

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

**CR NO'S 608/11
632/11
633/11**

CROWN

v

BEN TUAKANA

Hearing: 16 December 2011
Counsel: P Ngatokorua for the Crown
W Rasmussen for the Accused
Sentence: 16 December 2011

NOTES OF THE HON JUSTICE GRICE ON SENTENCING

[1] Mr Tuakana, you have pleaded guilty to three offences. The first is supplying a Class C controlled drug, namely cannabis, to any other person. That is an offence under s 7(1)(b) and (2)(b) of the Narcotics and Misuse of Drugs Act, and carries with it a maximum term of imprisonment of two years or a \$5000 fine, or both. Secondly, that on 30 September 2010 you did smoke a Class C controlled drug, namely cannabis. That carries with it a maximum of two years' imprisonment and a \$5000 fine. Finally, you are charged that you did have in your possession a utensil, namely a bong, used in the smoking of marijuana, and that is an offence

under s 13(1)(a) and (2) of the Narcotics and Misuse of Drugs Act. That offence carries with it a maximum of five years' imprisonment, or \$5000 fine, or both. As you can see, they are serious offences that you have been charged with.

[2] The Crown has read out the facts, which are accepted by you. They indicate that as a result of a search warrant on 30 September 2010, at the house that you live at, the police located 12 small plastic bags containing dried cannabis; one utensil, a bong, used for smoking cannabis; and five cannabis seeds from inside your room. The weight of those materials has now been agreed at 6.1 grams.

[3] When you were questioned you admitted that you were the owner of those items and you said that you had just finished harvesting the cannabis and seeds and they were for your own use and to sell to your mates and anyone.

[4] With respect to being in possession of the bong, you said that you made it yourself for smoking cannabis, you have had it for about a month in your possession and you described how to make and use the bong to smoke cannabis, which you said you smoked every day.

[5] With respect to the supplying cannabis, you said that you sell the cannabis to your mates and anyone to help them and their family.

[6] The Crown submitted that these offences must be taken seriously by the Court. The Crown referred me to the sentencing principles of deterrence, accountability for harm done, protection of the community and denunciation of the offending conduct, as well as looking at aggravating and mitigating factors and taking them into account and coming to a conclusion.

[7] The Crown also referred me to the decision of *R v Tina Upu (CRN 248/2011)* in which Justice Hugh Williams referred to the possession of cannabis in the past in the Cook Islands resulting in relatively lenient sentences such as probation; community service; orders to come up if called upon, and small fines. But he said that it was clear that there was an increasing concern in the community in relation to the prevalence of cannabis and offending and he took the view it was the responsible

position for the Court to reflect those increasing community concerns and to impose stiffer sentences for offending in cannabis; more stiff than has been in the past.

[8] The Crown in this case suggested that a hefty fine be imposed together with 12 months' probation supervision, with the first six months in community service, given the mitigating circumstances in your case.

[9] I have heard from Mr Rasmussen on your behalf, who says that you have a sharing and supportive family (your mother was in Court) and they are extremely concerned by all these events; it is your first offence, that your employer, who is supportive, was surprised, he supports you; and that you have always taken a responsible approach.

[10] I have a probation report which supports those submissions and also indicates that your mother, despite what you have done, will remain supportive and hopes you learn from this experience and will not repeat the same mistakes again. You earn an income of \$250 a week, out of which you pay your outgoings.

[11] I must look to and accept the submissions of the Crown on the general principles of sentencing, I have outlined those, and in particular in relation to drug matters on the Cook Islands. As I have said, the Court has made it clear that the starting point is imprisonment in the appropriate cases.

[12] At the same time I must fashion a sentence which takes into account punishment, deterrence from others doing similar things and reflecting the gravity and seriousness of these drug offences. But I also take into account the mitigating factors; it is your first offence, you pleaded guilty early.

[13] So now turning to sentencing. In this case the charges are only in possession of the utensils, smoking and supplying cannabis. There is not a charge of selling cannabis, although it appears there were overtones of the supply being made at a gain. The amount involved was 6.1 grams. So I take as a starting point a very short term of imprisonment, say one month. You have already served 21 days in jail before you were granted bail, and therefore taking into account the fact that you

pleaded guilty early, it is your first offence, your family circumstances and the fact that you have a job, I have come to the conclusion and impose a sentence of:

- (i) a fine of \$750.00;
- (ii) 12 months period of probationary supervision; the first 6 months to be served on community service;
- (iii) \$30 Court costs;
- (iv) order for destruction of the materials.

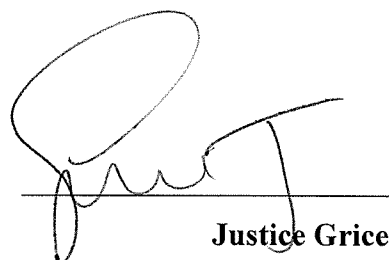
MATTER RECALLED

[14] This matter was recalled, thank you for coming back Mr Rasmussen, because I did the sentencing only on one offence, and we had lost you before we realised that that was what had happened so we needed to technically deal with the matter.

[15] So I sentenced Mr Tuakana on the charge of possession of a utensil to the \$750 fine, 12 months probationary supervision, 6 months community service, \$30 Court costs, and made an Order for destruction of the material.

[16] And there were two other offences of course, two other charges as well. So on the charge of smoking cannabis I impose the same sentence, and on the charge of supplying cannabis the same sentence, and all sentences to be served concurrently.

[17] Mr Tuakana you may finally go, thank you for your fortitude. We'll just add that to the end of the sentencing notes counsel so it all reads as one.



Justice Grice