

IN THE HIGH COURT OF THE COOK ISLANDS

HELD AT RAROTONGA

(CRIMINAL DIVISION)

CR 58/2002

POLICE

v

FRANCIS DASHWOOD

Defendant

Mr Elikana for Police

Mr Gibson for Defendant

Date: 27 June 2002

DECISION OF GREIG CJ

Francis Dashwood, you are appearing before me for sentence on one charge of cultivating cannabis. The maximum penalty is 14 years. Cultivation of cannabis is a serious matter. It's serious because it means that you or the cultivator is increasing the stock of cannabis and really taking part in the continued use, cultivation, growth, and abuse of that drug.

There is a saying that we often now hear that "if you do the crime you do the time." That really is intended to mean that if you commit a crime, then you must just face the punishment for it. And the fact that you are a young man, the fact that you may have supporting parents, the fact that you may have a good job ahead of you is not to be given all that much regard.

In this case there were 20 plants, 9 in the ground and 11 in plastic buckets. You said that they were your plants, that you had tended to them and put manure on them and water, and that you went there every day. In your flat there were 70 seeds and you accepted that they were yours.

It is said on your behalf now that you were one of a number of other people who were involved in this and that you have accepted the responsibility and the blame and that you will do the sentence, whatever it may be, on behalf of all the others. You are not appearing for the first time on a charge like this. In May last year you were convicted on a charge of possession of cannabis and were fined \$100. That it turns out was a case in which the possession was plants. You were not charged with cultivating but here you are just a few months later again caught with plants, cultivating plants that you accept are yours. I have already said today and I have said it on previous occasions that this is a serious offence and that it is sad that this offending appears to be so rife in the Cook Islands.

Your counsel has said to me everything that he could possibly say on your behalf and clearly there are a number of good things in your life and behind you. I have been referred to a New Zealand case, *R v Terewi* (1999) 3 NZLR 62. That was a case in which the Court of Appeal in New Zealand reviewed the penalties imposed on possession and cultivation and made a number of remarks in it and drew forth a Schedule of cases that had been dealt with in the Court of Appeal up to that time. It seems on my perusal that a sentence of imprisonment for an offence such as this would be appropriate and would withstand appeal in the Court of Appeal in New Zealand. Of course this is not New Zealand, this is the Cook Islands and there are different considerations that apply.

I have been persuaded in the end by your counsel not to send you to prison. You have only just escaped going to prison and there ought to be no doubt in your mind that if you come before the Court again on any such offence as this, you will almost inevitably go to prison as that would then be for your third offence which is likely to have very serious consequences for you in the future both in the Cook Islands and overseas if you wished to travel.

I am going to sentence you really on the grounds of your youth and your future and give you another final chance. You will be sentenced to 6 months community service to be followed by 1 year's probation. I am going to order that you will live and work where the Probation Service approves, that you will undertake any course or courses which will help you and which the Probation Service suggests to you. I am going to order that you are not to buy or consume alcoholic liquor and that you are not to enter licensed premises except with the approval of the Probation officers. This is your last chance, I hope you take the opportunity.



CHIEF JUSTICE