

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

CR NO. 1027/07

POLICE

V

DWAINE MATAA
Defendant

- ✓ Senior Sergeant Manavaroa for Police
 - ✓ Mr B Gibson for Defendant
- Date: 8 October 2008

SENTENCE OF WESTON J

1. Mr Mataa you have pleaded guilty to a charge of cultivation of cannabis and I now enter that conviction against you. The maximum term of imprisonment for this offence is 20 years which was increased from the previous period of 14 years in 2004. This clearly signifies the importance of the issue of cultivation of cannabis so far as the Parliament of the Cook Islands is concerned. And as a Judge in the Cook Islands it does seem that their concern is justified because cannabis is a significant problem here.

2. The Police say that five plants were involved and you say there were three. I do not think it matters too much. There seems to be common ground that whether it was three or five, these were intended to be for your own use. It does surprise me that someone of your obvious abilities would have been such a heavy user of cannabis as to need to cultivate your own for your purposes and that of course does you no credit. However you have now confirmed to me the advice recorded in the Probation Report that you no longer use cannabis. I commend you for that and trust that you will stick to that course.

3. I have had the benefit of a helpful Probation Report which refers to many positive features in your life. You and your partner run a successful business which you have just purchased and that more importantly it seems you are a good partner and father to your child. It is a comparatively rare occurrence in this Court that someone appears for sentence who gets a tick in both those boxes, let alone, one of those and for me that is a very positive feature in your favour. I have also been shown a copy of your scrap book of your surfing career and it is obvious from that that you were very successful in that and again I repeat it is a pity that you got caught up in smoking and then growing cannabis but it has got you in this position and your family as well.
4. The Police have asked for a deterrent sentence but realistically accept that that should be a fine rather than a custodial sentence. I have been referred to a decision of the New Zealand Court of Appeal *Q v Tereapii* and at paragraph 4 of that decision the Court of Appeal set out the various categories of cultivation offending and it's plain that you fall within category 1 where the usual penalty is a fine or perhaps a non-custodial sentence.
5. Mr Gibson recommended a fine somewhere between \$500.00-\$1,000.00. The Police have sought a fine somewhere in the vicinity of \$500.00-\$1,000 but together with a period of community service. For myself, I do not think you need to be put through community service because I don't think that will add to the deterrent effect, nor will it assist your rehabilitation. I do think however there needs to be a realistic fine imposed.
6. I have had regard to your financial circumstances which for the avoidance of doubt I suppress from publication. But as a result of considering that I now impose a fine on you of \$1,200. plus \$30.00 Court costs. Again for the avoidance of doubt I do not impose a sentence of community service.

I am going to order that your name be made public but I will suppress the name of the restaurant, so it may be disclosed that you are a restaurateur. Your name may be published but not the name of your restaurant. I think it is important that there is public accountability for these things and while the Police did not oppose it ultimately it is my decision and I believe the principle of open justice should prevail in this case.

A handwritten signature in black ink, consisting of a large, sweeping arch that descends into a tail stroke ending in a small arrowhead pointing downwards and to the right. To the right of the signature is a small, hand-drawn square symbol.

Weston J