

CROWN

v

UANI KATOA

Date: 5 August 2021

Appearance: Ms A Maxwell-Scott & M Okotai for the Crown
Mr N George for the Defendant

SENTENCING NOTES OF DOHERTY J

[1:34:13]

[1] Uani Katoa, on the 29th July – that is last week – you were found guilty of a charge under s 148B of the Crimes Act 1969. That charge was that you touched the genitalia of a woman with her consent but if it had not been for that consent it would have been an indecent assault because you obtained that consent by a false and fraudulent representation as to the nature and quality of the act.

[2] The context of this is that you are a Maori medicine healer – you perform a massage therapy in the course of your vocation, if I can call it that. The woman involved in this case was attempting to conceive in a manner that was not natural in the sense that she had had her fallopian tubes removed and she was undergoing an in-vitro fertilisation course. She desperately wanted to have a child. She had heard of your reputation as a healer and a massager, and it was her knowledge that you may be able to help her by the positioning or proper positioning of her womb so that she could hold a child more readily. She had already had one course of the therapy she was doing, and that had not worked. She was hoping that whatever you might do could help thereafter. Ultimately you and she arranged for an appointment and you saw her at your home on 11th July 2019.

[3] In the course of that treatment she explained to you her circumstances and to an extent that was caused because in the course of the massage on her body you saw a number of scars on her abdomen. She explained what each of those was about including the one that led to the removal of her fallopian tubes, meaning she could not conceive naturally.

[4] I heard that evidence and I heard your evidence about that where you said she had not told you that at all. I did not believe you at the time and neither did the jury. You knew full well that she could not conceive naturally.

[5] You carried on with the treatment and she got some precursor I think to what was to follow, because you commenced a massage of her breasts. It was not to her a massage at all, you were cupping or fondling them, holding them, wobbling them and squeezing them. That made her feel uncomfortable.

[6] You told her not to worry about it; that you had done this on many occasions before and you knew what you were doing. She ought not to be shy because you had seen it all before. And thereafter you continued your therapy down into her abdomen to concentrate on the womb area which she understood was what she was really there for. So despite her misgiving she remained.

[7] You worked on her womb area for some minutes – I think the evidence was 20 minutes – and told her it was difficult to move her womb where it should be. She gave evidence that it was painful but she persisted through that pain in the hope that you would help her.

[8] You then made an observation that was “some heat coming from down below” and that you were going to do a procedure which was one you had done, you said many times before that “was like a smear”. You also told her that you had been of assistance to women in Middlemore Hospital when you were in New Zealand. That gave her the confidence to allow what she thought would have been an internal procedure wherein you placed your fingers into her vagina and uterus to check where the positioning of the womb was. That is the trust she put in you. You did not do that. What you then did was to place your hand and your fingers on her clitoris and to stroke her. The same time you asked in Maori “te nene mai ara koe?”, “te kiki mai ara koe?” – are you feeling aroused?

[9] This she rationalised was to diagnose that she could not conceive naturally, if she was not able to be aroused. You made comment that you thought she was dead down there. You knew full well she could not conceive naturally, and there was no need to be doing that other than for your personal gratification. Having heard her evidence, having heard your evidence, I do not buy your story which continues to be that this was some great mistake on her part.

[10] That led her to be very uncomfortable and to abruptly end that part of the massage. She left, she came back not wanting to hurt your feelings, not wanting to know that she realised you were up to no good and you completed the massage with a back massage.

[11] What is also aggravating and telling is that you told her not to tell anyone. In the course of the trial you tried to rationalise that as saying, “oh, people do not understand these things so it is far better that the people I treat do not tell anyone about it”; particularly their loved ones, and you made a specific point of telling her not to tell her partner. Shortly after that she told the police, and that resulted in the trial and what is happening today.

[12] You are no stranger to being before the courts for unlawful sexual matters. In 2007 you were convicted on three counts of sexual violation and indecent assault on a female cousin of yours who was then aged either 12 or 13, where you groomed her and then violated her over a 12 month period. This conduct led you to receive ultimately a term of imprisonment of three years in New Zealand.

[13] I have had the benefit of a report from the victim’s service. The young woman you treated continues to have significant affects from your offending. She is extremely anxious and emotional. She is upset. She went through all sorts of guilt that she let this happen. She struggles with sleep still. She describes the event as being life-changing. I saw her give her evidence on the stand – she seemed to me to be a mature, sensible, well-qualified woman with a high powered job but it is very clear that she has been struggling since this happened and she continues to struggle. She has moved away from her house because you own one next door. And one of the significant features to me which ties it all up, is that her self-esteem has gone and she said “I believe part of my mana, my power was stolen that day and I am still in the healing process.” I see her in court today and I hope that this process, the end of it for her, will help heal her for her future.

[14] There is also the effect that it has had on her partner, so it is not just her.

[15] I had also the benefit of a report from the Probation Service. It does not give me any confidence that you are remorseful at all. You want to carry on as a healer, helping women who are wanting to conceive in the same way. The report says that you display remorse towards the victim and you understand why she accused him for indecent assault, also stating that he agrees to the verdict by the jury. That is curious to me – that you agree with the verdict yet you made this woman go through this whole process. If you agreed with the verdict then you knew full well what you had done was indecent and you could have spared her that, but you did not. You continued. So, going to trial hardly sits well with remorse. In my view your attitude is nothing but self-serving.

[16] I quote also a later part of the Probation Service report, “Mr Katoa is concerned about the outcome of this case as it could jeopardise his reputation in the community, stating that his clients are calling to schedule appointments but he has had to advise them he cannot help as he is awaiting the outcome of his sentencing. Mr Katoa pleads for the court for a term of probation as an alternative to imprisonment and asks the court to grant him permission to continue doing his work.”

