

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

**CR NO'S 332-334/12
& 337-338/12**

POLICE

v

**ANANIA TUTEMAeva I TE TAUAREKAREKA URIARAU &
NGAMETUA NICHOLAS KIMIIA**

Hearing: 22 June 2012
Counsel: Ms C King for the Crown
Mr C Petero for the Defendants
Sentence: 22 June 2012

SENTENCING NOTES OF WILLIAMS J

[1] Anania Uriarau and Ngametua Nicholas Kimiia, you both appear here for sentence this morning having pleaded guilty to the same three charges; possession of cannabis on the 2nd April 2012, possession of a utensil/bong, and smoking cannabis. The amount of cannabis involved was 3.95 grams. You are liable for imprisonment on possession or smoking for up to 2 years in prison and of possession of the utensil for up to 5 years imprisonment. Plus potentially a fine can be imposed.

[2] You pleaded guilty, essentially, at the first opportunity you had but apart perhaps from the smoking of cannabis, which was a matter of admission, you would have had little chance of escaping a conviction in any case.

[3] On 2nd April 2012 the Police were called to some suspicious activity on the beach at Tupapa. Both your motorcycles were there. You were found a few metres away, hiding, with bongs equipped with hoses in your possession. There was cannabis in your bag and a lighter and you both admitted to smoking cannabis. For each of you it is the first time you have appeared in this Court.

[4] It appears, Mr Kimiia, you are about 18 years old, you have had a good but somewhat distant family life, but to your credit you have undertaken some job training and your employers speak very highly of you. Your employers are also to be commended for the way they have tried to assist you and they ask for leniency. There is also a testimonial before the Court from the Head of the Hospitality and Tourism Training Centre which again suggests you have benefited from the training and if you were sentenced to community service, the Centre may be able to use your services in assisting the tutors there because you now have a Certificate in Food Preparation and Culinary Arts.

[5] The Probation Report expresses some concerns concerning the personal stress that you were under as a result of working seven days a week and sometimes two shifts and suggests that you used cannabis to alleviate that stress. It recommends 12 months probationary supervision, the first 6 months to be on community service.

[6] For you Mr Uriarau, again, much the same age, you have had a good upbringing even perhaps an indulgent one, and reasonably good schooling. But now you are unemployed. You have your family support here and you suggest the offending in this case was undertaken as a result of curiosity. The Probation Service recommends a similar outcome for you as for Mr Kimiia.

[7] Ms King for the Crown submits that by comparison with certain other cases such as *Joseph, Iati* and *Henry*, that maybe a fine should be imposed or probationary supervision. As I said to your counsel Mr Petero, if I impose a fine, at least with you

Mr Uriarau, it is your family that is going to have to pay it, not you, although you may pay them back.

[8] Mr Petero points in the case of both of you to your cooperation with the Police and suggests again that this is a matter of teenage curiosity with offending at the “lower end of the scale”. That is the phrase defence counsel always use. In mitigation Mr Petero points to your plea at the first opportunity, your age, and suggests that fines would be appropriate.

[9] There are a number of cases before the Court this morning for sentencing involving the possession and use of small amounts of cannabis, often with utensils such as a bong. Judges have been saying, at the urging of Police and the Crown in the Cook Islands, for a year or more now, that cannabis offending is on the increase and its prevalence is such that they urge the Court to take a more severe attitude to sentencing.

[10] Most of the charges this morning are for young or comparatively young men, nearly always men, who are fairly uneducated or not well educated, ill-trained or not trained at all. It usually involves small amounts of cannabis and the accused persons, in the main, have little motivation to improve their situation and seem content to be dependent on their families – including their families offering to pay fines. Often this kind of offending appears to be associated with other similar offences including in many cases, burglaries to get the money to buy cannabis.

[11] As the cases that counsel refer to show there has been quite a wide variety of sentences imposed by Judges in the past. They are no doubt justified by the different circumstances of the various accused, but it needs to be said that when Judges are sentencing people for drug offences, personal circumstances play very little part in the deciding what is the appropriate sentence to impose.

