

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

CR NO: 351/2013

POLICE

v

NAPOUA BENIONI

Date: 21 March 2014
Counsel: Mr T Manavaroa for Crown
Mr C Petero for the Defendant
Sentence: 21 March 2014

SENTENCING NOTES OF HUGH WILLIAMS J

[1] Napoua Benioni, at the age of 24, you appear before the Court for sentence, having pleaded guilty on 20 February 2014 to one count of possessing a cannabis plant on 23 July 2013.

[2] It seems the plant was only about ten centimetres high when the Police recovered it as a result of executing a search warrant on the property where you were then living.

[3] Although you did not plead guilty until, by my count the eighth time you were before the Court, a plea of guilty had been indicated previously and I think you are entitled to some

consideration for at least accepting responsibility for the plea at a fairly early stage of the proceedings.

[4] You are also entitled to some allowance to the fact that you immediately admitted ownership of the plant to the Police, where in the circumstances, possibly at least, you might have denied it.

[5] The Probation Office and Mr Petero tell me you are in a defacto relationship with a five year old child and that at the present time, you are not in regular employment, having being laid off your previous job, but, that you do casual work and are enjoying that.

[6] The suggestion is that the final sentence be one of 12 months probation with the first six months spent on Community service.

[7] The Crown emphasises the need to instil a sense of accountability for this offending and protect the community and denounce and deter others from getting involved in this sort of activity.

[8] There are no aggravating factors - factors that make the offending worse in your case - and you are as I said entitled to some allowance for your plea, for the fact it is your first offence and to a limited extent for your age.

[9] Mr Manavaroa has handed me a list of the cannabis sentencings over the last 12 months or so, and it is clear that sentences are stiffening to the point where short terms of imprisonment for any drug offending are now quite commonplace.

[10] The Court of Appeal in a case called *R v Marsters* (CA 3/12 30 November 2012) said "previous sentencing for drug offences seems in some instances in the High Court to have been too lenient. In some cases too little regard appears to be have been paid to the very high maximum sentences". And the Court of Appeal accepted the division of drug offending cases into categories:

Category 1 - is growing a small number of plants for the offenders personal use without any sale to a third party intended, where a fine or non custodial sentence is appropriate.

Category 2 – is small scale the cultivation not for commercial purposes.

Category 3 - large scale commercial growing.

[11] Your offending is clearly in category one. So the maximum sentence which could be imposed on you is two years in jail or a \$5,000.00 fine or both.

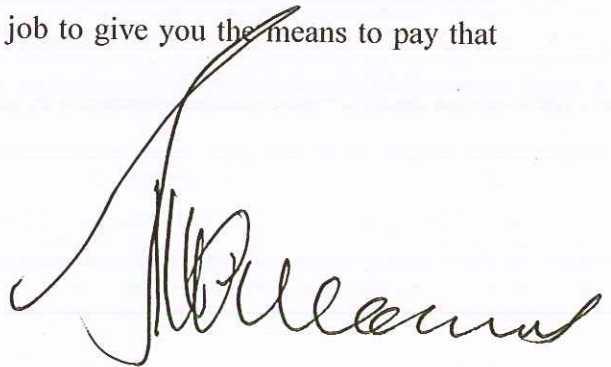
[12] It is clear that, as a result of what the Court of Appeal has said and the growing number of drug cases coming before the Courts in the Cook Islands, that all sentencing Courts need to start, in all drug offending cases, with considering a short term of imprisonment. Anything other than that starting point would be quite wrong in our current circumstances.

[13] Here, in my view, because of your early indication of a plea and your acceptance of responsibility for the plant and the other factors in your favour that I have mentioned, this is not a case where you ought to be sentenced to jail.

[14] However, in my view, to sentence you just to probation and Community Service as recommended is too light a sentence. One hesitates to impose a fine on you because of the likelihood that your partner who is in work might have to find the money to pay it, but you need to get a regular job and you need to pay the fine.

[15] In these circumstances, in my view, the appropriate sentence to impose on you is to fine you \$500.00, and place you on probation for 12 months with first six months to be served on Community Service. You need to find the job to give you the means to pay that fine yourself, not leave it to your partner.

[16] You may stand down.



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Hugh Williams J