

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

CR NO. 145/2018

POLICE

v

LUIS FELIPE GARCIA ATEHORTUA

Date: 14 March 2018

Counsel: Ms K Bell for the Crown
Mr W Rasmussen for the Defendant

**SENTENCING NOTES
OF THE HONOURABLE JUSTICE DAME JUDITH POTTER**

[8:37:54]

[1] Luis Felipe García Atehortua, who comes from Columbia, is before the Court for sentence having entered a guilty plea on 8 March 2018 to one charge of making a false declaration which is an offence under s 122 of the Crimes Act 1969. It carries a maximum penalty of 3 years imprisonment.

[2] Briefly stated, the facts are that on the night of Friday 23 February 2018 Mr Atehortua, who, as I have said, is a Columbian national, arrived in Rarotonga on flight NZ18 via Auckland. He completed the usual passenger arrival card and was allowed entry into the Cook Islands.

[3] On Monday 26 February, as a result of an investigation carried out regarding a fishing vessel Nino Maravilla, that had entered the Cook Islands exclusive economic zone without a licence and without prior notification to the Cook Islands Marine Resources, external investigations and assistance were sought.

[4] Those investigations associated the defendant with the Nino Maravilla. They also revealed that on 16 April 2003, the defendant was arrested for importation of heroin into the United States. He was convicted in 2004 for importing 3.68 kilograms of heroin into the United States in his suitcase. For that offence he was sentenced to a prison term of 46 months and he was then deported to Columbia.

[5] Mr Atehortua was interviewed by the Police here. In completing his passenger arrival card Mr Atehortua falsely declared that he had never been convicted of a criminal offence and that he had not been deported from any country.

[6] Those are the declarations which are the subject of the offence to which he has pleaded guilty. But it might also be noted that he entered his status as that of a visitor and his purpose in visiting the Cook Islands as vacation. Neither of these was strictly correct given his admitted association with the vessel Nino Maravilla and his explanation that he was bringing funds to assist with provisioning that vessel and the persons on board.

[7] It is an aggravating factor that in addition to the falsehoods in the declaration which are the subject of the charge, the statements about his being a visitor and on vacation are not correct. Also, the conviction he failed to disclose, although it was a number of years ago, was serious – importing 3.68 kilograms of heroin into the United States in 2003.

[8] Further, the defendant's explanation as to his entry into the Cook Islands was not satisfactory. He recorded prior travel in Paris, Hong Kong, and Fiji in the last 40 days and it has to be a matter of inference, or at least conjecture, that at those other borders he has not told the truth, thereby gaining access to those countries.

[9] Important is the integrity of the Cook Islands immigration system. Border control for every country is a matter of great importance. Offences against the laws and regulations which govern border control will be treated seriously by the Courts.

[10] In mitigation is his guilty plea entered promptly on 8 March 2018.

[11] Sentencing principles that apply include denunciation, and deterrence. And as I have already stated, of importance is the integrity of Cook Islands border control.

[12] Both counsel have submitted and accept, that a fine is an appropriate penalty, given the assurance from Mr Rasmussen that the defendant has the means to meet a fine and proposes promptly to make payment to enable his departure from the Cook Islands. Mr Rasmussen advises that he has a tentative booking on an Air New Zealand flight, at an early time.

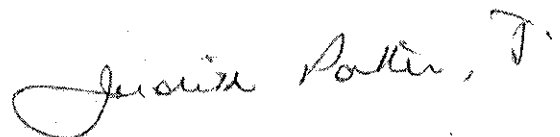
[13] There are no precedents in the Cook Islands to guide the Court as to the appropriate penalty for this type of offending. The Crown seeks a substantial monetary penalty.

[14] Mr Rasmussen on behalf of the defendant submits that a penalty as low as \$500 is appropriate.

[15] Despite the seriousness of the falsehoods of the defendant in his declaration, and the seriousness of the conviction which he failed to reveal, I note that it dates back to 2003 which is a relevant factor. I also take into account his early guilty plea.

[16] In all the circumstances the penalty I impose on you Mr Atehortua is a fine of \$1,000 together with Court costs of \$50. I understand you will pay that fine promptly.

[17] You may stand down.



Judith Potter, J