

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

CR NO. 221/2020

POLICE

v

RECHIMAER BAKER JONA RAIROA

Date: 1 September 2020
Appearances: Ms J Epati for the Crown
Mr M Short for the Defendant
Sentence: 1 September 2020

SENTENCING NOTES OF THE HONOURABLE JUSTICE PATRICK KEANE

[12:23:08]

[1] Rechimaer Rairoa, you appear for sentence for aiding and abetting the aggravated robbery of the Tex Mart Store at Rangiuira on 20 April 2020. I sentenced your three co-offenders on 5 August 2020.

[2] That morning you and the others had been drinking alcohol at the home of your closest friend, Jordin Manuela. When you ran out of alcohol and needed money all four of you agreed to rob the store. You travelled there on two motorcycles, one of which was yours.

[3] Jordin Manuela and a 15 year old boy went into the store carrying a kitchen knife and a bush knife, threatened the shopkeeper and stole money and cigarettes. You remained as a lookout with the man whom I held to be the ringleader.

[4] All four of you then returned to Jordin Manuela's home, where you divided the money and cigarettes and they bought more alcohol. You to say you participated in the robbery reluctantly, an issue to which I will return, and immediately returned home.

[5] The shopkeeper, an employee of the owner, was very fortunately not injured. He was very affected emotionally and had to take time off work. He has remained apprehensive.

Sentencing principles

[6] As I said, when sentencing your co-offenders, the sentence I must impose on you must denounce and deter you; hold you accountable for the harm you have done; induce you to accept responsibility; and to the extent possible, assist you to rehabilitate and reintegrate, and recognise as well the interests of your victim.

[7] In sentencing you I must take into account equally the gravity and seriousness of your offending, and its effect on your victim, and also the other principles relating to you and others governing the sentencing process.

[8] The most immediate principle, as I then said, is that the fact that you may have been affected by alcohol can be a neutral, aggravating or mitigating factor. I held it to be neutral as to two of your co-offenders, but mitigating as to the 15 year old boy.

[9] The second principle relevant to you is that your sentence must be consistent with those usually imposed for your particular offence and with those I imposed on each of your co-offenders. But, having said that, the issue is whether you acted under duress as the Crown has properly raised today; and that can alter the balance.

[10] The final consideration relevant to you is that New Zealand sentencing tariff decisions may be highly persuasive. They do not always translate literally to conditions in the Cook Islands.

[11] Aggravated robbery here, as in New Zealand, attracts a 14 year maximum sentence. And in sentencing your co-offenders I relied on the principles governing aggravated robbery sentences in New Zealand, set out in *R v Mako*, but did not fully apply the tariff it sets out.

[12] *Mako* holds very relevantly, as I then said, that where an aggravated robbery involves multiple offenders all are to be considered equally responsible, regardless of their role. There is no hierarchy. A lookout can be as blameworthy as the actual robbers.

[13] I held most responsible the man with whom you were lookout, and sentenced him from a 4 year starting point. I sentenced Jordin Manuela from a 3.5 year starting point, and imposed a non-custodial sentence on the 15-year-old boy.

[14] In your case, as I shall say shortly, the Crown first began seeking to equate you with Jordin Manuela and contended for a 3.5 year starting point. Today the Crown recognises you may well have acted under duress and that this significant mitigating factor alters your relativity.

Probation report

[15] As your probation report says you are now aged 20, and 19 at the date of your offence. You are appearing before the court for the first time.

[16] You and your partner, with whom you have been in a relationship for in excess of a year, live with your parents and younger brother in the family home in Avatiu, very harmoniously as it appears. You have been working over the last four months to assist the family.

[17] Your mother describes you as well-mannered at home but says when you are with friends you are easily influenced. Your offending, she says, has caused your family great distress, but they will support you in every way they can.

[18] Your report also says that on the day of the offence you went to Jordin Manuela's house to get a coconut plucking pole but stayed and paid for alcohol. When the robbery was agreed, your report says, you decided nobody was thinking straight. On the way to the shop you said so.

[19] In your report you say you suggested turning back, but that then and at the shop itself Jordin prevailed forcefully on you to stay, and you did. You admit to having shared in the proceeds. You say you left to put your co-offenders at a distance.

[20] Since then, the report says, you have apologised to the shop owner and his employee. You have written letters to them. With your parents help you have taken food to them, and made a gift of \$500. You have also worked for the owner, unpaid, for three weeks.

[21] Your report says that at interview you were forthcoming and remorseful. It also says you had the chance to do the right thing but you did not. Because your part in the offence was relatively small and involuntary, however, it recommends probation supervision for 2 years with 9 months community service.

Crown submissions

[22] As I said earlier, the Crown's initial position was that you are to be equated with Jordin Manuela. You are the same age as he is and, on the face of it, you played a full part in the aggravated robbery albeit as a lookout. Today the Crown very properly concedes your part was largely involuntary.

[23] Jordin Manuela is your closest friend. You did not want to carry through the plan but he prevailed. His pre-sentence report and that of the 15 year old boy both confirm that you were subjected to threats. Your part was passive and forced. The Crown accepts that this is a significant mitigating factor.

[24] A sentence of imprisonment would be disproportionate to your offense. A sentence within the community for the reasons set out in your report would be proportionate. The Crown supports the recommendation in the pre-sentence report.

Defence submissions

[25] Your counsel supports that recommendation, essentially for the reasons given in the report. He has supplied me with letters from your mother, and from your employer, who speaks very well of you. Also from responsible members of the community who regard your offence as quite out of character.

[26] He says also that you have undergone counselling and has supplied me with a letter from the shopkeeper, who confirms that you not merely expressed remorse, you worked for him for several weeks without pay. He is fully satisfied you are remorseful. He invites me to impose on you a sentence in the community.

Conclusions

[27] In the sentencing you I have to say at once, Mr Rairoa, that the part of a lookout in an aggravated robbery is not a small part. It can be an indispensable part. A lookout can be as culpable as an actual robber.

[28] That said, I do not equate you with Jordin Manuel with whom the Crown initially equated you. As I said when I sentenced him, he played a full and willing part in planning and executing the robbery and, I accept, did prevailed on you and may have threatened you. Such part as you played was, I accept, largely involuntary.

[29] Nevertheless, you owned one of the motorcycles used. You knew from the outset weapons were to be carried. You were outside when the robbery happened. You did accept some part of the proceeds. And so your fault is not negligible either.

[30] I am satisfied that you were very remorseful, and in an unusually tangible way. I regard as highly important the letter from the shop owner. That mix of considerations leads me therefore to take the unusual course in your case of imposing on you a sentence within the community.

[31] You will be convicted and sentenced for your part in this offence. You will be sentenced to probation for 15 months with 9 months community service concurrently. Your special probation conditions are these: (i) You are not to purchase or consume alcohol. (ii) You are not to enter licensed premises except supermarkets. (iii) You are to attend such training and workshops as are directed. (iv) You are not to leave Rarotonga without the consent of the High Court.



Patrick Keane J