

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

CR NO'S 383, 430-432/12

POLICE

v

NGATOKOTORU MATARA TUAPUTA

Hearing: 29 June 2012
Counsel: Mr Ngatokorua for the Crown
Mr Petero for the Defendant
Sentence: 29 June 2012

SENTENCING NOTES OF WILLIAMS J

[1] Mr Tuaputa, at the age of 21, you appear for sentence on a number of charges. The first is receiving a laptop worth about \$1,500 in December last year. On 8 April 2012, there is a charge of receiving a couple of cans of hair dye. Two days later, there is a charge of receiving a silver necklace. And on 23 April 2012 you were discovered in possession of a bong for smoking cannabis.

[2] You originally pleaded not guilty but changed your plea to guilty on the 17th May 2012.

[3] You have heard my discussion with the lawyers. It centres around whether what the Police got back from you was - apart from the hair dye - just the items that you are charged with, or whether they got back more than you received.

[4] I am prepared to accept that, as far as the charge on the necklace is concerned, the Police probably got back more than just one necklace, and that it was part of a bundle of other items that they recovered from you.

[5] There was a laptop: there was a burglary last December, an associate of yours offered you the laptop later on which you took. Fortunately it has been recovered.

[6] The hair dye: your associate burgled some property, offered it to you, you took it. It has not been recovered.

[7] The necklace: again the result of a burglary by an associate, offered to you, you took it. It has been recovered.

[8] And with the bong, as a result of a search warrant, executed on your property these were items recovered and there was a plastic bottle with a hose in it. You admitted that you had been smoking cannabis from it several times and Mr Petero now tells me you accept that you are actually addicted to cannabis and taking counselling for it.

[9] The Probation Service report said you show no remorse - you were not sorry at all for the time crimes you had committed - you even admired yourself for what had taken place. Well I hope as a result of the prosecution today that you have changed your mind on that.

[10] It is not the first time you have been before the Court. The Probation Service gives me some insight into your background. You have a supportive family and they want to help you turn your life around.

[11] Mr Ngatokorua for the Crown urges me to put together a sentence which will hold you accountable for what you did, and punish you and try and deter others. He points that in a case I did last week when some lengthy probationary community

service was imposed and I said that with the growing number of offences of cannabis in the Cook Islands and community concern about it, people are going to start going to jail even on a first offence.

[12] Mr Petero emphasises your confession, your early plea, and even he acknowledges that a short term of jail for the possession of the bong might be contemplated although he suggests that, at the end of the day, I should not send you to jail.

[13] In last week's case I said that possession of cannabis, possession of a bong, even for a first offender is likely to result now - with such offences becoming more common - a starting point of about a month or two in jail before the personal circumstances of the offender can be taken account, and personal circumstances do not count for much in drug offending. It strikes too much at the community to allow people to get out of jail because their personal circumstances are good.

[14] Making matters worse for you is the fact that it is not the first time you have been before the Court, and that these are four offences over a four month period. That suggests you are sufficiently dishonest simply to accept goods you knew were stolen when some mate of yours offers them to you.

[15] Against that is the early plea to these offences but you would have had little chance of escaping conviction anyway. You are still relatively young, and I am giving you the benefit of the doubt as far as the return of the goods to the Police is concerned. I accept that although it may have been the result of executing a search warrant on you, the Police did get back more than you are actually charged with. You volunteered it to the officer in charge who is your uncle. That fact alone saves you from going to jail.

[16] The starting point should still be about 1 or 2 months jail but, in light of that, I am prepared to admit you to Probation for 18 months, the first 9 months will be on community service on the statutory terms, and an additional term that you undergo such drug counselling as the Probation Service requires.

[17] You can count yourself lucky. Do not bank on it in the future. If you offend again you will almost certainly go to jail.

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

Hugh Williams, J