

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

CR 592/10

POLICE

-v-

TILEY NGATUPUNA MIRIAU

Counsel: Snr Sgt Hoskings-Tane for Informant
No legal representation on behalf of Offender

Date: 2 June 2011

SENTENCING NOTES OF HON HUGH WILLIAMS J

- [1] Tiley Ngatupuna Miriau, you pleaded guilty to one charge of possessing cannabis on 18 October 2010. The plea was entered on 19 May 2011.
- [2] For reasons which will appear, it is important to note that you were originally brought before the Court shortly after 21 October 2010. You were then remanded to 16 December, then to 17 February because the matter had to be dealt with by a High Court Judge, then to 28 April when you did not appear, and finally to 19 May when you entered the plea of guilty.
- [3] The maximum sentence available to the Cook Islands for the possession of cannabis is two years imprisonment or a fine of \$5,000.

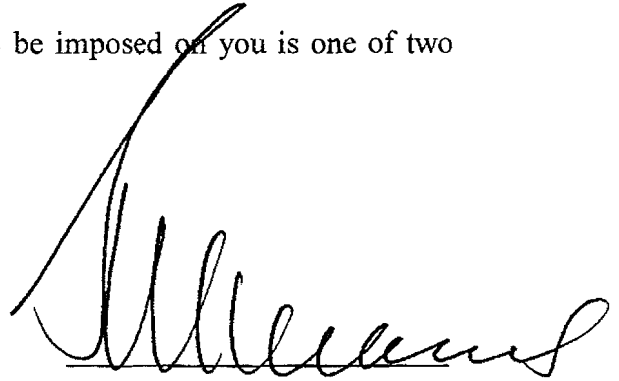
- [4] The facts adduced by the police show that on the afternoon of 18 October 2010 a search warrant was executed on the property where you were living in a separate unit. A 10 litre plastic bucket was found on the property containing 469.96 grams of dried cannabis leaf, with that secreted in an empty 40 gallon drum. You apparently told the police that the dried cannabis was yours and you bought it from an associate some time previously. You said the cannabis was all for your own use, but given there was nearly half a kilogram of cannabis dried leaf which was smokable, it must be doubtful that that is the case.
- [5] The helpful Probation Report shows that you have been before the Court on three occasions over the past 14-15 months or so. On 3 February 2010 you were convicted on three burglaries and two thefts and were given 12 months probation, six months of which was to be served by community service. Then you came back before the Court on 27 October 2010 for breach of probation and were fined. Then, only a month ago, on 21 April 2011 you were back before the Court, this time for two charges of assault and were again admitted to probation for a year with eight months to be served by way of a community service.
- [6] The Probation Report said you have a strong religious affiliation, as does your family. Your work record is reasonably good, and they say you were cooperative with both the police and the Probation Services and are remorseful.
- [7] Both the Probation Service, however, and the Prosecutor when asked this morning say that cannabis possession and use is an increasing problem in the Cook Islands including, apparently, possession of cannabis by children as young as in Primary School.
- [8] Your mother told the Probation Service that it is probable you are covering up for somebody who had supplied the leaf to you. If you are not a grower, that is undoubtedly right; you must have obtained the cannabis from a supplier, but it seems you are not prepared to help the police find who the supplier was.
- [9] The Senior Sergeant's helpful submissions speak of the prevalence of cannabis growing and use, your previous offences, and recommends that a jail sentence should be should

be imposed even though the Probation Service - in what must be thought to be a sympathetic report given the sentences imposed on you last month and February last year - recommends a further four months of community service for you.

- [10] This is your fourth offence over a period of about 15 or 16 months. There is a complaint by you, possibly a justifiable complaint via the Probation Service, that this matter has taken six or seven months to be completed. Whilst that seems a long time to a person in the community, it is not a particularly long time as far as the Courts are concerned.
- [11] This is an offence which is different in kind from any of your previous offending and it is clear that, although you might say you are remorseful, you have continued to offend even while on probation and subject to community service orders.
- [12] In deciding the sentence to be imposed it is necessary to try and find a sentence which makes you accountable for your criminal wrongdoing, denounces your conduct and, of importance, deters others from offending in the way you offended.
- [13] This was nearly half a kilogram of dried cannabis leaf. That is a substantial amount. Indeed, as I asked the Prosecutor, it seems surprising you were not actually charged with possession of cannabis for the purpose of supply to others given the amount found in your possession.
- [14] Despite what the Probation Service has recommended, I am of the view that the police are right and a jail sentence needs to be imposed on you for your offending on this occasion. The maximum sentence which could be imposed is two year's imprisonment.
- [15] There probably should be something like a sliding scale for those found in possession of cannabis depending on the amount in their possession and, of course, their personal history and previous records.
- [16] Where the amount in possession is clearly more than needed for own use, in my view the appropriate sentence should be about one month's imprisonment for each 100 grams of cannabis. So I take as my starting point that you should go to jail for four months.

[17] Against that, I am prepared to reduce the sentence because you pleaded guilty, although the chances of your escaping conviction were never high. I am prepared to reduce it further because of your personal circumstances, although they play little part in drug offending, and if you feel some difficulty arising out of the fact that this has taken six or seven months to complete and came to the Court this morning comforted by the Probation Service's recommendation for yet another sentence of community service, I am prepared to reduce the sentence to a degree for that factor as well.

[18] In the end, in my view the appropriate sentence to be imposed on you is one of two month's imprisonment.

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

Hon Hugh Williams J