

COMPTROLLER OF CUSTOMS

v

COURSE NEIAO

Date: 22 May 2019
Counsel: Mr F Hawkins for Customs
Mr M Short for Defendant

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

[1] 50.091

[1] The defendant, Course Neiao, appears for sentence on two charges: Being knowingly concerned in the importation of prohibited goods into the Cook Islands under ss 90(1)(c) and 268(1)(c) and (2)(a) of the Customs Revenue and Border Protection Act 212, namely two firearms and 4500 rounds of ammunition, without a permit to import such goods under s 4 of the Cook Islands Arms Ordinance 1954.

[2] This offence is punishable by a maximum sentence of 10 years imprisonment or a fine not exceeding \$300,000, which indicates the severity with which Parliament views this offending.

[3] The defendant is also charged with aiding and abetting failure to declare the firearms and the ammunition under s 68 of the Crimes Act and s 260 of the Customs Revenue and Border Protection Act. This offence is punishable by a fine not exceeding \$1,000.

Facts

[4] I have a detailed summary of facts but I propose to summarise them to the best of my ability. On or around late February or early March 2018 the defendant and his wife planned a holiday in New Zealand where they would purchase personal goods to be shipped back to the Cook Islands. The defendant and his family live on Nassau in the Northern Cook Islands. During the trip to New Zealand the defendant purchased two firearms and ammunition to import into the Cook Islands. On 25 March 2018 the customs office received an import entry submitted by Kauvai Customs on behalf of the defendant and his wife in relation to the importation of personal goods being shipped from New Zealand.

[5] Customs made an examination request in respect of the crate which arrived on or around 27 March 2018 because they were concerned there was insufficient information provided about the contents of the importation. Upon examination customs officers found in the crate two firearms – 12 gauge shotguns – and 4500 rounds of ammunition, as well, of course, as assorted personal goods.

[6] Customs discovered five packages heavily wrapped in plastic and neatly stacked at the bottom of the crate. Inspection of the five packages revealed that each concealed two smaller boxes. Inspection of the two smaller boxes found they contained smaller packs of two types of firearm and ammunition.

[7] The first type of firearm ammunition located was 2500 rounds of 12 gauge shotgun bullets. The second type of firearm ammunition was 2000 rounds of 22 long rifle led hollow point bullets. A total of 4500 rounds of ammunition.

[8] Upon further inspection Customs located package number 6. This package concealed two further packages. The two packages each contained 12 gauge shotgun rifle accessories.

[9] In total the defendant imported into the Cook Islands 4500 rounds of ammunition and two 12 gauge shotguns. He did not provide Customs with a permit to import the firearms and ammunition, required by s 4 of the Arms Ordinance 1954 to be provided at the time the import entry documentation is provided to Customs.

Principles and purposes of Sentencing

[10] The prosecution submissions have helpfully reminded me of the principles and purposes of sentencing – they must hold the defendant accountable to the community, promote in him a sense of responsibility for his conduct, denounce his offending and deter him and others who might be minded to commit like offending.

Aggravating and mitigating factors

[11] The prosecution submits that there are aggravating factors in this offending, premeditation, and despite what is said about the defendant by his counsel, a degree of sophistication, apparent in the purchase and concealment by the defendant in the way the crate was packed and prepared for shipping to the Cook Islands.

[12] Further, no mention of the firearms items was made to the import agency, and of course they were not declared to Customs.

[13] The prosecution notes that the defendant had obtained from police a firearms licence to own and operate firearms in the Cook Islands and had undertaken a police firearms training course. This course covers the requirements to obtain a permit to import firearms and ammunition into the Cook Islands. It must be assumed the defendant had this knowledge. Indeed it is implicit in his guilty plea to the more serious of the two offences, of knowingly being concerned in the importation of these goods.

[14] In relation to mitigating factors, Mr Short for the defendant seeks a discount for the guilty pleas and the previous good character of the defendant. This is not opposed by the Crown despite the fact that the guilty pleas came later rather than earlier in the piece.

