

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

**CR NO 851/12**

**POLICE**

v

**TRAINEE O TUPUNA RAKANUI**

Hearing: 15 March 2013  
Counsel: Mr T Manavaroa for the Crown  
Mr W Rasmussen for the Defendant  
Sentence: 15 March 2013

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**SENTENCING NOTES OF HUGH WILLIAMS J**

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[FTR 11:16:21]

[1] Trainee O Tupuna Rakanui, you were charged with cultivating cannabis and pleaded guilty to that charge on your first appearance in Court.

[2] The cultivation took place at Matavera between 1<sup>st</sup> August and 19<sup>th</sup> November 2012.

[3] As mentioned when your case was first called this morning, you are facing a charge where you could go to jail for 20 years. That shows the determination of Parliament to stamp out cannabis offending and in particular to stamp out cultivation offending here in the Cook Islands.

[4] It is fortunate for you that you have Mr Rasmussen appearing for you this morning although you did not have a lawyer up until that time and you have been on bail since you pleaded guilty.

[5] The facts are that on 19<sup>th</sup> November 2012 the Police executed a search warrant on your property and found four plants, between 23 and 71 centimetres, growing in potting mix plus two overgrown plants. You told the Police that you were given some eight seeds by someone to make what you described as “local medicine”. You planted the seeds, you watered them and transplanted them three times. Quite clearly you looked after the cannabis well for quite a lengthy period, as the information suggests.

[6] The Probation Service says that you live with your partner next door to her family and you are the sole breadwinner. So you support the family.

[7] The Probation Service says that you are extremely apologetic for being involved in this matter and they suggest that the non-custodial sentence would be available.

[8] You have two testimonials from previous employers both who speak highly of you. It seems you still have the support of your partner who speaks well of your caring for your two children.

[9] And for the purposes of today I am prepared to treat you as a first offender coming before the Court although you had some traffic conviction about 10 or 12 years ago in which you were admitted to Probation.

[10] Mr Manavaroa for the Crown draws my attention to the New Zealand Court of Appeal case of *R v Terewi* (CA 113/99 25 May 1999) which set out the categories of cannabis offending. Clearly what you did on this occasion – and it is a somewhat unusual case and I will come to that in a moment – you are in the first or lowest category covering a small number of plants without any commercial purpose. The Court of Appeal in New Zealand said that such offending can be followed by non-

custodial sentence. But if there is any commercial purpose involved in cannabis cultivation the answer is always a fairly lengthy jail term.

[11] I have to try and fashion a sentence that will deter you and others from cultivating cannabis, an offence which is on the rise in the Cook Islands, and denounce your conduct.

[12] The Crown accepts there are no circumstances relating to this matter which would make it worse than a standard case and there are substantial factors which lessen the seriousness of your offence, taking into account your early guilty plea. They might justify a non-custodial sentence.

[13] Mr Rasmussen suggests or supports the comment made in the Probation Service report that it may be that your offending was instigated by your mother-in-law who, he says, is a well-known traditional healer and dispenser of local medicine. If that is the case, both you and she and anyone else minded to be involved in cannabis cultivation should keep in mind that any cultivation of cannabis and any incorporation of cannabis into local medicine is a crime. It is quite common in New Zealand for people to grow cannabis and say they only use it for self-medication because they suffer pain or something. It is also quite common for people to say they use it only or grow it only for medicinal purposes. But that is still a crime. And it is still a very serious crime involving both the cultivation and the possession and use of cannabis. So no-one in the Cook Islands should be misled in any way into thinking that in some way they are justified in growing or using cannabis as part of traditional medicine. It is a crime and it is a serious crime for which the cultivator can go to jail for 20 years.

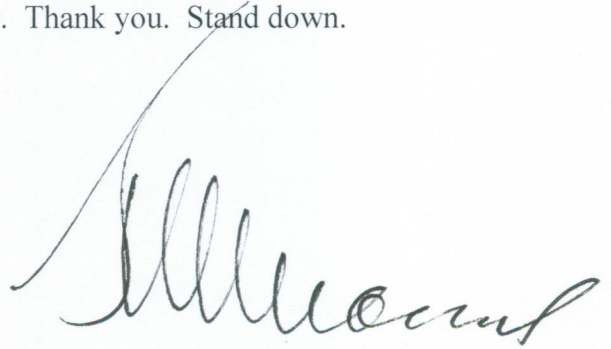
[14] Because it is such a serious matter, Mr Rakanui, I need to tell you that after a lot of thought you are escaping jail by a whisker. Usually personal circumstances have almost no effect or part to play in sentencing for drug offending. But the circumstances relating to your mother-in-law's tradition of healing practice do make this a little out of the ordinary. But now that aspect of the matter has been dealt with in Court – no traditional healers should ever think that they can use cannabis and get away with it.

[15] The Crown very responsibly accepts that a non custodial sentence is just open and I am prepared to go along with that in this case.

[16] So the sentence is that you be admitted to probation for a year and that you spend 8 months of that time serving community service.

[17] You can count yourself very fortunate not going to jail.

[18] In addition there are Court costs of \$30. Thank you. Stand down.

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**