

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

CR NO. 300/18

POLICE

v

SIMIONA WICHMAN

Date: 20 November 2018

Counsel: Mesdames Bell and Glassie for Prosecution
Mr Short for Defendant

SENTENCING NOTES OF THE HONOURABLE JUSTICE PATRICK KEANE

[9:18:38]

[1] Simiona Wichman, you appear for sentence for possession of cannabis for supply on 23 May 2018.

[2] That day the police executed a search warrant at your home. They found sixteen rolls of cannabis, carefully wrapped with tin foil and glad wrapped, in your freezer. The total amount of cannabis was 419.77 grams.

[3] Also located was cash in a small box near the computer table in the sitting room in five rolls of \$100 and \$50 bills. Also a small black bag containing more, this time extending to \$20, \$10 and \$5 notes. The total found was \$8,040.

[4] You were charged with the offence for which you appear and you entered a guilty plea at the earliest opportunity as the Crown accepts.

Pre-sentence report

[5] Your pre-sentence report is highly sympathetic to you.

[6] It explains that you come from a very well regarded family in Rarotonga. That in your early life, you travelled with your family throughout the Pacific and that you, yourself in 2003 went to New Zealand, to complete your studies. You completed a civil engineering degree.

[7] In 2011 you returned to the Cook Islands. You are working presently for the Cook Islands Investment Corporation, where you are well regarded indeed indispensable employee.

[8] You have, your report says, three children. I understand now that two are in New Zealand and that you have been embroiled in a custody dispute relating to one or more in Manukau. You have a child here in the Cook Islands by another relationship.

[9] Your counsel says that it may well be that your offending is explained by the New Zealand proceedings relating to your two children extending over two years. If that is so, it is entirely unsurprising.

[10] Your employer, as I have said values you highly. You are rated as indispensable to projects the corporation is presently undertaking. Your family, like your employer are surprised and distressed by the offence in which you appear. All support you and a number are in Court today. In that, you are fortunate.

[11] As to your offending, your report says that when interviewed, you said that the cannabis found was not for sale, it was for your personal use. You also denied that the money found represented proceeds of more sustained offending. Your counsel has confirmed however that you accept the logic of the evidence.

[12] The quantity of cannabis found 419.77 grams is well above the presumption for supply which is 28 grams. The way in which it was wrapped, and the money

found and invites the ordinary inference that on the search the police found evidence of cannabis for supply.

[13] There are civil proceedings in train relating to the money found, and more; and an agreement reached in principle between you and the Crown as to that. It will be settled formally after sentence, perhaps some time after. But it suggests you accept you were in the course of dealing.

Sentencing principles

[14] The maximum sentence for your offence is 10 years imprisonment and in sentencing you I am obliged by *R v. Marsters* (CI COA [2012]), to impose on you a sentence which holds you accountable for your offence, which denounces it and it deters you and others in the Cook Islands from committing the offence.

[15] By supplying cannabis to others, you assist them to offend themselves and the net widens, so there is a community responsibility that cannot be ignored on the sentence for this form of offending.

[16] Equally, to the extent I can, because the cases say that personal circumstances must always be secondary where drug offending is concerned, I must impose on you a sentence which assists you to reintegrate into the community as soon as that is practical. But the primary principle remains.

[17] In *R v. Marsters* the Court of Appeal said that the starting point to be taken for sentence for drug dealing, as for cultivation, lies in three categories within the second of which your offending lies. It was not minor as in the first category. It was not major, as in the third category. It lies in the second category. The starting point to be taken lies in the span of 2 to 6 years imprisonment.

[18] In *R v. Valu [2013]* a sentence to which your counsel referred me, possession of cannabis for supply was the primary offence and the offender was a first offender. The quantity of cannabis in that case was 79.22 grams.

[19] The sentencing Judge took particular account of the fact that there was nothing independent to suggest more sustained dealing. She took a starting point of 18 months imprisonment.

[20] The quantity of cannabis you had for supply was obviously greater and there is independent evidence that you had been dealing in the cash found.

Crown submissions

[21] The Crown contends for a starting point in the range of 3-4 years. The quantity of cannabis found as the Crown says was significant. The Crown accepts that you are entitled to a 1/3 reduction for your immediate plea, but also accepts that you should receive credit for two other reasons.

[22] One is that you do not dispute the forfeiture of the money found \$8,040, or the forfeiture in civil proceedings of a further \$9,000 from a sum currently frozen. That will be resolved as I have said at sometime after the sentence is imposed.

[23] The Crown also accepts that because you have undergone counselling as your pre-sentence report confirms you should receive a further credit of the order of the 5%.

Defence submissions

[24] Your counsel in his very helpful submission has confirmed to me that from the outset you, and your family, have faced up to your offence. You have admitted it, you accept you are responsible for it and with their help, you will serve whatever sentence is proper.

[25] He emphasises to me how exceptional this offence in your case is something I already understood from your pre-sentence report. You have letters of support from your parents, from your uncle, from your friends. All say that this offence apart, you are a good and responsible man.

[26] Your counsel says you are a quiet man. But he says, and I accept your offending may well be attributable in an large part to the financial and emotional cost you have lived with over the past 2 years as a result of them in New Zealand custody dispute. He also says you did not understand the significance of your offending. I have to say that I find that surprising. You are, in contrast to many who appear, a highly educated man and hold a position of responsibility.

Conclusion

[27] The law is very clear here in the Cook Islands and elsewhere that dealing in cannabis is a serious offence. It is treated especially seriously here in the Cook Islands.

[28] Nevertheless, I sentence you on the basis that this offence was exceptional and that even if a generally deterrent sentence must be imposed, in your case personal deterrence is likely to be beside the point, I doubt you will ever offend in this way again.

[29] I take a starting point for your offence of 3 years imprisonment. From that starting point, I make the deductions the Crown accepts are proper, which come to some 45%. Without being exact about it, I deduct from that starting point, 16-18 months. You will be sentenced to 1 year six months imprisonment.

[30] There will be an order for forfeiture of \$8,040 and order for destruction of the cannabis.



Patrick Keane, J