Authorities

[15] The prosecution referred me to a number of cases for guidance. These are cases outside the Cook Islands because there are no previous cases in the Cook Islands to which counsel have been able to refer me in relation to sentencing for this type of offending.

[16] The prosecution however fairly notes that there are various categories of goods that may be imported in contravention of the provisions against which the defendant has offended. The category of goods concerned in this case is those prohibited because no import permit was obtained. In this respect the importation differs from other categories where the goods themselves, such as objectionable material, are unlawful per se. These firearms and ammunition could have become a lawful import had the appropriate permit been obtained.

[17] Of the numerous cases referred to me by counsel I refer only to the case of *Harris v Police* [2006] NZHC 481, a New Zealand decision, which makes clear that forfeiture orders under the Customs and Excise Act should not be taken into account in determining sentence. Forfeiture occurs by operation of law and there is no mitigating aspect in the removal of those items by customs officers.

Defence submissions

[18] Mr Short, on behalf of the defendant, described the lifestyle in which he and other members of his community are involved in Nassau – that it is a very collegial and sharing community. He submitted that the purchase of the guns and the 4000 rounds of ammunition would have been to supply the whole island. The defendant would have anticipated that on the trip to New Zealand the needs of the whole island population in this respect would be met.

[19] Mr Short referred to the language difficulties. The language predominately spoken on Nassau is the Pukapukan language which is different from Cook Islands Maori. He submitted that the defendant simply did not understand the need to obtain a permit for this importation and mistakenly thought that because he had a firearms licence, this would entitle him to purchase and import the firearms and ammunition.

[20] Mr Short submitted that while this explanation may seem naive it is realistic against the background in which the defendant lives on Nassau and does not have regular contact or access to information available to people in Rarotonga.

[21] Attached to Mr Short's submissions were numerous letters of support from members of the community on Nassau. They are extremely supportive of the defendant and I acknowledge them.

[22] In respect of the defendant's response to this offending, I note the probation report says he shows no remorse or understanding of his offending. Mr Short says that having come to a realisation of the seriousness of his offending, he is indeed remorseful and through Mr Short he apologised to all those to whom he has brought embarrassment and shame by this offending. He also apologised to the Court.

[23] I observe that professions of remorse and regret expressed through his counsel, do not sit happily with the defendant's guilty plea to the very serious charge of knowingly being concerned in the importation of firearms and ammunition into the Cook Islands.

Sentencing

[24] It is not difficult to see why this charge carries the heavy penalties it does. Were the firearms and ammunition to be released at any stage of the importation, the consequences could be very serious indeed for other people.

[25] I have wrestled considerably with the appropriate sentence in this case. The offending is moderately serious and I consider the appropriate sentence is probably a term of imprisonment. But I take into account all that has been said on behalf of Mr Neiao and the reality of his life on Nassau, as a father of five children, and with employment as an agricultural officer which earns him a regular income, as I understand it, of approximately \$600 per week.

[26] The probation report suggests a significant fine together with probation and community service. I am troubled by the ability of Mr Neiao to pay a hefty fine but Mr Short assures me that arrangements can be made for the fine to be paid by instalments, by deduction from Mr Neiao's salary.

[27] That being the case, though remaining troubled about this offending and the background to it, I have decided not to impose a sentence of imprisonment.

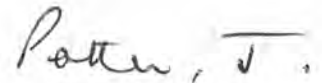
[28] The prosecution have calculated that the maximum fine available would be \$6,606. The fine I impose, Mr Neiao, is half that amount, \$3,000.

[29] You will be placed on 12 months' probation supervision, the first of those 6 months to be served on community service. I hope, Mr Neiao, you have understood all I have said.

Sentence

[30] The sentence I pass on you for the offending to which you have pleaded guilty is a fine of \$3,000, 12 months' probation and 6 months community service.

[31] Let this be a lesson to you and to all those in your community who might have an expectation that members of the community would offend in this way on their behalf.



Judith Potter, J