

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

**CR NO. 553/2021**

**POLICE**

v

**CLIFTON MIIMETUA JOSEPH HOSKING**

Hearing date: 17 March 2022

Counsel: Snr Sgt F Tararo, for prosecution  
Mr M Short, for defendant

Sentence: 17 March 2022

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**SENTENCING NOTES OF HUGH WILLIAMS, CJ**

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[11:17:25]

[1] Clifton Miimetua Joseph Hosking, at the age of 39 you appear here for sentence on a charge of cultivating eight cannabis plants between 24 October and 4 November 2021, a charge to which you pleaded guilty on about the fourth appearance on 10 February 2022.

[2] The seriousness of cultivating cannabis is shown by the fact that Parliament has enacted a maximum sentence for cultivation of 20 years in jail, twice the maximum in New Zealand.

[3] The facts of the matter are that on 3 November last year, as a result of information received, the Police executed a search warrant on your home and found eight fairly small cannabis plants being cultivated in the middle of a linen cupboard in a middle room with an LED light over them to assist in their growing process.

[4] The Police have provided photographs of the set up that you had installed and of the individual cannabis plants and it is fair to describe it as a moderately sophisticated setup.

[5] You initially denied cultivation but the evidence was overwhelming and you said to the Police that you found the plants on the side of the road and because you were interested in knowing how cannabis grows, you took them home, planted them out, set them up in the cupboard and installed the light to assist in their achieving maturity.

[6] This is not the first time you have been before the Court on drug offences although the only other time you have been here for such offences was in 2011 when you were put on 12 months supervision for possession of a utensil possession of cannabis and possession of a plant.

[7] The Probation Service gives me some insight into your background, saying that you were a spoilt child with little parental control and guidance in your youthful years but you have corrected yourself and you have been with a partner now for some 18 years and have three children. She, sensibly, when you set out on this enterprise told you to dispose of them, but you did not. The Probation Service recommends 18 months' probation for you on certain conditions.

[8] For the Crown, Senior Tararo points to the seriousness of the offence, shown by the 20 year maximum, and draws my attention to a New Zealand case called *R v. Terewi*<sup>1</sup> but suggests that possibly the appropriate sentence to be imposed on you might be one of probation.

[9] Mr Short, in his submissions says that you have been to counselling and provides me with a letter from Mou Piri to say that you have successfully passed through that course. Counselling seems to be an increasing adjunct to the criminal processes in the Cook Islands to the point where the Court Justices of the Peace have

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<sup>1</sup> *R v. Terewi* (1999) 3 NZLR, at 62.

been concerned as to how they should treat a defendant's participation in counselling when they come to sentence defendants.

[10] It is a voluntary system. It is outside the criminal justice system and although it can be taken into account, naturally, as a factor impinging on the sentencing process, it actually plays very little part in sentencing, especially in sentencing under the Narcotics and Misuse of Drugs Act 2004 where the focus is on the offence rather than the offender.

[11] Similarly, Mr Short puts before me testimonials from your father, your workmates a friend and your partner. The testimonial from your partner is impressive. She said, "I already told him to remove the plants when he first brought them home". You did not, despite that good advice.

[12] It has been said over and over again in sentencing for narcotics offences that personal circumstances of accused persons have almost nothing to do with the sentence to be imposed. Narcotics offences are so serious that personal circumstances are almost entirely disregarded when it comes to imposing an appropriate sentence. So while persons giving such testimonials have no doubt feel that they have done the best for a defendant, in fact the law is that their efforts are largely set to one side when it comes to imposing a sentence. As with all sentencing, the sentence to be imposed should reflect the gravity of the offence. And here, as I have said previously, the maximum sentence which could be imposed is 20 years imprisonment.

[13] I need to endeavour to fashion a sentence which holds you accountable for the harm done to the community, promote a sense of responsibility in you, denounce your conduct and particularly by comparison with the maximum available, deter others from being involved in the cultivation of cannabis.

[14] Cannabis is becoming more prevalent in the Cook Islands and Judges are, over and over again, being urged by prosecutors to recognise that by the imposition of severe sentences. I am aware that there is something of a debate in the Cook Islands about the current law concerning cannabis but that plays no part in imposing a sentence on you. The law is the law and Judges must enforce the law as it is. If Parliament

chooses to change it, that is a matter for Parliament and Judges will then impose the altered law. But at the present time, the law is that cultivation of cannabis carries a maximum sentence of 20 years in jail.

