

POLICE

v

DANIEL AKAMA

Date: 1 June 2018

Counsel: Mr T Manavaroa for Crown
Mr D Akama for himself as Defendant

SENTENCING NOTES OF HUGH WILLIAMS, CJ

[10:17:48]

- [1] Daniel Akama, you appear here today for sentence on one count of possessing cannabis, 12.2 grams of cannabis, on 3 March 2018. You were in jail at that stage but were due for release shortly afterwards. You went out of the prison on a work scheme, you said you found some cannabis and you tried to take it back into the prison hiding it in your socks, presumably to smoke.
- [2] You pleaded guilty on 24 March and have been in custody since that date.
- [3] Since yours happens to be the first of the sentencings this morning involving drugs and various offences under the Narcotics and Misuse of Drugs Act 2004, it may be timely to repeat and collate what has been said on previous occasions concerning sentencing under that Act.
- [4] This is against the background of the increasing prevalence of cannabis in the Cook Islands; its cultivation, its use and in various other ways which offend against the Narcotics and Misuse of Drugs Act. It is also against the background of the calls by Police prosecutors and by the Crown for heightened severity of sentences to be meted out for those who offend against the Act.

- [5] There is, it must be acknowledged, a gap in the sentencing regime in the Cook Islands in that there is no sentence available, whether for drug offences or any other, between probation with a combination of community service, various conditions and the like, and imprisonment so that unless the correct outcome for sentencing of a person accused of a crime, whether a drug crime or not, can be reduced to probation and conditions and the like, the inevitable result is that a person goes to jail.
- [6] The offences set out in the Narcotics and Misuse of Drugs Act and the maximum sentences which can be imposed, generally reflect a difference between those who involve themselves in drug offences in some way or other which only affects themselves or, possibly, their immediate families, by contrast with offences under the Act which have an actual or potential effect on other people and on the community. So offences under s 6 involving dealing with controlled drugs – importing, exporting, producing, manufacturing, supplying, selling, or possession for supply – reflect that divide and involve potential sentences of between 10 and 20 years in jail. For those offences, which are likely only to affect the person accused of the crime or, as noted, their immediate family, the potential jail terms are much less. So possession of a controlled drug, supplying it to the person, having a pipe or a utensil or seeds in their possession generally results in a maximum jail term of up to 5 years.
- [7] The Court of Appeal in a case called *Marsters* (CA 3/12, 30 November 2012) carefully reviewed the range of appropriate penalties for those involved in offences under the Narcotics and Misuse of Drugs Act and adopted a New Zealand classification of those offences into three categories. The first – and they were dealing with a cultivation case in that case but it also largely applies to personal possession and the like – was growing a small number of plants for the offender’s personal use without sale to a third party being intended where the Court of Appeal said, having regard to the maximum sentences available in the Cook Islands, that the usual starting point for a sentence would be a fine or a short term of imprisonment. The Court of Appeal said that where there had been some supply to others, prison was usually appropriate.
- [8] The second category was small scale cultivation or drug offending on a broader scale which involves some commercial purpose or the possibility or proof of offences involving members of the community. The starting point the Court of Appeal said in that case was jail for 2 to 6 years.

- [9] And category 3, fortunately not commonly found in the Cook Islands, was large scale commercial growing involving sophistication and organisation where the starting point for sentencing was said to be between 5 and 10 years imprisonment.
- [10] It is necessary to recount those requirements from the Court of Appeal, partly because this Court is bound by the Court of Appeal's decision, but also to meet the increasing offending across the range of charges under the Narcotics and Misuse of Drugs Act with which the Court is required to deal.
- [11] In a case called *Benioni* (CR 18 & 480/16, 17 March 2017) the observation was made that having regard to all the factors earlier discussed in this decision, jail was to be regarded as the starting point for category 1 offences, that is to say the least serious offences under the Act.
- [12] So it needs to be widely appreciated in the Cook Islands community that those who commit offences under the Narcotics and Misuse of Drugs Act 2004 will, apart from the least serious cases, be confronted with a starting point for their sentencing of a term of imprisonment.
- [13] It can be the case that the circumstances of their offence reduce the appropriate sentence from one of a term of imprisonment to, as noted, probation on conditions and similar outcomes.
- [14] But there being no available sentence between those two poles, persons who are convicted of offences under the Narcotics and Misuse of Drugs Act 2004 need to understand that only in exceptional circumstances will a jail term not be the starting point for imposing sentence.
- [15] And finally it needs to be added that, as is well documented in the cases and in the sentences imposed in the Court, drugs play such a pernicious and increasing part in the community here in the Cook Islands that stiff sentences can be expected and that because of the place that drugs already have here, and the necessity for the Court to do what it can to stem the number of convictions for offences under the Act, personal circumstances of the offender can have very little part to play in a Court determining the correct ultimate outcome.

