

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

CR NO. 454/11, 455/11

COMPTROLLER OF THE COOK ISLANDS CUSTOMS SERVICE

v

MICHAEL WILLIAMS

Hearing: 8 September 2011

Counsel: C. Evans for Crown
W. Rasmussen for Defendant

Sentence: 8 September 2011

SENTENCING NOTES OF THE HONORABLE WESTON CJ

[1] Mr Williams, you are here for sentence today having pleaded guilty to charges under the Customs Act relating to events occurring in July 2010. You have pleaded guilty to charges that you evaded payment of duty on goods with intention to defraud the revenue of Customs and the items involved; one litre bottle of vodka, two cartons of cigarettes and you are also charged in relation to 50 grams of tobacco. Those various charges are that you conspired with other people to undertake those offences.

[2] During the course of the sentencing I asked as to whether the other two people alleged to have participated in these conspiracies had been charged. The Crown has advised they have not but that active consideration is being given to those charges and indeed Ms Evans said that in her estimate there was an 85% chance that charges would be laid.

[3] You held a position of responsibility as part of the Airport Security Service and indeed you still hold that position but subject to review by your employer.

[4] The Crown has made submissions that the maximum penalty for which you can be sentenced is a fine in the sum of \$4,998. This is based on a calculation of three times the value of the goods. There are no other penalties available to me such as community service or indeed imprisonment as would be the case in New Zealand. Ms Evans tells me that the Act is being reviewed and it seems to me sensible that the penalties for breaches of this sort should be reviewed because simply limiting those penalties to a fine leaves the court with an insufficient range of options.

[5] Mr Rasmussen on your behalf has emphasised the mitigating factors which include that you are a family man responsible for providing for children, that this is your first offence, that you pleaded guilty to the offence. He's also emphasised in his submissions that you gained nothing financially from what you did.

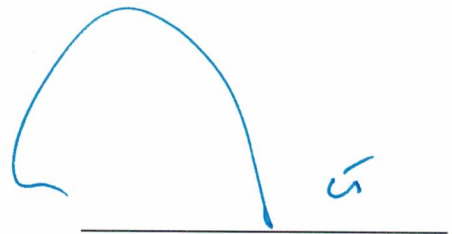
[6] However the crime to which you have pleaded guilty is a serious one because you have abused your position as an Airport Security Officer and that factor was something emphasised in the New Zealand case of Nua¹ as being an aggravating factor. I agree that an Airport Security Officer who breaches the Customs Act must expect to be dealt with in a rigorous fashion by the Court in order to reflect the condemnation of society of a person in your position abusing that position. What you have done amounts to corruption, and corruption in a society is always dangerous to that society.

[7] In round figures the maximum fine that I can impose on you is \$5,000. I am told that you are on a salary of \$12,000 and as I have already mentioned you are responsible for your family. There must a high degree of likelihood that you will lose your job following this sentencing today and although I cannot know that for certain I do need to take that possibility into account in setting any fine.

[8] If I had the option to do so, I would be sentencing you to a significant term of community service and I would certainly be considering imprisonment. Those options are not open to me. It might be thought then that I would sentence you to the maximum fine that I can. However in fixing a fine I do need to have regard to your personal circumstances and as I said to the mitigating factors mentioned by Mr Rasmussen on your behalf. I do not think a fine at the top end is appropriate. I'm going to fine you \$2,000. In one sense that does not adequately recognise the crime that you have committed but I think bearing in mind the limited tools that I have available to me, that is the most appropriate penalty that I can impose. In addition to the fine of \$2,000 you are to pay court costs of \$30. At this stage I do not make any orders as to instalment payments of the fine or the like because until the issue of your employment is better understood I think it is premature to address that topic.

¹ R v Nua (CA 106/1; 28 June 2011)

[9] The fine of \$2,000 I will impose in respect of the second listed charge, Ms Evans, in your submissions (the tobacco charge), and in relation to the first charge (vodka and cigarettes) he is convicted but discharged in relation to that. So the total fine for this offending is the sum of \$2,000 plus court costs of \$30.



Tom Weston
Chief Justice