

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

**CR NO's 525/17, 536/17
364/17, 244/18
429/18**

POLICE

v

NGATUPUNA TEINAKITAMA

Date: 22 November 2018
Counsel: Ms Glassie for prosecution
Mr George for defendant

SENTENCING NOTES OF THE HONOURABLE JUSTICE PATRICK KEANE

[9:55:34]

[1] Ngatupuna Teinakitama, you appear for sentence for five offences – two burglaries, one on 19 September, the other on 25 September, both at Arorangi; two offences of possession of a bong, one on 13 July 2017, the other on 26 April 2018; finally possession of seeds on 26 July 2018.

[2] On 19 September 2017 you were acting as a lookout when Travel Tuaputa broke into the Sunset Palm. He obtained from a unit there a backpack, a camera, two mobile phones, related equipment, alcohol and cigarettes. The total value was \$2,087.70. He returned the computer when he discovered that it had important photographs for the owner.

[3] You were on the beach as a lookout, after the initial planning, and when you got back to your start point in Arorangi you drank the alcohol.

[4] On 24 September you acted as lookout when Travel Tuaputa entered the Casa Rosada. You were both at the back of the building when he went in through a back window. You walked to the front, to act as lookout. He returned with NZD\$70 cash and Marlboro cigarettes valued at \$240.

[5] The effect on the occupants of the units on those two dates was not insignificant. The couple, who were the victims of the first burglary, found their holiday ruined. They still had 17 days left. They had difficulty with phones, liquid had been spilled on the laptop. They had intended to retire to the Cook Islands but have decided not to.

[6] The other victim puts in issue the actual cost of the cigarettes. They may have cost \$240 duty free; they cost \$500 at full retail price. And their total losses were \$600 which was their living budget for the next month.

Pre-sentence report

[7] Your pre-sentence report presents a mixed picture of you. On the one hand it is evident that your life was stabilised. You are living at the Sheraton Hotel complex under the supervision of Mr Tangatapoto. You are working. You were cooperative at the interview. In that sense your report is positive.

[8] As against that, your offences span 2017 – 2018 and your part in the two burglaries committed by Travel Tuaputa was indispensable. Without the security of a lookout he may have been less inclined to offend himself.

[9] You are making your third appearance for the offences for which you appear. In 2014 you were sentenced to 12 months imprisonment for offending which included three burglaries. And again a burglary in 2016 resulted in a prison term. In that sense your present offending is all of a piece.

[10] Your report therefore recommends, on balance, that a custodial term be imposed.

Submissions

[11] The Crown contends that a short term of imprisonment has to be appropriate in your case despite the improvements in your life. You are Mr Tuaputa's co-offender.

[12] The sentencing judge took an 18 month starting point for his part in the two offences to which you were privy. The Crown contends that a starting point in your case ought to be at least 12 months. The Crown also seeks a cumulative sentence for the drug offending.

[13] You are entitled to a credit for your plea, the Crown accepts, but you entered it on the eve of trial. You ought not, the implication is to receive a full credit.

[14] Mr George invites me to accept that your principal offence is the burglaries in which you played a lesser part. You are not to be equated with Mr Tuaputa who made the actual entry. He contends for a start point of 9 – 12 months.

[15] Those offences occurred in 2017 and despite the fact that you have offences that extend until July 2018 ostensibly, he says the reality is otherwise. Those are all possession offences and the last of them, possession of seeds, was actually a relic of 2017 offending discovered late.

[16] As to plea your counsel invites me to give you a full credit. He accepts that your plea to the burglaries was not entered until a week before the trial but he says he did not get full disclosure until that week. He could not, before then, advise you as to your plea.

Conclusion

[17] As I said, when speaking about your pre-sentence report Mr Teinakitama, you present a mixed picture.

[18] You have made radical improvements in your life recently. You were involved in serious offending, for which you have previous convictions, last year

and, however, it may be your offending did extend into this year. That has to be recognised on sentence.

[19] The ordinary principle is that co-offenders are to be sentenced equivalently to the extent that their offending is similar though parts played can have an effect as to how comparability is to be achieved. You did play a part in the burglaries that was beyond the merely instrumental. You were part of the planning and you also enjoyed the fruits.

[20] For those two offences I take a starting point of 12 months. You are entitled to a credit for plea. I am going to give you a full credit of 4 months. You will be sentenced concurrently on the burglaries to 8 months imprisonment.

[21] The possession offences warrant, to my mind, a cumulative term of 2 months imprisonment, each to be concurrent. Your total sentence is 10 months imprisonment.



Patrick Keane, J