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

CR 530/11

CROWN

v

MAARA TERITAITI

Hearing: 15 December 2011
Counsel: N Ngatokorua for the Crown
C Petero for the Defendant
Sentence: 15 December 2011

SENTENCING NOTES OF THE HON JUSTICE GRICE

[1] Mr Teritaiti, I am now going to sentence you. I am going to go through a number of matters and if there is anything you do not understand, you can clear it up with Mr Petero later and I will take it carefully.

Mr Teritaiti, you have pleaded guilty to two charges: The first, on the 12 August 2010, you found a Cook Islands drivers licence, a New Zealand driver's licence, nine business cards and five bank cards to a total value of \$120, the property of Cyrus Nielson of Matavera, on the side of the road at Vaimaanga, Titikaveka and

you failed to notify the police. Therefore, you committed theft by finding. The second charge to which you pleaded guilty was possession of a utensil, namely a bong, which was found on you at the same time.

[2] The first charge, the theft by finding, has a maximum period of imprisonment of five years. The second charge, possession of the bong, has a maximum period of imprisonment of five years and \$5,000 fine.

[3] Now the facts as I understand are agreed, was that on that date you were stopped by the police and a result of various checks they found the cannabis bong and some cards owned by Mr Nielson on you, including the Cook Islands' driver's licence, the New Zealand driver's licence and the bank cards. They also found a bong. During the interview you admitted finding the wallet belonging to Mr Nielson at the side of the road the previous week and you kept the contents. You also admitted possession of the bong and said that you had recently made it.

[4] The Crown submissions on the theft by taking, the Crown say it is an unusual offence. I think you told your counsel that you were too scared to return the wallet, but you were found with the contents in your bag and admitted the charge. On the cannabis bong possession charge, the Crown accepts that this is at the lower end of seriousness, and made some submissions on appropriate penalty.

[5] This is the first time you appear before this court so you are a first offender, which is something I must take into account. The Probation Service have supplied a helpful report which says that you are at the moment unemployed doing odd jobs, that you are good at fixing motorbikes and things, and you do that when you can but you rely on your mother mainly for support. She brings in the money, but she has got other children to support as well. Your mother says that you are helpful at home, but you are susceptible to peer pressure, pressure of your friends. She says that, hopefully, she is going to be able to take you and your girlfriend to Australia in the next few years, and she has asked for leniency by the Court on you. I see you now have a girlfriend and a three month old baby to support and you do that by doing odd jobs and getting about \$100 a week. The mother of your baby lives with her parents

and I see that your mother also helps when she can to get things for the baby and support the baby.

[6] I cannot take into account the explanations that you have given in the probation report about the offending. That is already taken into account in the agreed statement of facts before the court, but there seems to be some doubt surrounding the use of the bong. I can only take the agreed facts and note the Crown has accepted that it had not been used and that is to be taken into account here.

[7] As the Crown and your counsel, Mr Petero said these are offences which are serious. The community requires that these types of offences be denounced. I am required to pass a sentence that punishes you for the offence, but also to deter others from doing similar things. So it must reflect the gravity and seriousness and hold you accountable for the offence. At the same time, I have to take into account your particular circumstances, including your family and background, and then I must impose the least restrictive sentence that is appropriate in the circumstances and also consider whether there is a path which would give some possibility or rehabilitation for you.

[8] In relation to the cannabis bong, as you have heard, there is growing concern in the Cook Islands regarding drug and cannabis offences. Recently, they have been treated far more seriously with stiffer penalties.

[9] The Court has made it clear that offenders should be looking at jail sentences as a starting point for cannabis offences, and I particularly, refer to the decision of *Police V Tina Upu* (CRN 248/11) in a decision of Hugh Williams J. The Court's job is to try and fashion a sentence which will bring home the accountability, for the harm to the community by the drug offending but also try and promote a sense of responsibility and, of course, punish you.

[10] In these offences there were no aggravating factors, they were, bare offences and in the case of the bong, it had not been used.

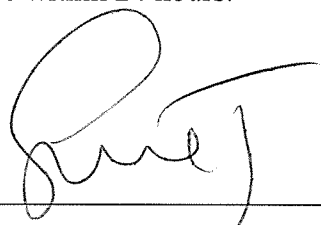
[11] The mitigating factors are that you pleaded guilty early, made a clean breast of it, your young age (you are only seventeen) you have a supportive family and you yourself now have a family to support, so you have significant responsibilities yourself.

[12] So, taking all those factors into account, as the cases tell me, I should start from a short prison sentence for the cannabis bong, but in this case it was at the less serious end of offending.

[13] I take into account the fact that you pleaded guilty, your youth, your supportive parents and particularly your mother. I also look at your financial position and, from my review of the information, it seems that all that a fine will do will be to impose a further obligation on your mother, and it will be your baby who suffers, because all your money will go to the fine. So I propose sentencing you to a probation supervisory sentence:

- (i) On the charge of possession of the cannabis bong, I sentence you to 12 months' probation supervision with the first three months on community service and to attend any workshop directed by the probation service. Secondly, to refrain from taking drugs and alcohol.
- (ii) On the theft by finding charge, my same comments apply and again I sentence you to 12 months' probation with three months' community service, to attend any workshop or training as directed by the Probation Service.

[14] Those sentences of probation are to be served concurrently. That means it is a total period of 12 months, not two periods of 12 months. So that the totality is proportionate to the offences themselves. Accordingly I impose those sentences and you are free to go. You are to report to the probation office within 24 hours.



Justice Grice