

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

**CR NO'S 474/19
406-407/21
57, 1449, 1843/22**

POLICE

v

DEREK RAKAROA TREGO

Hearing: 17 March 2023
Appearances: Ms M Pittman for Crown
Ms L Rokoika for Defendant
Sentence: 17 March 2023

SENTENCING NOTES OF TOOGOOD, J

[9:46:36]

[1] Derek Rakaroa Trego, you appear for sentence on five charges of contempt of court and one charge of wilful damage to which you have pleaded guilty.

[2] On 22 August 2019, you appeared in Court on a charge of arson. It was alleged that you had started a house fire at a cottage in Avana, Ngatangia. You entered no plea and the case was adjourned. You were granted bail on condition among other things that you should not be abroad between 7pm and 7am – a night time curfew. You were I think around 22 at the time.

[3] The contempt of court charges arise from breaches of your bail in that on 5 July 2021, 6 August 2021, between 27 January 2022 and 31 January 2022, and on 14-15 October 2022 you were away from your bail address when the police did a bail check. You had been bailed

I think for most of that period when the contempt charges arose to the home of your father. The fifth contempt of court charge arose from your failure to report to police as required on 18 November 2022.

[4] What is troubling about this case is the delay in dealing with what should have been a relatively straightforward charge. Arson is serious and you have acknowledged that you were involved, although you dispute some details of the Crown's allegations. Arson – carrying a maximum penalty of 14 years imprisonment – is regarded by the courts, quite rightly, as a very serious charge. But it should not have taken 3 years and seven months to get this case to this point.

[5] In January of this year you pleaded guilty to an amended charge of causing wilful damage which carries a maximum penalty of 3 years imprisonment.

[6] Your conviction history is all related to this series of events. Prior to your arrest in August 2019 on the arson charge, you had never been convicted of any offence. And you have not been convicted of any offence other than the wilful damage charge and seven breaches of your bail conditions. I mention seven because, on two other charges of contempt of court, you pleaded guilty and were fined by Justices of the Peace. You have seven convictions for contempt of court, therefore, all related to a strict bail condition that remained in place for three years; residing with the Rasmussens and others sometimes but more recently with your father. All of the breaches of the curfew, as I understand it, involve occasions in which you were in fact at a neighbour's house close by at the time the police did a bail check.

[7] It is remarkable to me that, in fact, you did not breach your bail more often. I do not mean that would have been excusable, but for a man to go from the age of 22 to 26, being forced to live every night in his father's home, to me, is highly inappropriate and wrong.

[8] As to the principal charge of arson, you had maintained your not guilty plea until the Crown reduced the charge. But it was apparent that, at the time of your arrest, you had a psychological disability and a request was made to Dr Evangeline Wong, a consultant clinical

psychologist who first assessed you on 5 November 2019 and provided an initial report on 12 November 2019.

[9] The summary of facts for the wilful damage charge says that somewhere around 7pm on the night of 1 August 2019 you drove by motorbike to a cottage at Avana with a nearly empty 20 pound cylinder gas bottle on which the name 'Trego' was engraved. You went to the cottage in the dark and threw the gas cylinder into the cottage, smashing the top window of the sliding door. You then gathered paper materials and lit a fire inside, close to the sliding door. It is alleged in the summary that as a result of leaking gas from the cylinder and the burning fire lit by you, there was a loud explosion and the fire burst into flames spreading to other parts of the cottage. You fled the scene but neighbours rushed to the fire and managed to put it out before the fire service arrived. You were then arrested by police on 9 August 2019, you denied being responsible and refused to make a signed statement. I understand there was an issue about whether you had a lawyer present, and I make no criticism of you; I am just reflecting what was said in the summary of facts at this point.

[10] You now admit that you broke the window with the gas cylinder and lit a fire but you deny that the fire was ignited by leaking gas and that there was an explosion. You say that you had a bottle of Vaiora with gasoline in it which you poured into the house and then lit the fire by that means. You did not enter the house, all the lights were off, and there was no one at home.

[11] For sentencing purposes I am prepared to accept your account of what occurred, but I do not think it makes any difference to the degree of culpability, whether the fire was started by an exploding gas bottle or by gasoline. And I do not hold it against you that a statement was not signed, because I understand that you did not have the benefit of legal advice at that time.

[12] What is significant, though, is that Dr Wong reported that when she asked you for an explanation for lighting the fire you reported to her intense frustrations and intense emotional pressures during your time in New Zealand and said that had made you paranoid. You described your brain trying to put things together and your mind playing games and you talked about the difficulty you had in managing things. You said you reached a point where you did not care about anything anymore and you had lots of questions that could not be answered

and you took your frustrations out on the building and you described your actions as “kamikaze like”. That is probably in reference to the fact that you left primary evidence of who the offender was by leaving the cylinder there with your name on it.