[17] To be fair, Mr George on your behalf has submitted to me today that you do not really expect that to happen, that you have made a commitment to your spiritual leader and to the community of Pukapuka that you would cease healing practises if you were given the maximum sentence of probation that was available – three years.

[18] I think your attitude is rather naive. Why would a court want you to continue your work with the risk that it would bring to vulnerable women? In 2007 you were convicted of indecencies against a vulnerable woman – she just happened to be 12 or 13. In 2019 you offended again. If it were up to me, you would never work in the field again.

[19] There are a number of aggravating features to this offending – the harm to the victim that I have already described; the fact that she was vulnerable, both physically because she was lying there on your couch naked, and psychologically – I have spent some time on that. There is the breach of trust.

[20] Mr George has gone to some pains to tell me, and he did tell the jury that you are held in high esteem within the healing community and your Pukapuka community as a traditional

healer. You do hold mana. You are a papa. But when you abuse that mana and that esteem then it is a significant breach of trust because people like this woman put their trust in you.

[21] There is another potential for a breach of trust and that is the harm to reputation of others. You put your case to this jury on the basis that this was an attack on traditional Maori healing. So you nailed your colours to the mast. What was notable was that there were two other esteemed healers who gave evidence – not for you but for the crown. And their evidence was categorical, that what you did has no part in traditional Maori healing and treatment. And you can justify if you like, they did not.

[22] So what are your actions do to the others who indulge in the art of Maori healing? I suspect that many people will think twice now because of what you have done.

[23] The crown points to the deception that you had in letting this woman think that you have some sort of gynaecological base behind what you were doing, particularly with the reference to the Middlemore Hospital and using semi-medical terms like ‘like a smear’. It is also aggravating of course that you have your other convictions.

[24] Mr George has done his best to mitigate matters. A number of the purposes of sentencing come from the courts in New Zealand and that is because the operation of the law here that we lean in that way when there is a gap in this law – the law of the Cook Islands.

[25] But at any sentencing process, it does not matter where it is, denunciation, making people accountable, making them responsible for the actions are fundamentals of any regime where the courts have to intervene in a way to respond to criminal offending. And if I do what Mr George asks me to do, which is to put it in the context of the Cook Islands, I see no difference. Conduct like this, from whoever does it, and particularly from those in positions of trust mean they have to be held accountable, they have to be responsible, the conduct has to be denounced, and the courts have to show that this type of offending is not on.

[26] Mr George has done his best to say that you ought to have a credit for all the help that you have given in the plying of your trade as a Maori healer. And I have to accept that not all of your work from has been detrimental. You treat others, not just women wanting to conceive and to have some of their gynaecological difficulties dealt with. He makes another plea which is a wider one, which is a recognition that perhaps it is time that traditional Maori healing be

brought under a better control and, as he put it, a better discipline so that there can perhaps be certification or proceedings taken or some sort of tribunal who might oversee this type of therapy. I do not know about that, it is not my place to comment on what legislation there should be. I think that is a matter best left to the community who might now, as a result of your offending, think that is a good idea.

[27] The crown has referred me to a number of decisions of this court and the New Zealand courts relating to like offending. Because this type of offending is so eclectic or so wide and wide-ranging there are not any tariff decisions because every one of them is different in terms of their detail, although not in terms of their genre.

[28] No two cases are alike. But I have read the cases that the crown has provided and some others and when I look at the Cook Islands cases of *Taufahema*¹ and *Tangatapoto*² and the older New Zealand case of *Karotu*³ and particularly *R v M*⁴. Bearing in mind that the maximum sentence of imprisonment here is seven years, I cannot see, firstly, any other alternative sentence for you Mr Kato other than one of imprisonment.

[29] The crown says that it is somewhere in the range of two to three years as a starting point. I think I agree with the range although I do not agree with the crown's starting point being at the lowest end of that range. Bearing in mind the aggravating features that I have already referred to, I think the starting point is in the mid of that range, which is two years and six months. I agree that there needs to be or should be what is called an uplift from that because of your previous offending.

[30] Mr George has said that your previous offending should be, if not discounted, have little weight put onto it because of it being a different type of indecency and not one which was carried out in the course of your treatment regime. But it is still a significant indecency.

[31] You are lucky, if one can be lucky in these circumstances. If you were in New Zealand this would be a case of sexual violation, which is even more – even a higher category of

¹ *Police v Taufahema*, CR 505/15, CR 527/15, 31 May 2016.

² *R v Tangatapoto*, CR 102/2020, CR 103/2020, 26 March 2021.

³ *R v Karotu* (1994) 11 CRNZ 691 (CA).

⁴ *R v M* [2000] 2 NZLR 60 (CA).

offending. I think there needs to be an uplift and it is to be six months imprisonment. Meaning the starting point before I look at any mitigating factors is three years.

[32] I have discounted that you are remorseful in any real way. You put this woman through trial. It does not lie well in your mouth now to say, "well I accept what the jury said and I knew it all along".

[33] You are 65 years of age. You are, I am told from the bar, of an infirm nature in the sense you have a bad knee and a bad back and you suffer from diabetes. Should any of that give you a discount from the three years imprisonment? I suspect that a sentence of imprisonment will have a significant effect on you, probably more than if you were a younger and healthier man.

[34] I accept also that there may well be something in Mr George's submission, that treatment of women aside, you have caused some good in the community and helped many people. So I think you should receive some small discount for those factors. And that is a discount of three months from the three years.

[35] You will therefore serve a maximum term of imprisonment as a sentence of two years and nine months.

[36] I mentioned earlier that if I had my way you would never practise what you do again. But that is not a matter for me, it is a matter for the Parole Board on your release. You will serve a maximum sentence of two years, nine months imprisonment.

[37] Thank you.



Colin Doherty, J