

POLICE

v

FRANCOIS HERMAN

Sentence: 6 December 2017

Counsel: Mr T Manavaroa for the Crown
Mr M Short for the Defendant

SENTENCING NOTES OF THE HONOURABLE JUSTICE CHRISTINE GRICE

[10:00:50]

[1] Mr Herman, you appear before me today on one charge of possession of a utensil. This is a serious charge under the Narcotics and Misuse of Drugs Act, sections 7(1)(a) and 7(2)(b), and it carries a maximum term of 5 years imprisonment.

[2] The offence relates to a bong which was discovered in a search of your car, that was used for the purpose of smoking cannabis. It was confiscated. You freely admitted to owning it, so no-one else took the blame, and using it for smoking cannabis. And you admitted in fact you made it.

[3] You are now aged 28 and in a stable relationship with two children presently aged 10 and 4. You are a self-employed mechanic, do other jobs for income, and I understand you work very hard. You provide well for your family and your extended family.

[4] I understand from submissions that you had a bit of a troubled youth but I am putting that to one side, as what happened then has been dealt with and this is about what is happening now ten years later.

[5] It certainly seems as though you kept clear of drugs while you had the family and that you have been devoted to them. It has upset the family that you are facing these charges.

[6] I understand from the pre-sentence report that you have kept well out of trouble and you are highly regarded by your family and your wife. It is a shame that you have offended and you are before the Court today.

[7] As you heard, the maximum term of imprisonment for this offending is 5 years and the Cook Islands Parliament has indicated by increasing the maximum term some years ago, that it takes these offences very seriously, it does not want drugs in the Cook Islands. So that is something I need to consider.

[8] I have to take into account sentencing principles that you heard the Sergeant outline – to make you accountable for what you have done, to deter you and others from doing the same sort of things, and to make sure that you understand what you are doing should not be repeated and is not appropriate. I have got to send a message.

[9] But at the same time I have to impose the least restrictive sentence I can in the circumstances. And to that end I have heard some very extensive submissions from Mr Short on your behalf which have modified my view of what your sentence should be.

[10] I note in particular that you are hard-working. You have a number of testimonials including a letter from your father-in-law which is very supportive. You have undertaken counselling off your own bat which you are to be congratulated for that. And I understand that that has brought home to you how serious this could be for the family and how it would interfere with the good you have already done creating a stable home for your children.

[11] So that shows a certain amount of proactivity and a certain reality as to, if you keep on this course it is not going to be good for you or the family.

[12] Accordingly I have taken all that into account and including the fact that if you are sentenced to community service, it will interfere with your being able to sell the produce at the market. And it is important that you continue to support your family and make sufficient income for them so I take that into account as Mr Short asked.

[13] Accordingly I am going to sentence you to 12 months probation, no community service. One of the conditions of probation is:

- a) that you will continue to attend counselling or such other counselling as the Probation Service decide;
- b) that you abstain from the consumption of illicit drugs – in fact that is the law anyway, it does not need to be a condition, it is the law; and
- c) that you not leave the Cook Islands without approval of this Court.

[14] You are fined \$100 – you can work out instalments to pay that with the Probation Service, that can be arranged.

[15] I am going to order you to pay Court costs of \$50.

[16] I order that the bong be destroyed.

[17] So Mr Herman, I hope you have learned your lesson and good luck.

[18] You may stand down.



Grice J