

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

**CR NO. 364/2004**

**POLICE**

**v**

**DAVID SHANE NAVILLE TOETA**  
**Defendant**

Mr T Elikana for Police  
Mr N George for Defendant  
Date of sentence: 14 September 2007

**SENTENCE OF WESTON J**

1. Mr Toeta, you are here today for sentence having pleaded guilty to cultivation. You were discovered by the Police with 10 seedlings and 1 larger plant in your possession. You are a first offender. Your age is 23.
2. Mr George in his submissions has emphasized that you were arrested in 2004. He has complained about the delays. That may be a matter for another day and another defendant. It is, however, partially relevant to you because during the 3 years that you have been on bail, it appears you have complied with all bail requirements. The Crown accepts that you have, and I believe that is a matter that should go to your credit in sentencing you.
3. Mr George has told me that you have commenced drug counselling and he read a letter from Dr Fariu. It seems however, you have only been doing that for 4 weeks.

4. The other side of complaining about the long delays since 2004 is that if you were really serious about doing something about your drug addiction you might have started that course of treatment a considerable time ago. However, you have started it and you have been four times. It does weigh in the balance although I cannot put too much weight on it.
5. Mr George has urged that I impose a sentence of 12 months probation. He accepts it could be a term of probation that you continue the treatment programme you have started which I have just mentioned.
6. By contrast, the Crown has said that the probation recommendation of 3 months imprisonment is too lenient and that a figure in the vicinity of 9 months would be more appropriate. References to deterrence and protection of the public have been made. The increasing problem of drugs on the island has also been mentioned, and, as a Judge, I cannot help but have noticed the increasing amount of drugs cases coming before the Court.
7. You do of course get some credit also from the guilty plea you have entered and that this is a first offence.
8. When I read the Probation Report, I was concerned there might be issues of burglary involved in addition to those offences for which you have been charged but I have been assured that

that is not so and there is no issue for you in relation to the goods the Police were seeking at the time you were arrested.

9. I am going to take a punt on you Mr Toeta but not quite to the extent Mr George might wish. I am going to sentence you to a term of imprisonment but it will not be as long as 3 months, it will be for 6 weeks. Following that, you are to have 12 months probation. A term of that probation is that you continue with the drug treatment programme you have commenced. I realize that puts a burden on, probably, your father but I hope you give that your best shot. It is also a term of probation that you should abstain during the period of probation from alcohol and drugs; not to enter licensed premises and to attend any courses and training workshops as directed by the Probation Service.



Judge