

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

CR NOS: 12/06, 64/06

POLICE

V

JASON DAVID ELIA
Defendant

Sergeant T Howard for Police
Mr Little for Defendant
Date of Sentence: 31 March 2006

SENTENCE OF NICHOLSON J

Jason Elia, you have pleaded guilty to two offences, both committed on the 17th of January this year at the airport in Rarotonga. The first, that not being licensed or otherwise permitted, you imported cannabis into the Cook Islands and second, that you had possession of a pipe for the purpose of a drug offence, namely, consumption of narcotics.

The facts are that you arrived at the airport from New Zealand, that the Customs searched your bag and in a locked case they found first wrapped in some socks, two medium long necked glass pipes with oval ends, this being a utensil for smoking drugs. They found a red Tui can which had a false screw-in bottom and inside that, inside a plastic bag was 27.61 grams of dried cannabis sativa cuttings. Also in the silver bag was a yellow engine degreaser can which had a false screw bottom and that in a plastic bag was also 25 grams of dried cannabis. Thirdly, there was a purple air refreshner can which had a false screw in the bottom and in that was found 27.06 grams of dried cannabis making a total of 79.67 grams.

When interviewed at the Prison, you admitted that you bought the cans at \$25.00 each but that you bought them for the purpose of bringing the cannabis into the Cook Islands. It is clear from your medical history and your explanation and the amount of cannabis involved that you did not import it for a commercial purpose but to use yourself for pain relief from a chronic back condition which you've had for many years and a migraine headache condition.

In a pre-sentence report, the Probation Officer talks of your age of 36 years, how during your youth, you showed excellence in sporting events and you had actually realistically hoped to represent New Zealand in the Commonwealth Games but due to a back injury suffered while you were working as a concrete layer you had to withdraw, it was then that you started using marijuana for pain relief. You have a history of conviction in New Zealand for drug offending but all of that was in 1993 and you were _____ and supplying metampethamine, you were sentenced to imprisonment.

Clearly there was a commercial element in that but may have been in the context of getting money to support your drug taking. However, in this case I am satisfied there was no commercial element of profit and so therefore I do not regard those previous convictions as being of significance for sentencing today. However, the Probation Officer goes on to point out that you have married and that your second wife has two children, that you have an excellent relationship and you are supporting your wife and your step children. In particular, in a letter sent to the Court by your wife, she tells of the great change for the better that you have brought to her life and to the life of the children and how they justifiably regard you as their dad. If you were sent to prison, by reason of you not being able to earn, this would cause great difficulty to your wife and children. As a consequence of your offence you have suffered loss of your job in the Fire Service associated with the airport and you now do more casual type work.

You pleaded guilty to the charges at an early stage. Normally, for the offence of importing a drug, imprisonment is the appropriate sentence because of the need for deterrence of that activity. However I am satisfied in your case that the drug was imported for your own personal use and not for any commercial reason, that the amounts were relatively modest. And in the circumstances I consider that this is an exceptional case in which the normal penalty of imprisonment need not be imposed.

The Probation Officer recommends a Probation Service order of 12 months and in my view that is appropriate. I accordingly sentence you to 12 months Community Service order as prescribed in Section 8 of the Criminal Justice Amendment Act 1976. You will of course realize that with this conviction your contact with cannabis or any other drug must absolutely cease because if you are found in the future, even in the possession of cannabis, it is likely that the Court would regard the appropriate sentence then as a deterrent to you, let alone to others to be imprisoned. So you must seek other pain relief for your problems.

So that's the sentence of the Court and I trust that you will now continue to be the good husband and father that you have demonstrated you are. I order that the articles ceased be confiscated to the possession of the authorities and dealt with accordingly.



JUDGE
