

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

CR NO 929/12

POLICE

v

METUAMOEROA NGAERUAITI

Hearing: 22 March 2013
Counsel: Mr Manavaroa for the Crown
Mr Rasmussen for the Defendant
Sentence: 22 March 2013

SENTENCING NOTES OF HUGH WILLIAMS J

[FTR 10:09:26]

[1] Metuamoeroa Ngaeruaiti, at the age of 50 you are appearing in Court for the first time. You are appearing having pleaded guilty for an offence, cultivating cannabis, which carries a maximum of 20 years in prison.

[2] On Christmas Day 2012 your partner called the Police to your home after a domestic row which was caused by you and your son-in-law being out all night drinking. The Police not only were called to a domestic dispute but your partner called their attention to the fact that you were cultivating cannabis. There were some five cannabis plants which you had concealed in your banana plantation. They were between 1.8 and 2.65 metres in height, about 5 feet to 8 feet in the old regime, and

the photographs show that they were well-attended flourishing plants which must have been close to maturity and readiness for harvesting.

[3] You told the Police that your son-in-law gave you eight cannabis seeds some time previously and that you had taken them, planted them, watered them, looked after them, tended them, transplanted them, made sure they matured to the healthy plants that are shown in the photographs.

[4] The only explanation you gave the Police was that you wanted to see what cannabis looks like when grown. Well if it was just a question of curiosity, you could have looked it up in a book or on the internet. For curiosity, you did not have to plant these seeds. And you certainly did not have to cultivate them and manure them and look after them for five months to the point where they were as tall and flourishing as they were.

[5] In fact, if it is the case, that your son-in-law gave you the seeds and that he had taken the top part of one of these plants he may think himself lucky that he is not also facing a charge of instigating your offence. He certainly left you to take the criminal responsibility for what he did.

[6] The Probation Service in their usual helpful report have given me a deal of material about your personal background, the fact that you have been in a relationship for 27 years, you have got a couple of adult children, you are currently unemployed but make some money as a planter through the Muri Enuia Planters Group. She says that after you were introduced to criminal offending in this way your temperament and behaviour changed including resorting to alcohol. She told the Probation Service you had been out all night on Christmas Eve with your son-in-law "clubbing", as it is put. Those are regrettable personal circumstances all too common in cases of this sort but it is well understood that personal circumstances have very little part to play when it comes to sentencing people for drug offending.

[7] You told the Probation Service and Mr Rasmussen on your behalf has emphasised it again this morning that you had no intention to get yourself involved in any sort of commercial enterprise with the cannabis, you do not smoke cannabis,

and suggested you were not going to sell it. That may be true but commerciality in drug offending does not just involve selling the drugs, it also involves people supplying the drugs. By one means or another the drugs get out into the community. In this case you already supplied your son-in-law by allowing him to take the top part of one of these cannabis plants, no doubt for drying and smoking and possibly selling on his part.

[8] So when one is looking at sentencing for drug offending, one does not just stop at trying to stamp out selling. The underlying purpose is to stamp out the means by which the drug gets out into the community and that includes supply.

[9] For the Crown, Mr Manavaroa draws my attention to the categorisation of cannabis cultivating offences appearing in New Zealand Court of Appeal case called *R v Terewi* (1999) 16 CRNZ 429. Although the sentencing levels in New Zealand are quite different from the Cook Islands, the categorisation applies.

[10] People growing a small number of cannabis plants for personal use can sometimes escape a custodial sentence. They do not always go to jail although they may still do.

[11] The second category involves small scale commercial cultivation. In New Zealand the starting point for sentencing for that offence is 2 to 4 years in jail. As I said, sentencing levels in the Cook Islands are much less but they are going up. And the commercial aspect of that category, as I made the point, includes supplying the cannabis, not just selling it.

[12] And the third category is major commercial growing which is not a feature in this case.

[13] Mr Rasmussen has also helped me with details of your background and tells me that you do not personally smoke cannabis. If that is the case you could not, as some people, claim that all of this was for personal consumption. So something was going to be done with the cannabis, you were not just going to cut it down and leave it to rot.

[14] The starting point for cultivating cannabis in the Cook Islands is, as I have said, increasing. But it certainly involves a jail sentence. The Courts have to recognise that Parliament has said that the maximum penalty for this kind of offending is 20 years imprisonment.

[15] Here the factors that make your offending worse are that there has to be a clear purpose of you, if not selling, then supplying this drug into the community. It also makes it worse that you had been cultivating these plants for about five months. They were tall, flourishing and they must have been near maturity. That would have resulted not only, or could have resulted not only, in a large quantity of dried cannabis being available in the community or, once they had flowered, the number of seeds that you could have taken off these plants were many times more than the five seeds that you got to germinate. We do not know what the weight of cannabis might have resulted from your cultivation but it certainly had the potential to be significant and if the seeds had matured and you planted those there was a repeated aspect to the cultivation which increases its potential, in yours or other's hands.

[16] Then there is also the factor I mentioned several times that even if you did not sell the cannabis it could be supplied and get out into the community, or supplied to your son-in-law.


[17] So in my view the starting point for sentencing you has to be between 4 and 6 months imprisonment. This is much lower than in New Zealand but though sentences for cultivation are increasing in the Cook Islands if this kind of offending continues to grow, as even Mr Rasmussen acknowledges is likely, that starting point will also continue to grow so that in time people involved in cultivating cannabis will be facing a starting point well in excess of 4 to 6 months imprisonment. The Courts have to recognise that the maximum penalty for this is 20 years imprisonment and do something about it and try and do something to deter and denounce the conduct of people such as yourself who potentially at least may have caused a lot of cannabis plant or seeds to get out into the Rarotongan society.

[18] You are entitled to a reduction in the possible jail term for your very early plea and the fact that you are remorseful, although the conviction for this must have

been inevitable. And you are entitled to some consideration for the fact that the increasing sentencing levels may not yet be widely known in the community.

[19] At the end of that consideration what I intend to do is this. First there will be an order for destruction of the plants if they have not already been destroyed.

[20] Secondly, you will go to jail for 3 months. On your release from jail you will be admitted to Probation for 18 months on a condition that you do not buy or drink alcohol. Probation also recommended some community service. I think that is superfluous in light of the fact that you are going to jail. Stand down.



Hugh Williams, J