[13] Dr Wong records that you were aware that some of your experiences were due to psychosis, some to paranoia and a belief that others were hassling you. Dr Wong said that when she first interviewed you, you told her you occasionally had auditory hallucinations, hypomania and manic states and that you reported historical depressive episodes. You also reported ongoing periods of self-harm. In Dr Wong’s opinion, you had a disease of the mind at the time of the wilful damage offending, described by her as a psychotic episode predominantly delusional type, as evidenced by the belief that you were being persecuted by an unknown group for unknown purposes during your time in New Zealand and then in the Cook Islands. You believed that you were receiving messages from the group via technological means and also via media, such as the paper.

[14] You were subject to a community treatment order under the Mental Health Regulations 2013. As a result, you underwent regular treatment over a period of 12 months and you have continued to engage with the Mental Health Services throughout the period of your remand.

[15] The treatment appears to have resolved your mental health issues. In a second report dated 6 January 2022, Dr Wong said you were not currently insane and you did not have acute psychotic symptoms. You described the regular mental health service appointments as helpful because you could express frustrations. Significantly, you said that you were wanting to go to New Zealand for work and you were very frustrated by the length of your remand which, in Dr Wong’s view, in many ways put you at risk of further mental health problems. You were becoming increasingly depressed at the inability to plan forward and felt you were being unduly targeted by the police. In January 2022, you said that you wanted your charges dealt with, and it was at that time you entered pleas of guilty to the arson and other contempt charges and you were to have been sentenced on 18 February. There was then a delay until late 2022, after it appeared the sentencing hearing was abandoned. The Chief Justice took the view that the arson charge was so serious that the sentence of probation which the Crown and your counsel, Ms Rokoika, were recommending was not one that the Judge would have found

acceptable. Your counsel was unavailable to you until October 2022 and eventually, in January this year, the Crown amended the charge from one of arson to wilful damage. You indicated then that you would plead guilty to that and the contempt charges. You have pleaded guilty today to the two remaining contempt charges.

[16] On 21 February 2023, Dr Wong said that the mental health team had had no difficulties working with you for the past nearly four years and that you had been not suffering from any mental illness for well over 24 months. The mental health team has no concerns about your mental health.

[17] I can well understand your frustration, Mr Trego. I accept that there are explanations for these delays but you have been let down by the criminal justice system. As a man who was plainly suffering from serious mental health issues at the time of the offending, and subsequently, as was known to the authorities in November 2019, only three months after the offending, you should not have been made to wait for another three years to have the case dealt with.

[18] You should not have been confined in the way you were confined to the Cook Islands and to a particular part of the Cook Islands every night. A young man in his mid-20's should not have been required to stay at home with his father every night for nearly four years, a severe restriction on your freedom of movement particularly when it was clear that you wished to return to New Zealand, and there was no evidence that you posed any risk of reoffending. It is no reflection on your father, who has been very supportive of you, that you have remained frustrated by having to remain here. You acknowledge that you have been well looked after in his care.

[19] The terms of your bail have in effect imposed a period of detention, similar to home detention. I recognise, of course, that you have been free to move about Rarotonga during the day and go to work. But the severe restriction on your ability to stay elsewhere, and particularly your ability to leave Rarotonga and return to New Zealand or go anywhere else, has proved to be highly punitive.

[20] You have acknowledged your wrongdoing by pleading guilty. Apart from the breaches of bail, as I have said, you have not committed any criminal offence other than the

wilful damage in 2019. The Probation Service has recommend that you be placed under probationary supervision for a period of 18 months and that you should undergo a three-month period of community service. And it suggested that you should undertake a period of community service in order to hold you accountable for what you have done. But you have also spent periods in custody during this remand period. I cannot see any proper basis on which you should be punished further for your offending.

[21] There is no justification provided to the Court to suggest that you are in need of supervision by the Probation Service. Nothing in the material before me indicates that you would receive any benefit from probation and that an imposition of an order of that kind would mean that you would not be able to leave the Cook Islands unless the Court approved it. You do not exhibit any risk of behavioural problems and you have been punished enough.

[22] In the particular circumstances of this case, I regard you as having fully accepted responsibility for your actions, despite the fact that you may well have had a defence related to the mental illness you were suffering at the time of your offending. At the very least, it is a strongly mitigating factor which, in my view, would never have resulted in a period of imprisonment.

Sentence

[23] On the five contempt of court charges to which you have pleaded guilty, you are convicted and discharged. On the charge of wilful damage to which you have also pleaded guilty, you are similarly convicted and discharged.

[24] You may stand down.



C H Toogood, J