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

CR NOS. 115/2022
116/2022
120/2022

POLICE

v

OCEANA MATAITI

Hearing: 2 February 2024

Counsel: Ms J Crawford for Crown
Mr N George for Defendant

Sentence: 2 February 2024

SENTENCING NOTES OF THE HON. JUSTICE C GRICE

---

[1] Mr Mataiti, you were found guilty by a majority following a jury trial on 7 December 2023, on one charge under s 7(1)(b) of the Narcotics and Misuse of Drugs Act 2004 which was a representative charge of offering to supply cannabis to other persons, between 1 January 2021 and 8 February 2022 at Aitutaki. This carries a maximum term of imprisonment of two years, or a fine not exceeding $5,000, or both.

[2] On 18 March 2022 you pleaded guilty to one charge of possession of a utensil under s 13(1)(a) and (2) of the Narcotics and Misuse of Drugs Act 2004 with a maximum penalty of five (5) years' imprisonment or a $5,000 fine. You also pleaded guilty to possession of a Class C Controlled Drug pursuant to s 7(1)(2) of the Act, for

which the maximum penalty is two years' imprisonment or a $5,000 fine. You are convicted on those charges.

[3] The particulars relied on by the Crown involved, in particular, two incidents which, on the evidence, occurred around January 2022. The first was when you supplied cannabis, which you carried in a Port Royal tobacco pouch, to a number of young people at Amuri Beach in Aitutaki. The second was when you shared a small amount of cannabis with a group of people at your home. One of the young persons involved in those incidents gave evidence for the Crown at the trial.

[4] You admitted in your evidence, on the second incident, that you had shared your cannabis. However, you did not consider sharing Ccnnabis was supplying cannabis. You denied the first incident and said there was only tobacco in the pouch that you produced at the beach.

[5] In a search of your home the Police located a bong, which you said was owned by someone else and you were just looking after it; as well as cannabis, which is the subject of the charges on which you pleaded guilty.

[6] Your counsel, Mr George, in his submissions noted – and I accept - that the incidents occurred in social situations, that there was no payment involved nor any element of criminality.

[7] Mr George also submitted that the jury was wrong to convict in a number of respects. However, that is not a matter for sentencing, as the Crown as pointed out.

[8] The legal principles and purposes of sentencing have been adopted from the New Zealand Sentencing Act 2002. In this case, the Crown submits the relevant purposes should be to hold the offender accountable for the harm done, to promote in the offender a sense of responsibility for/and acknowledgment of that harm, to denounce and deter and assist rehabilitation and reintegration. The principles also require taking into account the gravity and the seriousness of the offending, as well as the desirability of consistency in sentencing, and the imposition of the least restrictive sentence available in the circumstances.

[9] The Crown points to the sentencing methodology adopted by the Court of Appeal in *R v Kamana*[1]. The methodology is to calculate the start point, incorporating all aggravating and mitigating features of the offending and, secondly, to incorporate all aggravating and mitigating factors personal to the offender, together with any guilty plea discount, which should be calculated as a total percentage to the starting point in order to come to an end sentence.

[10] The Crown pointed to a number of authorities. The recent decision of the Court of Appeal in *Schofield*[2] is of particular importance. In that decision the Court of Appeal confirmed some sentencing guidelines for supply of cannabis offending as follows:

(a) Category 1, the bottom level of seriousness, an act of isolated supply, motivated by a friendship or some other non-commercial purpose, and where no money changed hands.

(b) Category 2, a mid-level of seriousness, where supply took place on more than one occasion for which payment was made, but not for profit.

(c) Category 3, the highest level of seriousness, where sales for profit with culpability being ultimately determined by the extent and quantity of the dealing.

[11] The maximum term of imprisonment for the representative charge is two years.

[12] In *Schofield* the Court of Appeal determined that a sentence of seven (7) months' imprisonment was fair in relation to offending, which it described as "small time dealing operations and selling Cannabis for a profit". The full discount was given there for a guilty plea, and a discount of 12.5% for personal circumstances and good character was considered appropriate. Mr Schofield had no previous drug convictions, and his personal circumstances included a stable relationship, and supporing five children. A 12 month start point had been taken. The High Court Judge had noted he

---

[1] *R v Kamana* CA 504/2022, 28 June 2022.
[2] *R v Schofield* CA 1533/23, 17 November 2023.

was starting at the lower end of the available range of imprisonment, which was 12 to 15 months. A one-third discount given for the guilty plea, and family circumstances were credited, leading to a term of seven (7) months' imprisonment.

[13] Here the Crown points out that there were separate incidents of supply, and involved a group of young people; also that all drug offending has an element of premeditation. However, it accepts there was no commerciality nor sophistication involved in this offending. The defendant provided the cannabis free of charge, and the amounts involved were minor.

[14] Your counsel, Mr George, submits the sentence should be 18 months' probation, to be served on Aitutaki. This is in line with the Probation Report recommendation and the submissions of the Crown.

[15] In support, Mr George points to the victimless nature of the offending, the medicinal benefits of Cannabis, and the lack of harm that smoking Cannabis in moderation does. Those, again, are not maters for sentencing, but matters for the legislature to address.

[16] However, more relevantly, Mr George submits there was no sale and the offending occurred in social circumstances. Mr George also points out that you are in a stable relationship and there are no signs of a future serious offending path that are indicated by the present offending. You and your partner live on and are from Aitutaki.

[17] I accept those submissions. The offending is at the lower or middle range of the low end offending, the incidents occurred at social events and involved sharing small amounts of cannabis and there was no commerciality.

[18] There are also two other offences to which I have referred, for which guilty pleas were entered.

[19] The Crown submitted that a short term of imprisonment should be start point, but accepted a term of probation was appropriate, and would meet the purposes of sentencing, in particular, accountability, deterrence, and denunciation.

[20] I agree. In particular, on the lead charge there was no suggestion of any commercial activity involved in this offending. It was low-level and not sophisticated. However, one factor which I do consider is noteworthy, is that it involved a number of young people.

[21] You pleaded guilty at an early stage to the two other offences, that is, possession of a bong and possession of cannabis. As the Crown agreed, those very early guilty pleas should be taken into account.

[22] You have two other convictions; the first for wilful damage in 2019, and for a breach of probation for which a three month term of imprisonment was imposed in 2020. I do not consider any uplift is warranted due to the very different nature of the offending in those cases.

[23] The Crown also seeks the sum of $283, being reimbursement of the airfare for transporting you back to Rarotonga to stand trial. You were in Aitutaki on bail and refused to answer bail. If you had not returned to Rarotonga you would have been in breach of bail, and the Police could likely have arrested you and brought you before the Court. This would have led to the delay in the trial start date, which was already in some difficulty, and in that situation the Police did the practical thing, which was to pay for the flight to return you to Rarotonga.

[24] I consider that in those circumstances, the cost of the flight is a cost which may be properly subject of an Order under s 414(1) of the Crimes Act 1969, and I order you to pay that cost. I acknowledge Mr George's submission that these costs might be properly be costs of the Crown because the only possibility of a defendant facing trial is for the trial to be held in Rarotonga. However, that is a policy matter. The cost in this case was properly incurred by the Prosecution. It saved trial time and it was incurred solely because you indicated a refusal to answer your bail. Those matters were addressed in Chambers before the trial.

[25] Mr Mataiti, I impose a term of 18 months' probation/supervision, with an order for the first six months to be served on community service, with the following special condition to apply, that you will abstain from the purchase or consumption of illicit drugs.

[26] In addition, I make an order for the payment to the Crown of $283 for the airfare from Aitutaki to Rarotonga.