

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

CR NO. 229/18

POLICE

v

TEREVA TEREVA

Date: 19 November 2018
Counsel: Ms Glassie for Prosecution
Mr Short for Defendant

SENTENCING NOTES OF THE HONOURABLE JUSTICE PATRICK KEANE

[9:33:15]

[1] Tereva Tereva, you appear for sentence for the offence of importing the class C control drug cannabis into the Cook Islands on 26 May 2018.

[2] That day you arrived at the Rarotonga International Airport from Auckland. Acting on information received customs officers searched your luggage. They were especially interested in a white chilly bin containing four frozen meat packages. Concealed within the frozen meat was 906.10 grams of cannabis.

[3] A wider inquiry revealed that somebody else had paid for your airfare and accommodation at the Edgewater Resort. The chilly bin, by then intercepted, was to be collected by an unknown third party.

Pre-sentence report

[4] You are a Cook Islander but not ordinarily resident here. You are resident in New Zealand. You have not previously appeared here for any offence but you have appeared for offences in New Zealand of a relatively minor order.

[5] You have the benefit of a sympathetic presentence report, which recommends that you be fined for this offence.

[6] It explains that you were brought up here in the Cook Islands, first by your parents and then, when they separated, by your grandparents. You left in 2000 and completed your secondary school in New Zealand. That is where your life is. You and your present or former partner have four children, all under 10 years of age.

[7] You returned to the Cook Islands on the date you were apprehended, for a short holiday and to visit your father and extended families. But as your report says that soon became a nightmare. You spent 67 days in custody, an issue to which I will return. You have since been in work, where you are well-regarded.

[8] The recommendation made, as your counsel says, was without any reference to the statement of facts which I have and which you do not dispute. What your report does say is that you take full responsibility for importing the cannabis. You acknowledge that the offence is serious. You sincerely apologise.

[9] You did not, when interviewed by the police, or for the purpose of sentence, disclose on whose behalf you acted. Your reason, your report says and your counsel confirms, is that your children's safety is your first priority. Clearly you feel that if you disclosed the principal offender they could be at risk.

[10] You wish to complete whatever sentence is imposed and return to New Zealand to continue in the support of your children. That mix of factors leads to what I have to say is a very merciful recommendation.

Sentencing principles

[11] The maximum penalty for your offence is imprisonment for 10 years and in sentencing you I must give first place to holding you accountable and to imposing a sentence which denounces and deters you for what is regarded in the Cook Islands, as elsewhere, as serious offending.

[12] I have also to take some account of your personal circumstances and impose on you a sentence which assists you to reintegrate into the community as soon as that can sensibly be achieved.

[13] In *R v Marsters* [2012] CKCA, the Court of Appeal confirmed that the importing cannabis, as well as other forms of consequent offending, must be met by sentences of imprisonment from starting points within categories fixed by the New Zealand cases which the Court endorsed.

[14] In that case the Court distinguished, as in the New Zealand case, *R v Ho* [2005] CRI 2005-012-000567, between importers who instigate, mastermind and are prime movers and controllers and lesser offenders essential to the enterprise, who attract lesser starting points of 3 to 6 years imprisonment.

[15] Very recently the New Zealand Court of Appeal in *Hernandez v R* [2018] NZCA 309, a case helpfully referred to by the Crown, spoke about the role that you exercised as a category 2 offender, that of a courier.

[16] Those, who like you play an instrumental part in an importing chain are often as the Court said vulnerable, naïve and susceptible to manipulation or exploitation. They should ordinarily attract a sentence towards the bottom of the band.

[17] In *Hernandez*, as well, significant discounts were given for remorse, good character and for having to serve a sentence at a point distant from family, complicated also by language issues. These considerations apply potentially in your case also, though the last not in as marked a degree, because you are a Cook Islander.

Submissions

[18] The Crown contends that you lie in category 2, *Marsters*, and should attract a sentence of imprisonment at a starting point within the range of 3-6 years.

[19] Aggravating your offence, the Crown says, is the quantity of cannabis that you were responsible for importing (906.10 grams of cannabis). The quantity required to attract the presumption for supply is by contrast 28 grams. In *Police v Blake*, CR 106-107/13, where the offender imported 507 grams of cannabis for personal use, a 4 year starting point was adopted.

[20] Your counsel in his helpful submission emphasises those factors in the presentence report which led to the recommendation.

[21] He adds that, as well as accepting responsibility for your offending, and sole responsibility to protect your children, you are remorseful. You have learned from counselling that you broke the law, that you brought your family into disrepute, that you caused stress to your partner and children.

[22] He has supplied me with letters from your mother, your partner, your employer. It is quite clear that you are a loving father to your four children and anxious about them. They are aged 3, 4, 5 and 9 years.

[23] Your counsel supports the recommendation in the presentence report but recognises that it is lenient; too lenient I have to say.

Conclusion

[24] Mr Tereva you do have convictions in New Zealand of a minor order but this present offence is much more significant as you now more fully understand.

[25] Importing cannabis into the Cook Islands enables other forms of offending to follow. It sits at the beginning of a chain and those who commit the offence must be made accountable.

[26] You were not however the primary offender. Clearly you were an instrumental offender, essential to the offence but on the face of it unlikely ever to benefit yourself. Your benefit lay in having your fares and accommodation paid for.

[27] You do fall for sentence within the range of starting points the Crown submits must apply. As a courier, and nothing more, I take my starting point for your sentence at the bottom of that range, 3 years. You are entitled to the benefit of your early guilty plea. I reduce your sentence on that account by a full third to 2 years. From that also you are entitled to discounts for a range of other reasons.

[28] They include that you spent 67 days in custody in excess of 2 months; that you undertook counselling; that you have expressed remorse; and that you will serve your sentence here in the Cook Islands distant from your young children for whom you have the fullest responsibility. For those reasons I reduce your sentence further by 9 months.

[29] You are sentenced to one year and 3 months imprisonment. There will be an order for destruction of the cannabis.



Patrick Keane, J