

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

CR NO. 742/19

POLICE

v

TAI ISAAC NIO

Hearing date: 18 August 2020

Counsel: Ms M Okotai for the Crown
Mr K Ahsin for the Defendant

Sentence: 18 August 2020

SENTENCING NOTES OF HUGH WILLIAMS, CJ

[11:27:09]

[1] Tai Isaac Nio, at the age of 19 you appear for sentence, having pleaded guilty on 23 April this year to one charge of possessing a utensil under the Narcotics and Misuse of Drugs Act 2004, namely a bong, that having occurred on 13 December 2019. The maximum sentence for this serious offence is five years in jail or a \$5000 fine.

[2] One of the serious issues to be considered is that you were on probation at the time, having been convicted on 25 September 2019 on charges of careless driving, contempt of Court and burglary and placed on probation for a year with six months on community service. I know of nothing of the circumstances relating to the September 2019 convictions, but the offences must have been quite serious for that to be thought to be the appropriate penalty.

[3] On this occasion, 13 December 2019, a search warrant was executed on the property where you are living. The bong was found in your bag, the bag was hidden and you admitted to the police that you had been using it for smoking cannabis, including the day before.

[4] The Probation Service sets out your family history and in particular that you have the support of your feeding father Mr Elisa whom I sentenced just a little earlier this morning. And I was also to sentence Mrs Elisa, but that now has changed.

[5] The Probation Service, backed up by Mr Ahsin, makes clear that you were apologetic for what you did on this occasion and you take full responsibility for it. The report gives me details of your rather unsatisfactory family background and the fact that you are now unemployed and reliant on casual work to earn a living.

[6] Uncharacteristically, the Probation Service recommends that the appropriate outcome this morning should be a short jail term with 12 months' probation on conditions to follow. Your current probation is due to expire next month on 24 September.

[7] The Crown too, through Ms Okotai, also adopts the Probation Services' recommendation of a short jail term, particularly because this offending took place when you were already subject to a sentence, although Ms Okotai recognises you are entitled to some credit for your early guilty plea.

[8] Mr Ahsin for you argues that a non-custodial sentence would be appropriate, pointing out that this is your first drug offence, despite the fact that you have been convicted before. He tells me, which I accept is correct, that you have completed the community service to which you were sentenced in September last year and I am now told this morning that you have managed to pay the whole of the reparation that you were ordered to pay in September last year of \$1,118.40.

[9] I need to try and find a sentence for you which reflects the seriousness of the offence, try and promote a sense of responsibility in you, denounce your conduct and deter you from offending again.

[10] The Probation Service, under the heading “Cause of Offending”, says “stupidity”. That is a remark with which I agree.

[11] I am not going to send you to jail despite the recommendations received, despite the fact that this offence occurred when you were on probation and despite your previous convictions. The reasons for that include first, that you entered a plea of guilty at effectively an early stage of the proceeding, the fact that you are still a young man and also because it is to be hoped that, with guidance, you will not continue to commit offences and in particular will not be involved in drug offending.

[12] Of this offence, possession of a utensil, this offending on your part is towards the lower end of the scale. I think that, for the reasons just given, yours is a case where rehabilitation and reform should be uppermost in choosing the sentence but you need to recognise that you avoided jail only by the narrowest of margins.

[13] What I intend to do, to try and keep you away from offending and particularly from drugs, is that:

- (a) You will be placed on 2 years’ probation;
- (b) You need to pay \$50 Court costs;
- (c) The conditions of the probation will include that you are not to reside at a residence not approved by the Probation Officer and you are not to associate with specified persons with whom the Probation Officer has in writing warned you not to associate;
- (d) You are not to involve yourself in drinking alcohol or illicit drugs;
and
- (e) You are also to undertake such course of education or training as the Probation Officer prescribes.

[14] Now Mr Nio, you need to understand you are fortunate not to be going to jail. Whilst the conditions of your extended probation are onerous, they are intended so to be and it is up to you to comply with them. If you comply with them and accept the Probation Services' assistance then you should avoid returning to Court in the future. If you do not, and if there are any breaches of the probation terms then the service will bring you back to Court and you can be almost certain that next time jail will be the ultimate outcome.

[15] For the present however, the sentence just pronounced is the sentence you will serve.

[16] Stand down.

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

Hugh Williams, CJ