- [16] Now reverting from those general remarks to you Mr Akama, I have noted the circumstances of the offence. One of the disturbing features in your case is that you have, by my count, 18 previous convictions entered against you between April 2012 and November 2016. They were for four burglaries, three unlawful takings and a miscellany of public nuisance offences, contempt, escape, that sort of thing. But they also include an indecent assault. For those offences you have been sentenced previously to a variety of jail terms up to 25 months for theft, contempt, and lawful taking in June 2013.
- [17] Now it must be acknowledged – Mr George has pressed that – this is the first time you have been before the Court for an offence under the Narcotics and Misuse of Drugs Act but nonetheless your background history creates an additional difficulty in trying to determine the appropriate sentence for you on this matter.
- [18] The Probation Service have filed the usual helpful report giving the background circumstances concerning your being raised by your grandparents, little contact from your natural parents, and the fact that you have difficulty finding somewhere to stay. But you do now have an offer for somewhere to stay and thanks to the generosity of Papa Tom Temata and Nooroa Ruaine. The Probation Service, Senior Sergeant Manavaroa for the Crown notes that you entered an early plea to the charge but in truth there was really no choice but for you to acknowledge your guilt.
- [19] The Senior Sergeant acknowledges, as I said, all the factors that make this offending worse including the fact that you were serving a sentence at the time. And he too suggests that either a short term of imprisonment or a fine would be the appropriate outcome.
- [20] Mr George on your behalf describes you as a “Jekyll ‘n Hyde” character and to the extent that I am able to discern that, it seems a fair description. And he has handed me, in amplification of what the Probation Service tell me, a testimonial from Messrs Temata and Ruaine and it certainly seems as though they are prepared to assist you despite your background.
- [21] As with all sentencing and particularly drug sentencing, the sentence to be imposed must reflect the gravity of the offending, the seriousness of the particular offence, try to instil some form of accountability for the harm done to the victim and community,

and, as I noted earlier in these remarks, the harm done to the community by drug offending is increasing and of considerable concern. The sentence needs to try to promote a sense of responsibility for that harm and denounce the conduct and deter others.

- [22] Now those are not just empty words. They are an obligation on a sentencing Judge, particularly in drug sentencing, to try to arrive at a sentence which will denounce the conduct and try to deter others from getting involved in offences under the Narcotics and Misuse of Drugs Act.
- [23] I will share with you my thoughts that before sitting on the bench today, a jail term for you was inevitable. But I think that what saves you from a further jail term on this occasion is the fact that you have already spent something over a couple of months in custody as a result of your being remanded in custody once you pleaded guilty. That can be taken as being the equivalent in your case of that short term of imprisonment.
- [24] So I think that 2 ½ months in jail is probably less than you should have received but on this occasion, that, plus the assistance you are receiving from Messrs Temata and Ruaine, is sufficient to avoid adding to that sentence.
- [25] The result therefore, an unusual result for somebody with your record (and you should take advantage of it) is that you will be convicted and admitted to 12 months' probation on conditions that you attend trainings and workshops as directed and you do not leave the Cook Islands without approval from the Court.
- [26] You can count yourself very fortunate Mr Akama. It is ironic that your remand in custody has really resulted in no further imprisonment being imposed on you, but you need to take all the help you can get from Messrs Temata and Ruaine.
- [27] Stand down.

A handwritten signature in black ink, appearing to read 'H Williams', written in a cursive style. The signature is positioned above a horizontal line.

Hugh Williams, CJ