[15] The aggravating features, thus making your offending worse than it might otherwise be, are that this was a moderately sophisticated set up. You said that you wanted to know how cannabis grew. You could have found that out off the internet and if you wanted to see how plants grew you should have chosen, as your partner said you should, some other plant than cannabis. Also an aggravating feature is of course that you have previous convictions for narcotics offences even though they were back in 2011.

[16] The mitigating features reducing the severity of the sentence are your early plea, but there was really no chance of avoiding conviction given the circumstances discovered on execution of the search warrant and, to a very limited degree, your family's circumstances.

[17] Sentencing for cultivation has become a rather difficult exercise in the Cook Islands. As mentioned several times, Parliament has provided for a 20 year maximum for cultivating cannabis, but in a schedule of previous sentences for cultivation, up to 2017 at least, not a great number of people went to jail for cultivating cannabis. Some did, but not all. And in some more recent cases, such as *Monga*<sup>2</sup> where 16 cannabis plants were involved and *Wachter*<sup>3</sup> where 15 cannabis plants were involved, jail was not the result.

[18] On the other hand, the leading decision in the Cook Islands for sentencing for drug offences is *R v. Marsters and Tangaroa*<sup>4</sup>. That was a case involving a variety of charges under the Narcotics and Misuse of Drugs Act 2004 including cultivation. The Court of Appeal in that case carefully reviewed the sentencing approach of Doherty, J from which the appeal had been brought. They noted<sup>5</sup> Doherty, J saying; “the scourge of drugs in any society and its impacts are well known. Not just the impact on users,

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<sup>2</sup> *Police v. Monga* CRN 180/21 5 August 2021, Doherty, J.

<sup>3</sup> *Police v. Wachter & Wachter* CRN 411/17 et al, 23 March 2021, Potter, J.

<sup>4</sup> *R v. Marsters & Tangaroa* CA 3/12, 27 November 2012.

<sup>5</sup> At [20].

the wasted lives of addicts and the impact on their immediate families but also on the wider society”. They also discussed the difference in the maximum sentences between the Cook Islands and New Zealand and they also referred to the decision of the New Zealand Court of Appeal in *Terewi* which classified cannabis cultivation into three categories: Category 1; growing a small number of plants for the offender’s personal use without any sale to a third party being intended, in which a fine or another non-custodial sentence is appropriate; Category 2; small scale cultivation for commercial purposes, where the starting point for sentencing is usually two to four years; and Category 3; large scale commercial growing with a starting point of four years or more.

[19] In his sentencing in *Marsters Doherty*, J reviewed the *Terewi* categories. His approach was endorsed by the Court of Appeal. Justice Doherty said that in category 1 *Terewi*, growing a small number of plants for personal use, the sentences should be a fine to a short term of imprisonment; category 2, small scale cultivation, two to six years imprisonment; and category 3, large scale commercial growing, five to ten years imprisonment<sup>6</sup>.

[20] So for a decade now in the Cook Islands those should have been the start points for sentencing in cultivation of cannabis cases, but, as previously commented, for some reason not every Court which has sentenced people for the cultivation of cannabis since *Marsters* has sent people to jail.

[21] There is a case not in the 2017 schedule, *Benioni*<sup>7</sup>, which has some echoes of your case in that it involved two charges, one involving two cannabis plants. There it was said, adopting category 1 *Terewi* against the maximum of 20 years, for the cultivation of one plant, the starting point should be a year’s jail. There were some aggravating and mitigating circumstances in that case, particularly the second offence, and the offender went to jail for 15 months.

[22] In your case, I am bound by *Marsters*. I can take some account of the sentencing decisions which have followed *Marsters* and the fact that in some of them, jail was not imposed, but in your case, I think you are on the borderline of category 1

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<sup>6</sup> At [27].

<sup>7</sup> *Police v. Benioni* CRNs 18/16 & 480/16, 17 March 2017, Hugh Williams, J.

and category 2, that is to say you were not growing the 8 plants for personal use it seems and there is no obvious suggestion that you were growing it for commercial purposes. But on that basis the start point for sentencing you in my view should be something of the order of 1 to 2 years imprisonment. I think that in this case, the appropriate starting point is at the bottom of that range and against that I need to balance your previous conviction for narcotics which would ordinarily increase the sentence, even though it was ten years ago, and make some allowance or small allowance for you – the family circumstances, and the letter from your partner.

[23] All of that however, does not mean you avoid a prison sentence. In my view the appropriate sentence to be imposed on you on this charge is 9 months imprisonment and you will be sentenced to that.

A handwritten signature in black ink, appearing to read 'Hugh Williams', written in a cursive style. The signature is positioned above a horizontal line.

**Hugh Williams, CJ**