

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

CR NO's 903-905/2023

POLICE

v

BENJAMIN JESSIE

Counsel: Senior Sergeant P Tararo for prosecution
Mr M Ioane for defendant

Oral Sentence: 24 November 2023

SENTENCING NOTES OF GRICE J

[9:50:0]

[1] Mr Jessie, you come before the Court for sentencing in relation to three charges, carelessly driving a motor vehicle, possession of a utensil namely a bong for the purpose of cannabis, and possession of cannabis leaves. Both the cannabis or drug offending are serious matters and as outlined in the police submission the possession of a utensil attracts a maximum imprisonment of 5 years or a fine up to \$5,000, and the possession charge is imprisonment of up to 2 years and a fine of \$5,000 or both. The charge of careless driving is under s 30 and 124 of the Transport Act.

[2] You have pleaded guilty early to all the charges. They arose out of a driving incident that on 3 June at Nikao. You were driving at about 10 pm and crashed it. You told the police you got dizzy. There was no alcohol or drugs involved at all and it was only when your car was searched that the police found the bong as well as the two plastic bags with cannabis inside and you readily admitted that they were yours.

[3] There are a number of principles that I must follow in sentencing and that includes taking into account the gravity of the offending, the seriousness of the offence, the desirability of being consistent with other sentences for other people who have offended in the same way or similar ways but also impose the least restrictive outcome. I must take into account the circumstances of the offence as well as the circumstances of your background and your family and environment which Mr Ioane has outlined today.

[4] I must bear in mind also the purposes of sentencing which are to hold you accountable, to promote a sense of responsibility and acknowledgment of that harm, to provide reparation if there is any victim and this is commonly referred to as a victimless crime, to denounce the conduct and deter it happening again as well as protecting the community.

[5] The police in their submissions gave me reference to a number of three other cases which relate to offending in similar circumstances: *Estall*¹, *Turia*² and *Monga*.³ In this case the police submit that a monetary fine is the most appropriate, taking into account there were no aggravating factors apart from the fact that the community regard drug offending in the Cook Islands seriously which is indicated by the level of penalty set out in the Narcotics and Misuse of Drugs Act 2004. I must take that into account. But also, the police point out that you readily admitted that the cannabis was yours; gave an explanation for the offending immediately, that is the accident; this is your first appearance; and also your extreme youth to be appearing in this Court. You are presently aged 18, so you are very youthful to be appearing here.

[6] The police accept the submission of Mr Ioane that you should be discharged without conviction on the charge of careless driving. The reason for that is that the police accept having seen the medical material that Mr Ioane has produced concerning the fact that probably it was a medical event that caused the accident rather than any external event or any carelessness on your part.

¹ *Crown v Estall* [2012] CKHC 55, CR 247.2011 (2 March 2012).

² *Police v Turia* [2020] CKHC 14, CR 87-88.2019 (25 August 2020).

³ *Police v Monga* [2017] CR 329.2017 (15 September 2017).

[7] Mr Ioane noted that you are presently only aged 18 and this is your first offence. You have been brought up by your paternal grandparents in the Cook Islands since your parents separated and you came back from New Zealand at only 2. You left college last year and you are employed as a carpenter. Your employer gives you a good reference saying you are a good worker and can be trusted, that you are eager to learn the trade, and he will continue to employ you. I understand that you have been living with your employer since the offending.

[8] I have information concerning the medical conditions that may have contributed which apparently contributed to this accident as well as references from your father and grandfather and your employer. They all speak highly of you and your potential and they are surprised and saddened by your appearing today and say that that is as a result of your exploring drugs and having a lifestyle which was not condoned by your family.

[9] The probation report confirms the information in the submissions and in the references.

[10] It is apparent from the material before me that you have a lot of support and love from your family as well an employer who supports you.

[11] While the probation officer recommended a term of 12 months supervision and other conditions, in the circumstances I consider, having heard from the police and your counsel, that a fine is appropriate rather than any supervisory sentence.

[12] Mr Ioane on your behalf recognises the seriousness of offending as it relates to drugs in the Cook Islands. Given the circumstances I consider that a fine will recognise that seriousness.

[13] The principles of sentencing which are most clearly engaged in this case relate to deterrence and denunciation of drug offending. The Cook Islands community has strongly indicated through the legislation I have referred to, the seriousness with which it views drug offending, and that must be reflected in my sentence. However, given your youth, a first offender, the circumstances of the offending, your early guilty plea and the fact you are in full-time employment with a very supportive family, and employer, indicates a fine is most appropriate.

[14] In this case a fine will reflect the seriousness of the offence as well as giving effect to deterrence and denunciation. It is a lot of money for you to find out of your present salary. You are going to have to pay this off or pay it back to your employer if he pays it for you.

[15] So I fine you \$700 in total, being \$500 on the cannabis charge and \$200 on the bong charge. You are discharged without conviction on the charge of careless driving given that it appears to be an accident not caused by any sort of carelessness on your part.

[16] Court costs of \$50 are ordered.



Grice J