

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

**CR NO'S 43, 134-135, 778/11, 45/12**

**POLICE**

v

**TEAUARIKI ARETI JOSHUA MAKI**

Hearing: 22 June 2012  
Counsel: Mr Manavaroa for the Crown  
Mr Petero for the Defendant  
Sentence: 22 June 2012

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**SENTENCING NOTES OF WILLIAMS J**

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[1] . Teauariki Areti Joshua Maka, at the age of just 18, you appear here for sentence on five outstanding charges, one each of burglary, failing to stop, contempt of Court, unlawful taking of a motorcycle and possession of cannabis. You pleaded guilty to those at an earlier stage. Your sentencing has been postponed because it was not clear exactly what charges still remained to be dealt with by the Court. As a result of the Crown's investigation it appears that some eight charges to which you pleaded guilty on 26<sup>th</sup> November 2010 and 13<sup>th</sup> January 2011 were dealt with by the Children's Court on 25 February 2011. You were then released under the supervision of welfare officers for 18 months on certain conditions and that supervision has been transferred to the Probation Service on your attaining the age you are now.

[2] The facts of the matters are as follows:

[3] On the burglary, CR 43/11, on 12 January last year about 4.15 pm in the afternoon the Police were advised that a burglary had taken place. You were found at a shop where you gave a friend some American currency of about US\$150 to exchange to New Zealand currency. Five days later you were brought in for questioning and admitted that that money had been stolen by you when you committed a burglary on Christmas Eve at Ina Mokoroa's house in Ngatangia. You opened the front door, went inside, found the money in a plastic bag, and took it. total taken was about \$300.

[4] On the contempt of Court and the failing to stop charges, CR 134 & 135/11, you were referred on 17 February 2011 to the Children's Court sitting on 25 March 2011. On 4 March the Police undertook at routine curfew check and found you were not at home despite that being one of the conditions on which you had been released. And then on the 5<sup>th</sup> March the Police found you driving a vehicle. You were stopped in front of the Police Station but failed to continue to stop and drove the motorcycle away, being caught by the Police later on. You admitted to the Police that you were not home at the curfew check and said you were out buying liquor.

[5] On the possession of cannabis charge, CR 45/12, that occurred on 17 January 2012 at 2.00 p.m. the Police discovered you sitting on a motorcycle with a bag over your shoulder. You drove off to try and avoid apprehension but were stopped and when the bag was searched it was found to have 5.78 grams of cannabis inside and a branch with the leaves totalling 9.24 grams. The total amount of cannabis of which you were in possession was 15.02 grams.

[6] The Probation Service in their initial report said that you told them you committed burglaries in order to steal alcohol. You had no regret for what you had done and no plans for the future at that stage, nor any intention to find work, but Mr Petero tells me that you have changed your ways a little in the period since that report was prepared back on 28 February 2012 and that you have had work for the past three months.

[7] There was a Welfare Report on the Court file as well from 1 December 2010 which gave details of your residence with the local MP and the significant assistance he had given you to try and turn your life around and assist you. It does appear however that you have had a pretty unfortunate family background and also lack much in the way of education. The up-to-date Probation Report also gives details of your poor background, your lack of education, and your being left very much to yourself by your family.

[8] The Crown points me to a number of other cases involving offences by others that you now face and suggest that the aggravating circumstances in this case – that it is a situation which makes things worse than might have been the case – that much of your offending was when you were still on welfare supervision. But Mr Manavaroa for the Crown acknowledges this is the first time you have been before this Court although, of course, it is multiple offending, you pleaded guilty at an early stage and he points to your age.

[9] Mr Petero also relies on many of the same circumstances. He suggests that the possession of cannabis charge as the leading offence. That I will deal with shortly. He emphasises the fact you now have a job, the instability of your background and the fact that your mother appears to have come back into your life and to be exercising that stability that you have lacked in previous years. Mr Petero advises me of your brother's conviction and sentence in March of this year on rather similar offending and points to the personal use of your cannabis and the relatively small weight.

[10] Mr Maka, you may not have been in Court earlier when I made some remarks about the prevalence of burglary and cannabis offending and the rise in both those matters coming before the Court, but Mr Manavaroa draws my attention to that. You may also not have been present while I said that with cannabis offending, in my view, the time has come for the Court to take as a starting point for that offending a short term of imprisonment in most cases. There is also a prevalence of burglary on the island, and in my view, the Court should also consider a short term of imprisonment as a starting point for sentencing people who have committed those offences.

[11] In this case, Mr Petero suggests a fine. In my view, that is probably not appropriate given that you have only got a low paying job and had it for a short time.

[12] There are two lead offences in your case, the burglary and the possession of cannabis, the burglary because of its prevalence and the fact that you stole a substantial sum of money and it has been lost to the owner; and the possession of cannabis offence for the reason I have just outlined. In your case, the amount of cannabis found was somewhat larger than in previous cases I dealt with this morning.

[13] As a result the mitigating factors – those which reduce the sentence and in your case enable you to escape a jail term – the early pleas, your age, and the fact that this is your first appearance – something you won't be able to say ever again in the future. In my view, the appropriate sentence is on the failing to stop charge and the unlawful taking of a motorcycle for a joyride – again a prevalent offence – is that you be convicted and ordered to pay Court costs on each of those charges.

[14] On the other three charges, the burglary, the possession of cannabis, and the contempt of Court, I was minded to impose a term of probation of 18 months, but, given the sentence imposed on your brother, I will reduce that. Like your brother you will be sentenced to 15 months probation on those three charges, the first 9 months of which is to be served by way of community service.

[15] Because you are now in work I will direct that you pay reparation of \$300 to the person from whom you stole the money, that to be paid over 15 months in such instalments as the Probation officer directs.

A handwritten signature in black ink, appearing to read 'Hugh Williams J', written in a cursive style.

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Hugh Williams J