

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

CR NO'S 151/13, 234/13 – 236/13

CROWN

v

MATUI VALU

Hearing: 6 December 2013
Counsel: Ms King for the Crown
Mr George for the Defendant
Sentence: 6 December 2013

SENTENCING NOTES OF GRICE J

[FTR 10:53:16]

[1] Mr Valu, you are appearing on cannabis charges today. First, a charge of having possession of cannabis for supply. That is a serious offence under s 6 of the Narcotics and Misuse of Drugs Act and it has a maximum of 10 years imprisonment attached to it.

[2] The second charge is the possession of instruments for smoking cannabis (that is the two bongos). The Act says that 5 years imprisonment is the maximum with a \$5,000 fine maximum.

[3] The third offence is a charge of possession of cannabis seeds and again the Act says there is a maximum term of imprisonment of 2 years and a \$5,000 fine.

[4] Mr Valu, I have listened to counsel and I have read the reports from the Police setting out the facts. They are that on the 24th April they searched your house and they found two plastic bags of cannabis weighing 79.22 grams, two bongs and a bottle with 19 cannabis seeds. The amount of the cannabis is well over the 28 gram presumption of cannabis for supply.

[5] You indicated immediately to the Police that you had no intention of supplying and it was for your own use, that you had just harvested the material. Your counsel has confirmed that and said it was for your own use only. But unfortunately for you, the law says once you have got that much cannabis, there is a presumption that you are supplying it.

[6] In this case the situation is not aggravated by any other evidence indicating you in fact had a supply operation. That is something I will take into account as your counsel has asked me to.

[7] The Cook Islands has become very concerned about the amount of drug offending on the islands, and as you have heard from the Crown, the Court of Appeal has made it clear that drug offending will not be tolerated – as has Parliament.

[8] The Community wants to rid the islands of all levels of players in the drug industry, and messages must be sent out about the fact that penalties will be severe in drug cases.

[9] For people selling drugs in the Cook Islands, the relative profits that they can make are much higher than, for instance, in New Zealand. So the incentives are higher and those incentives have to be countered by the sentences imposed.

[10] I repeat the comments of Justice Hugh Williams in the case of *Upu* he said, “*there is an increasing concern in this community at the prevalence of cannabis and cannabis offending, and in view of the fact it would appear the responsible position for the Court to take is to reflect those increasing community concerns to an extent at least and impose stiffer penalties for cannabis offending.*”

[11] As we heard from the Crown and from Mr George, the Court of Appeal dealt with drug offending in the case of the *Queen v Marsters* and again more recently in the case of the *Queen v Franklin*. The Court of Appeal has approved the approach of sentencing categories that have been adopted in New Zealand.

[12] In New Zealand the case of *Queen v Terawhi* has indicated that there are three levels of drug offending; the first, Category 1, is where cannabis is grown for your own use in small quantities. In New Zealand that would attract a fine or a non custodial sentence but if there was an application for selling it would be imprisonment. Category 2 is small scale of cultivation of cannabis for sale which attracts 2 to 4 years imprisonment. In Category 3 which is the most serious, for commercial growing it has a starting point of 4 years imprisonment.

[13] The Court in that case noted that Parliament intended substantial penalties to be introduced to the Cook Islands for drug offences. The penalties are higher than the maximum penalties in New Zealand.

[14] As the Crown said, the maximum penalty for importing cannabis is 30 percent higher here than in New Zealand. So the sentencing here will impose higher penalties than would in New Zealand.

[15] Your counsel referred me to the Court of Appeal decision in *Franklin & King* which was delivered just two weeks ago. And in that case, as your counsel indicated, two sentences in relation to selling cannabis were under appeal in relation to two offenders who were categorised in Category 1. In this case we have a presumption of supply.

[16] The Crown has submitted, and I must accept, that this is in the high end of Category 1.

[17] The starting point, and your counsel has candidly accepted this, is a term of imprisonment. In that case because of the circumstances and the nature of the offence, the Court of Appeal did reduce the sentences but made it clear that the principles that they had set out in their earlier case applied.

[18] The Court said that offenders who indulge in the sale of cannabis as in that case, must accept imprisonment. Indeed that is where we start in this case.

[19] I have heard from counsel and I consider the starting point is 18 months imprisonment. It was an amount well over the presumption level but there was no evidence or other indications of any commercial supply or sale, there was not any indication of a commercial operation.

[20] You have consistently said it was for your own use. The Crown have conceded that there are no extra aggravating features in this.

[21] Now I turn to your counsel's submissions. As the Crown indicated, personal circumstances do not weigh heavily in relation to this type of drug sentencing, however they are taken into account.

[22] I have listened carefully to your counsel's submission, he said you have acknowledged guilt and you pleaded guilty early to your credit, you have been co-operative, well behaved, you are sober and quiet and show remorse, you are here as a worker. Those are supported by the Probation report which I have also read.

[23] Turning to the sentencing I have listened to your counsel's submission that six months imprisonment plus probation might be appropriate, the Crown are indicating more than that.

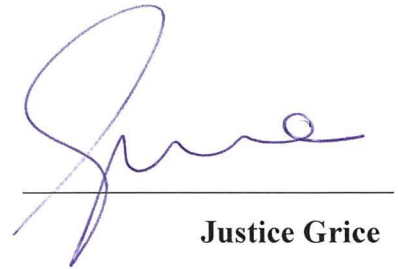
[24] I am of the view that in all circumstances the starting point taking into account the factors surrounding the offending is 18 months imprisonment, however, you pleaded guilty early and so therefore I will take six months off that starting point which gives us 12 months. I have listened carefully to your counsel's submissions and noted each of those, the fact it is a first offence and there is no other indications of any previous problems. So I have taken those submissions at their face value and I will discount a further three months for those personal submissions.

[25] I convict and sentence you to a term of 9 months imprisonment on the charge of possession of cannabis for supply; and for 2 months imprisonment on each of the

other charges of possession of cannabis seeds and possession of the bongs. Those terms to be served concurrently.

[26] And I make Orders for destruction of the bongs, the seeds and the cannabis material.

[27] You may stand down.



Justice Grice