

POLICE

v

ROBERT VAKATINI

Date: 22 September 2017
Counsel: Ms A Mills for the Crown
Mr W Rasmussen for the Defendant

SENTENCING NOTES OF THE HONOURABLE JUSTICE PATRICK KEANE

[9:41:24]

[1] Robert Vakatini you appear for sentence for three offences, a burglary of Text Mart at Matavera on 29 March 2017, possession of three bongs on 1 March 2017 and a further bong on 17 May 2017.

[2] At the date of your offences you were aged 15 and you appeared in the Children's Court. You are now 16 and you have been transferred to this Court for sentence as an adult offender, given the burglaries for which you appeared in that Court in August 2015.

[3] Under section 36 of the Prevention of Juvenile Crime Act 1968 I have the ability in this Court to make any order that could have been made in that Court as well as to deal with you as an adult offender.

[4] In sentencing you I am obliged to reconcile the purposes of sentence which can be in tension. You must be made accountable for your offence, your offending must be denounced and you and co-offenders of yours must be deterred. As against that, particularly at your age, I must promote in you a sense of responsibility and assist you in rehabilitating and

reintegrating into the community. I must also impose a sentence that is consistent with those that are imposed on others like you who offend as you have.

[5] Burglary is a serious offence and in an adult offender can call for a significant sentence for imprisonment. Young offenders have been spared imprisonment in the Cook Islands simply because of their age. But the sentences in the community that have been imposed have been necessarily stringent. Possessing utensils for drug use is also a serious offence in the Cook Islands and that too attracts a severe response.

[6] The reality today may be that your burglary is the primary offence as a matter of totality. But in the submissions the Crown makes, relying on equivalent cases, it contends that they should be treated equally.

[7] The Crown submits that you should be sentenced to 3 months imprisonment for the burglary and accumulatively a further 3 months for the possession of the utensils; a total sentence of 6 months imprisonment. The Crown also contends for 12 months a probation with conditions consistent with your report.

[8] Alternatively, recognising your age and the fact that you have just become a father, the Crown accepts that you might be sentenced to a community based sentence consistently with the UN Convention on the Right of the Child 1990. More particularly the Crown recognises that this month you have become a father. If I am disinclined to imprison you, the Crown commends a lengthy period of probation up to 2 years, 9 months community service and reparation of \$854.62.

[9] Your counsel, for reasons I am about to come to, which are consistent with those in your pre-sentence report, supports a community based sentence as that report recommends and the Crown accepts may be a possibility. He contends for a lesser sentence than that commended by the Crown and your pre-sentence report. That is an issue to which I will return.

[10] As your counsel emphasises, at the age of 16 your offending is in part explained by the fact that in your early life when your parents were living apart your life was disrupted.

However your parents are now since reconciled you live with them and they support you. They support not just you but your partner and your new baby.

[11] Secondly, he says that you, in contrast to many of your age, have actually obtained work twice now and you are in work this week. That points to your acceptance of a level of responsibility. He points to the fact that you have pleaded guilty to these offences and accepted responsibility.

[12] Thirdly, he accepts as the Crown has pointed out that you were sentenced to supervision only in the Children's Court for five burglaries in 2015, and that this, plus the bong offences, was why you were transferred to this Court. He submits that your 2015 offences do not have the status of aggravating previous convictions.

[13] What they demonstrate to me however, as do the three offences for which you appear today, is that you have been set on a path of offending for 18 months or so now and that the outcome, if you continue, has to be imprisonment. So you are at a point of choice in your life. You can either continue that way or you can stick to what you are now setting out to do, keep work, and be responsible for your own child with your partner.

[14] Those are the reasons why I am prepared to accept the recommendation of the pre-sentence report; that and your young age. The sentence I must impose on you, however, must reflect how serious your offending is becoming and is presently.

[15] I sentence you to 2 years' probation under the supervision of the Probation Service. The terms are that:

- (a) you be under a curfew between 7pm and 6am;
- (b) you live under the supervision of your parents or another person at an address that Probation approves;
- (c) you not consume alcohol or non-prescription drugs;

- (d) you attend any workshops or counselling directed by Probation to address the Court as of your offending;

[16] You will also complete community service for a period of 9 months. You will pay reparation of \$854 at the rate of \$25 per week, the first payment is to be made a fortnight from now, being 5 October 2017.



Patrick Keane, J