

**POLICE**

v

**SAMUEL KAUTAI**

Counsel: L William and M Williams for the Crown  
M Short for the Defendant

Sentence: 3 June 2021

---

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

---

[1:09:54]

[1] Samuel Kautai has pleaded guilty to four charges under the Narcotics and Misuse of Drugs Act 2004: cultivation of cannabis, possession of cannabis, possession of a utensil and use of premises to commit an offence.

[2] This is serious offending. The maximum term of imprisonment for the lead charge of cultivation of cannabis is 20 years.

**Facts of offending**

[3] The facts can be stated quite briefly. On 18 April 2018, Police executed a search warrant at the defendant's property at Tupapa. The investigation revealed that between the 1 April 2017 and 18 April 2018, a period of over one year, the defendant cultivated eight cannabis plants on a vacant section next to his house.

[4] In the period 1 March 2018 to 18 April 2018, he had cultivated four cannabis plants in four containers behind his house. Police located eight adult cannabis chunks in the ground on the adjacent vacant section, and four young cannabis plants growing in a pot behind the house.

[5] In the house Police found a substantial amount of dried cannabis; some packed in medium sized snap lock bags, and some in smaller snap lock bags. A total of 62 snap lock bags of dried cannabis, weighing approximately 655.68 grams and ready for sale, were located. Police valued the cannabis in the range of \$6,000-\$7,000.

[6] Police also located a black utensil, a bong used for smoking cannabis. They identified that the defendant used his bedroom for packaging, drying and storing the cannabis.

[7] The defendant admitted the facts to Police on apprehension. He has no previous convictions.

### **Background**

[8] Since apprehension, approximately three months later, Mr Kautai was involved in a serious motor accident which has left him severely disabled. He is paralysed down his left side, he suffered brain injury and he has now very limited capacity to care for himself and to be independent.

[9] This matter came before me on the 28 May. I adjourned sentencing and requested that an updated medical and, if thought appropriate, psychiatric report be obtained in respect of Mr Kautai. I also requested a report from the Prison authorities as to the Prison's ability to provide proper accommodation and care, both from a physical and mental perspective, of Mr Kautai if he was sentenced to imprisonment. I indicated to counsel my willingness to complete sentencing this week, if the reports could be made available.

### **Reports**

[10] I have received from the Prison a very comprehensive report, which in summary confirms that the current Prison facility on Rarotonga will not be able to cater and provide the assistance that would be required by a person in Mr Kautai's situation. Nor do they have the

expertise to handle such a case. They do not have the correct placement and toilet facilities set aside for disabled persons, nor rehabilitation facilities to assist in his recuperation. They lack staff adequately trained for such a demanding task. I am grateful to Superintendent Purua for his informative report.

[11] I have also received a report from the Creative Centre which Mr Kautai has been attending. Mr Tixier from the Centre describes the limited range of movement that Mr Kautai has, and details the physical requirements for his care: personal care, meals, residential living and domestic tasks and rehabilitation. He expresses his concern for the safety of Mr Kautai, both in everyday living and because of the risk for self-harm. He recommends that he has consistent sessions with a clinical psychologist, and he refers to Evangeline Wong.

[12] He notes that Mr Kautai attends the Creative Centre five days per week, and that there is excellent support network for him. The staff are available to help him when he is stressed or not feeling well. He considers that Mr Kautai is doing well at the Creative Centre, and recommends that he continues to attend at the Centre so he can work towards his goals.

### **Recent Developments**

[13] There has been a further development this morning. Mr Kautai has been admitted to the Rarotonga Hospital and I understand, as I speak, he is undergoing surgery for appendicitis. A medical certificate from the Hospital has been produced. He will obviously take some time to recover.

[14] Mr Short has been in contact with Mr Kautai following discussion I had with counsel this morning. That discussion primarily was directed to whether sentencing could proceed in the absence of the defendant, Mr Kautai. Ms William from Crown Law has kindly checked the legislation, and confirms to me that there is nothing in the legislation governing the situation in the Cook Islands that would prevent sentencing proceeding in the absence of the person to be sentenced; very unusual though that course may be.

[15] I requested Mr Short to discuss this aspect with Mr Kautai, and to get written instructions. He has been unable to get written instructions for the obvious reason that Mr Kautai has been obliged to undergo surgery. But he assures me he is confident from the

verbal discussions he has had, that Mr Kautai agrees – and indeed is insistent, that sentencing should proceed. In that context it is worth noting that this matter has been ongoing for over four years while Mr Kautai has been under severe medical stress, surgery and rehabilitative measures.

[16] Against that difficult, complicated and unusual background, I propose to proceed with sentencing. It can only be in the best interests of Mr Kautai that when he emerges from his current surgery and is released from Hospital, he knows the outcome of sentencing and the way forward. It would be a considerable cloud hanging over his head, if he must once again confront an unknown situation as far as the outcome of his criminal offending is concerned.

### **Sentencing**

[17] As to sentence I have been assisted by thorough submissions from the Crown. I have already said that this is serious criminal offending, and the Crown submits a starting point in the region of 2-3 years' imprisonment as being appropriate, with an end sentence in the region of 20 months' imprisonment, allowing a discount for relevant factors.

[18] The Crown acknowledges that in some circumstances the Court may depart from imprisonment, even for this type of serious offending; but invariably the starting point and consistently the end point, is a sentence of imprisonment.

[19] I have received helpful submissions from Mr Short. He was good enough to update his submissions this morning in the light of recent developments. And I have received and carefully studied a helpful and supportive Probation report.

[20] I am accustomed in this jurisdiction to receive very sound reports from the Probation Service and they are of great assistance to the sentencing Judge. I have to say in this unusual situation the report, and the presence in Court today of Miss Messimes have been a great help.

[21] The recommendation of the Probation Service is for 2 years' probation supervision, with the first 6 months to be served on community service; those sentences to run concurrently. The authority is s 10(2) of the Criminal Justice Amendment Act 1976. The Probation report also recommends that special conditions should be imposed. In Court this afternoon I have

discussed with counsel those conditions, and I will now set out the conditions that are to be imposed.

[22] Mr Kautai is:

- 1) Not to leave the Cook Islands without the approval of the High Court.
- 2) To serve his Community Service Order at the Creative Centre, with his welfare and progress at the Centre to be monitored by Probation Services pursuant to a system of regular reporting by the Creative Centre to Probation Services.
- 3) To attend any rehabilitation programs under the Creative Centre scheme or as directed by Probation Services.
- 4) To reside as directed by Probation Services.
- 5) To report to Probation Services as directed.

[23] The sentence is 2 years' probation supervision with the first 6 months to be served on community service, subject to the conditions set out above at [22].

[24] There will be an order for destruction of the cannabis and bong.

[25] It is clear that because Mr Kautai is currently undergoing surgery, some of the conditions cannot take immediate effect. I direct the community service conditions to take effect from the date upon which Mr Kautai is released from Hospital and able to resume access to the Creative Centre.



---

Judith Potter, J