

IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CRIMINAL DIVISION)

18/07
CR NO. 18/07

BETWEEN **POLICE**

V

MIIMAMA PEPE
Defendant

Mr Elikana for Police
Mr George for Defendant
Date: 14 September 2007

SENTENCE OF WESTON J

1. Mr Pepe, you have pleaded guilty to a charge of importing a very large amount of cannabis, 325 grams, which you say was to be for your own use. It seems to be common ground that you are a heavy user of marijuana. The reason given is that it is a means of dealing with the pain that you suffer due to the accident that Mr George mentioned in his submissions.
2. Mr George has submitted that you are treated daily for pain by way of an injection and you travel to New Zealand on an annual basis for a rehabilitation purposes.
3. Indeed it seems to be that travelling that has exposed you to the matter for which you have now pleaded guilty. You were originally charged with a wider range of offences, including a much larger amount of cannabis. To some extent I believe you were fortunate that the Crown decided to withdraw those other charges because if you had faced those and been convicted

you would have gone to jail for many years because the amount of marijuana involved was significant.

4. There is in a reference to that in the Probation Report where the factors relevant to your offending are set out and I want to quote those two paragraphs. "With regards to marijuana found in his baggage, the Defendant explained that the marijuana was not his, it was from a person named Tom. He was on his way to check in at the Auckland Airport to return to Rarotonga when he was approached by him. He (Tom) asked him to take the bag which contain some meat for his friend on Rarotonga, he told him to put in his handbag but said that his bag was full clothes and told (Tom) to put it in the chilly bin but Tom did not. Defendant said he does not know him very well but every time he travels to New Zealand for his medical referral, Tom would always be at the airport to pick him up. Sometimes he'd wonder how he knows he was on the flight. It was not the first time he gave something to him. The first time is he gave him a chilly bin to give it to his friends on Rarotonga. What he gave on that particular occasion, he did not realize there was some marijuana in it. He admitted bringing some marijuana on him when he returned for his own personal use."

5. I, today, do not sentence you in relation to that activity but Mr Pepe I want to signal to you that you have been playing with fire in this matter. I would have thought it would have been pretty obvious that the person that you bought your own marijuana off, who then provided you with a chilly bin to bring to Rarotonga, was an incredibly high risk and stupid activity. The fact that

there was marijuana packed in that shows just how foolish you were. I really suggest to you strongly that whatever association you've had with that man should be ended. Frankly I cannot believe he simply turns up without you knowing about it in some way. And that's particularly the case if you are about to travel to New Zealand for further treatment.

6. I found your case a tough one. I sympathize with your personal circumstances. I know what it is like to live with pain, I have got a bone disease. I know how hard it is but equally, I do not see that necessarily as an excuse to resort to drugs, particularly where the hospital does treat you for pain relief.
 7. The fact that you have not been charged with dealing suggests that the Police also understand your predicament. The huge amount of marijuana which you have pleaded guilty to importing, in most cases, would have led to a dealing charge but you have not faced that and you certainly have not pleaded guilty to that.
 8. I accept what Mr Elkana says would be a normal starting point for a sentence; perhaps not quite as high as two years, but it would certainly be pushing up around that.
 9. I have been tinkering with a sentence of around perhaps 4 months for you but you have already served 3 months 4 days and I see little point in sending you back to prison for another week or two, because frankly, I do not think that is going to make the slightest bit of difference to you. So Mr Pepe, I am not
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going to send you back to jail. I am going to order you to be sentenced to the time that you have already served which is 3 months and 4 days. I am going to order that you be subject to 18 months of probation and this is your opportunity to try and get things back on an even keel and realize the potential that I think you have in paddling and so on. Again I have not been assisted because it was not a matter of recommendation by the Probation Service as to what the terms of probation should be, but it is clearly a term of that you shall not use alcohol or illegal drugs. You may find that a struggle but that is a term of that probation. You will not enter licensed premises; you will attend any courses or other workshops to which you are directed. In addition, you are ordered to pay \$30.00 Court costs.



Judge