

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

**CR NO'S 411/17 & 454/17  
410/17, 453/17  
548-549/17**

**POLICE**

v

**HENRY WACHTER  
&  
JOSEPH WACHTER**

Date: 23 March 2018

Counsel: Ms A Herman for Crown  
Mr M Short for Defendant (Henry Wachter)  
Ms M Henry for Defendant (Joseph Wachter)

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

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[10:02:07]

[1] Joseph Wachter and Henry Wachter you are appearing jointly for sentence on one charge under the Narcotics and Misuse of Drugs Act 2004, that you cultivated 15 prohibited plants namely cannabis. The charge carries a maximum penalty of 20 years imprisonment. As I said in sentencing your mother, that indicates how seriously parliament and the community view this offending.

[2] Joseph is also appearing on three other charges – possession of cannabis; possession of a utensil, namely a bong, and possession of 134 cannabis seeds. Those last two offences each carry a penalty of up to 5 years imprisonment or a fine of \$5,000 or both.

[3] Henry Wachter is also appearing for sentence on another charge – possession of utensils, namely two bongs. And again the sentence is up to 5 years imprisonment or a fine of \$5,000.

[4] The most serious charge and that which I take as the lead charge, is the cultivation charge which you face jointly.

[5] The facts I will summarise briefly because they replicate those that apply to Mrs Wachter.

[6] On 17 August 2017 police executed a search warrant at your family residence in Arorangi. As a result of the search, on the ground floor the police located several cannabis materials.

[7] Cannabis plants were located on the balcony of the second floor, inside small and medium sized pots, and the police found utensils, tools, water containers, water hose, liquid sprays and a sack of potting mix soil near the cannabis plants. Those utensils were used for cultivation of the cannabis plants.

[8] Police catalogued and measured the fifteen cannabis plants. They ranged in height from 1 centimetre to 43 centimetres. It was estimated by the police that the more mature cannabis plants were planted 3 to 6 months before the police search.

[9] In relation to Joseph, the police also found the bong, the container of cannabis seeds, and the dried cannabis which are the subject of other charges. And in relation to Henry, a red pipe bong and a bong fashioned out of a one litre Keri Juice bottle, both used for smoking cannabis.

[10] The sentencing principles that apply here are the same as those that apply in respect of Mrs Wachter and I do not propose to repeat them.

[11] Again the offending falls within the Category 1 of *Terewi* as applied in the Cook Islands in the case of *Marsters*. It is a cultivation operation for personal rather than commercial use. But the number of cannabis plants is not insignificant and there was reasonable sophistication about the operation.

[12] In the case of Joseph, the finding of 134 cannabis seeds is significant, as is the quantity of dried cannabis found, 28 grams.

[13] As to mitigating factors, you both come to the Court as first offenders.

[14] You have entered early guilty pleas and you are remorseful.

[15] In respect of you Henry, your counsel emphasised that you have come readily to understand that you have broken the law, that you have brought your family into disrepute, that you have caused a lot of stress to your partner and her family with whom you are staying, and you have let down your family especially your young daughter who relies on you for support.

[16] And Joseph, I am sure you are well aware of the disrepute into which you have brought your family and indeed yourself.

[17] Henry had a good job with Cook Islands Trading Corporation Limited and there are two references from that company which speak of his ability and that he is a team player in the organisation. You have let them down too. And Joseph has previously been gainfully employed and has good reports from previous employers.

[18] It is to be hoped that you can maintain ongoing employment and that you can offer to your future employers loyalty and a more open and honest approach than that which has obviously been the case while you have been concealing from them your criminal activities in cultivating cannabis.

### Sentencing

[19] I do not propose to impose on you sentences of imprisonment. This is first offending. It is very serious. And you need to know that if you get anywhere near cannabis or other drugs in the future there will be none of the leniency which I have found myself able, but with difficulty, to extend to you today.

[20] Joseph, you are sentenced to a fine of \$900 and 12 months' probation with the first 6 of those to be served on community service. The following conditions will apply:

- a) You are to abstain from the consumption of and any involvement direct or indirect with prohibited drugs other than prescribed drugs;

b) You are to undertake any training or workshops or counselling as directed by the Probation Service; and

c) You are not to leave the country without the approval of the High Court.

[21] An order is made for the destruction of the cannabis utensils and material;

[22] There will be Court costs of \$50.

[23] Henry, you are fined \$800. The lesser fine simply reflects the lesser number of charges you face.

[24] You will be placed under probation supervision for 12 months, the first 6 months to be served on community service. The conditions that apply to your probation supervision are the same that attach to that of Joseph.

[25] There will be an order for destruction of the bong and Court costs of \$50.

*Potter, J*

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**Judith Potter, J**