

**IN THE HIGH COURT OF THE COOK ISLANDS      CR NO: 393/15**  
**HELD AT RAROTONGA**  
**(CRIMINAL DIVISION)**

**POLICE**

v

**GRAHAM MURCHIE**

Date:            7 March 2016

Counsel:        Ms A Mills for the Police  
                      Mr M Short for Defendant

---

**SENTENCING NOTES OF THE HONOURABLE JUSTICE DAME JUDITH  
POTTER**

---

[1]    Mr Murchie you are before the Court for sentencing on two cannabis related charges: a charge of cultivating cannabis which as you well know is an offence under the Narcotics and Misuse of Drugs Act 2004 and carries a maximum penalty of 20 years imprisonment; also, a charge of simple possession of cannabis under s.7 of that Act where the maximum penalty is two years imprisonment. Clearly the lead charge in this case is the cultivation charge and I so treat it.

[2]    Briefly, the facts of the matter are that on the 3<sup>rd</sup> August the Police received information concerning cannabis being grown on certain land and they followed up on that information and attended the property next to yours in Titikaveka. They found eight cannabis plants growing in pot plants around the side of your residence and they found a further 56 cannabis plants in various locations on the neighbouring section. They also found a cardboard box containing a plastic container that had 211grams of dried cannabis on the neighbouring section.

[3] You admitted planting the cannabis plants and that you cared for them and you said you smoked cannabis on a daily basis, perhaps six to seven times a day. You also admitted that the dried cannabis belonged to you.

[4] A very positive pre-sentence report has been filed. I am grateful for this report and also for the full and constructive written submissions filed by counsel for the Crown and the defence.

[5] You are 56 years old Mr Murchie, you've been married to your present wife for 24 years and you have five children, three from that marriage, I understand, in Rarotonga, and two grown up children elsewhere from a previous relationship. You've never been before the Courts for any criminal offending, you are clearly remorseful and apologetic, as Mr Short on your behalf has confirmed to the Court today.

[6] You entered a very early guilty plea and obviously you take responsibility for your offending. You have been attending counselling since your arrest and the Probation report states that you are drug free. You are involved in the community and there are very positive reports about that involvement. You are well supported by your family and persons in the community.

[7] A comment in the Probation report caused me to pause. The report states "Mr Murchie has no doubt regretted being caught in this situation. His actions have been upsetting for his family and he feels that his family are victims as they too suffer the consequences." Most offenders do regret being caught, Mr Murchie, and most like you, regret the upset and stress that criminal offending causes for the rest of the family. But rather than regretting being caught, you will need seriously and continuously to address your drug addiction. Your offending will now be on record and any subsequent conviction cannot expect to attract the leniency that is urged on me today.

[8] Unfortunately for you, however one views the matter, de-criminalisation of cannabis use even for medical purposes, is not likely to follow fast and your only way to avoid subsequent apprehension and conviction is to deal with your addiction. I don't envy you that problem. It's a difficult one to deal with, but I'm sure you understand clearly what the situation now is.

[9] The Crown has helpfully referred to relevant authorities. The categories in R v Terewi<sup>1</sup> a New Zealand Court of Appeal decision apply to cannabis offending and I accept, as do both counsel, that this is category one offending, personal use although there was a significant amount of cannabis found. In R v Upu<sup>2</sup> in 2011, which concerned a charge of simple possession, the Court observed that a starting point of perhaps a month in jail for each 100g of cannabis in possession was appropriate but sentencing is not a formulaic exercise although sentencing Judges must strive to achieve consistency in sentencing.

[10] A relevant point of factual difference with the less serious charge in *Upu* is that the offender in that case was part of a fairly wide spread drug ring centred around his place of work. Mr Upu narrowly escaped a prison sentence. Your offending is more serious, but I take significantly into account the relevant mitigating factors I have referred to, particularly your early guilty plea and your remorse.

[11] I do not therefore, propose to impose a prison sentence although that would be available to the Court. There will be no second chances Mr Murchie.

[12] On the charge of cultivation, you are fined \$900.00 and sentenced to 12 months Probation Supervision with the following conditions:

- i. To abstain from the consumption of and any involvement direct or indirect with, prohibited drugs other than prescribed drugs;
- ii. Not to leave the Country without the approval of the High Court

[13] On the charge of possession, you are sentenced to 12 months Probation supervision with like conditions to be served concurrently with the sentence on the cultivation charge.

[14] There will be an Order for destruction of the cannabis material located by the Police.

---

<sup>1</sup> R v Terewi [1993] 3 NZLR 62

<sup>2</sup> R v Upu CR 248/2011, 3 June 2011, Williams, J.

[15] You may stand down.

*Potter, J.*

---

**Judith Potter, J**