already highlighted from the Probation report the fact that you are highly regarded in your community and in your family and I have had the benefit of a number of references and letters written by people such as the bishop of the Rarotongan Diocese of the Catholic Church, your parish priest, a number of respected individuals in the community and they all note that they have the support of both you and your character.

[25] The High Courts have not given any guidance to sentencing courts in this type of case and that is for one reason alone, I think, and it is the circumstances vary so widely in each individual case, that it is difficult to give tariff decisions. I have been assisted by reference to various cases from this Court and from other Courts both by your counsel and by the Crown. They are no more than an indication in giving some guidance as to what other judges have done in similar or other circumstances.

[26] I had to complete a similar exercise yesterday in this Court and Mr Rasmussen has referred to that case. I have to decide a starting point for the offending generally and then adjust that starting point for the other factors, the aggravating factors that I have referred to and the mitigating factors which are those in your favour.

[27] Mr Rasmussen in his submission that there should be no imprisonment for you is unrealistic. Make no mistake about it, your offending is towards the higher end of any spectrum of offending on young women like this.

[28] In yesterday's case there was a young man who had unlawfully entered a backpackers premises and then indecently assaulted a sleeping 27 year old by touching her vagina and her breasts while lying on the bed with her. That was a case where my starting point was 2 ½ years imprisonment and I think for the acts alone that is appropriately where I should start for you.

[29] But you have so many aggravating features that I have already alluded that that cannot be where it ends and I think the other aggravating features of your offending mean an uplift of 18 months which would have a starting of 4 years imprisonment.

[30] What then that can be reduced by for the mitigating factors? It is not an aggravating feature that you took this matter to trial, nor is it an aggravating feature that you do not have any contrition for it, but you certainly cannot get any credit. For example, those who plead

guilty at the earliest opportunity would get a 25 percent reduction in that starting point of 4 years. For you, the only thing is your previous good character and, to an extent, the public might say well why should you get a credit for being good before you committed a bad crime? That is a good question. However you do have some enduring good character issues which have been set out particularly not just by counsel but by those people who know you and respect you in the community. I think in the circumstances that deserves a reduction from the 4 years and there will be a reduction of 6 months. Your end sentence is 3 ½ years imprisonment.

[31] As to rehabilitation, because of the length of the sentence, that will be a matter for the parole board.

[32] Stand down.



Colin Doherty, J