[12] It is therefore arguable that earlier cases involving drug offending, particularly those older than a couple of years, are probably not now appropriate indicators of what the appropriate sentence should be. If drug offending is on the increase to the point where it is a concern to the Crown, the Police and other

authorities, then the Court needs to respond to that by imposing more severe sentences to deter other people similarly minded from involving themselves in drug matters. It is clear that a Court imposing sentence has to try and fashion a sentence which provides for some accountability for the harm done to the community by drug offending – which is very obvious – try and promote a sense of responsibility in those charged with offences, denounce their conduct, and of course to try and deter others from similar offending.

[13] In my view, therefore, where drug charges of this nature come before the Court, the Court ought to consider as a starting point a short term of imprisonment, perhaps a month or two. So in your case, adopting that starting point, I need to try and fashion a sentence which will meet those aims that I just outlined.

[14] In each case you are relatively young and that is a matter which the Court can take into account, but of course it is a matter of decreasing concern for you over the years.

[15] In each case you are entitled to reduction in the sentence, perhaps a substantial one, for pleading guilty to the charges at the first opportunity, but as I said earlier you would have had little chance of escaping conviction on the possession of the cannabis and the utensil in any case.

[16] In each case you are entitled to some reduction in sentence for the fact that this is your first offence and your first appearance in the High Court. But you are never again going to be able to invoke that to try and reduce the sentence.

[17] In my view, despite what Mr Petero has advanced on your behalf, because the circumstances of the offence in each of your case are identical, the sentence of the Court on each of you should be identical.

[18] I commence with a starting point of perhaps a short term of imprisonment. You can count yourselves fortunate that the mitigating features – those which reduce the severity of the offence that I have mentioned – do enable each of you to escape a sentence of imprisonment.

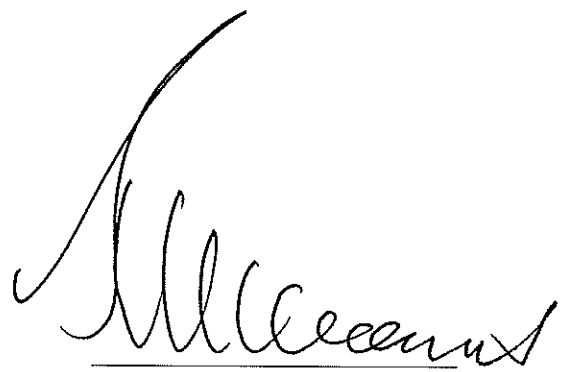
[19] In my view, in yours and in many other cases where the accused persons have no job or have no savings or no means of paying a fine, the choice facing the Court is either a term of imprisonment or a term of probation. It seems scarcely sensible to impose a fine particularly where that needs to be met by the family, not by the accused themselves, even though there might be a repayment arrangement.

[20] In each of your cases there will be an order therefore for the destruction of the utensil.

[21] Each of you is admitted to 12 months probationary supervision, the first 6 months of which are to be served by way of community service. The community service shall be such as the Probation Service orders and in your case, Mr Kimiia, if the direction is that you help the tutor of the Hospitality Centre that is perfectly acceptable.

[22] Mr Uriarau you said that you hope to go overseas. One of the consequences of your offending back on the 2nd April 2012 is that you may now no longer be able to do that.

[23] The sentence of the Court however, as I said, is 12 months probation and 6 months community service.

A handwritten signature in black ink, appearing to read 'Hugh Williams J', written in a cursive style. The signature is positioned above a horizontal line.

Hugh Williams J

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

**CR NO'S 332-334/12
& 337-338/12**

POLICE

v

TAVAREKAREKA

**ANANIA TUTEMAEVA I TE URIARAU &
NGAMETUA NICHOLAS KIMIHA**

Hearing: 22 June 2012
Counsel: Ms C King for the Crown
Mr C Petero for the Defendants
Sentence: 22 June 2012

SENTENCING NOTES OF WILLIAMS J

[1] Anania Uriarau and Ngametua Nicholas Kimiia, you both appear here for sentence this morning having pleaded guilty to the same three charges; possession of cannabis on the 2nd April 2012, possession of a utensil/bong, and smoking cannabis. The amount of cannabis involved was 3.95 grams. You are liable for imprisonment on possession or smoking for up to 2 years in prison and of possession of the utensil for up to 5 years imprisonment. Plus potentially a fine can be imposed.