

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

**CR NO'S 255/11  
279/11  
285/11**

**CROWN**

v

**SCOTT ARLANDER**

**Hearing:** 8 to 13 April 2013 (inclusive)

**Counsel:** Messrs S McKenzie & C King for the Crown  
Mr N George & Mr R Samuel for the Defendant

**Sentence:** 23 August 2013

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**SENTENCING NOTES OF DOHERTY J**

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[FTR 09:23:55]

[1] Scott Arlander, following a trial in April of this year you were found guilty of selling cannabis on three separate occasions. There was an amount of 0.9 of a gram worth \$50 on the 28<sup>th</sup> October 2010. Another 0.8 of a gram, again worth \$50 on the 29<sup>th</sup> October 2010. And then some months later to a separate person, \$100 worth of cannabis weighing 1.6 grams on the 6<sup>th</sup> April. The jury acquitted you on other drug related charges.

[2] This offending arose or was discovered in what was known as Operation Eagle, a significant undercover operation which had been conducted by the Cook Islands Police. They used undercover police officers from New Zealand although those officers were and had become sworn officers of the Cook Islands Police force.

[3] You made the sales from a nightclub operated by you in the Avarua downtown area.

[4] Since your conviction you have been on remand awaiting sentence and you have been in the local prison since the 13<sup>th</sup> April 2013. That is some four months and a bit until now. You were also on remand for earlier periods following your initial arrests and I am told that the total is five months or thereabouts when all of those are added together.

[5] You have no previous convictions of any type at least in the Cook Islands. I have had the benefit this morning of the submissions of your counsel and I have also had the benefit of further submissions by the Crown. The Crown has filed a written submission to me which I have read.

[6] Also of importance is the report from the Probation Service. Together with that there has been referred to me a good number of references from people who know you.

[7] The Probation report highlights that you say or have said that you are not an habitual user and that you came into the Cook Islands in a volunteer capacity with the Peace Corp. You now have businesses and successful ones at that. You are a dedicated family man and your incarceration has had a significant effect on your wife and children. You have made a positive contribution to others since your incarceration, particularly your assisting with the literacy and other education processes for other inmates in the prison.

[8] You are described by the Probation Officer and by those who have written to me as variously a gentle man, a good and honest man, an approachable man but a gullible one, a man of generosity and compassion. You are described by some as being remorseful. You have expressed your deep remorse to the Probation Officer although to an extent I have an impression that that remorse has its foundation in what incarceration has meant to your family. It does seem that this offending in some sense at least has been out of character.

[9] The Probation Service put it this way or the report writer at least put it this way:

“He has acknowledged his wrongdoings and is deeply remorseful for his actions. He has turned what could be seen as a horrific experience into a positive one, not only for himself but also for prisoners currently serving time acting as a mentor. The feedback from the prisoners has been extremely encouraging and there is nothing in the social circumstances to suggest that he is likely to reoffend, which is supported by the risk evaluation assessment which is an assessment tool used by the Probation Service.”

[10] The Probation Service recommends a community service order plus supervision and probation and a monetary penalty. I can understand that to an extent, but I find it rather surprising that probation and supervision be needed despite there being no identified need for rehabilitative help for you.

[11] I have talked about the references from your acquaintances and your family but I need to speak specifically about that from your wife. She is obviously a supportive and loving wife. She describes herself as a victim of your offending, the hardship that has been placed on her and your family. For people in your circumstances, that is often the case. People often have what appear to be ordinary lives but their behaviour belies that. In your case, you have been apprehended, you have been tried and convicted by your peers of drug dealing and the sort of impact that has had on your family and to an extent on your business is the type of collateral damage that one can expect in those circumstances.

[12] In careful submissions Mr George has reiterated your good qualities, what appears to have been an outstanding character to date, your popularity, the fact that you are a hard worker and a model family man. He says you still continue to deny being a drug dealer. That takes the gloss off the deep remorse that you say you feel; because you were dealing drugs. You sold and were convicted on three separate occasions of dealing drugs.

[13] The Crown highlights the Court of Appeal recently in upholding a sentence of this Court for others in Operation Eagle, and has reiterated that deterrence is the primary purpose of sentencing in convicted drug dealing. I have got no doubt that deterrence is not necessary for you now, but there is more than just personal

deterrence, it is general deterrence. And as comment has been made the proliferation of drug matters, even if they are class C, and cannabis in the Cook Islands deserves that deterrence.

[14] I am going to read to you, if you have not already read it, a couple of paragraphs from the Court of Appeal judgment on the 30<sup>th</sup> November 2012, which reads:

“[44] Previous sentencing for drug offences seems in some instances in the High Court to have been too lenient. In some cases, too little regard appears to have been paid to the very high maximum sentences. The Court must faithfully heed the message sent by the legislature by stipulating these maximum sentences. It may be regarded, as suggested by Mr Perese [who was counsel] that legislating for heavy maximum sentences is rather a blunt instrument. Regard should be had to the economic and social costs of lengthy terms of imprisonment – especially the impact on offenders families who could usually be left with minimal financial resources for years while the breadwinner was incarcerated. However, that is a matter for the legislature and not for this Court.

[45] In some of the sentences to which we were referred, too much regard seems to have been placed on the personal circumstances of offenders. Because drug-dealing is so corrosive in its impact on the community, with often an unknown number of persons affected detrimentally, the law for some time in the Cook Islands – certainly since this Court’s decision in *Mata* in 2000, has indicated that deterrence must assume greater importance in sentencing over personal circumstances in drug cases. For other types of offending which do not have as wide a community impact as drug-dealing, leniency based on personal circumstances can play a bigger part in the sentencing process.

...

[47] In an ideal world where there were ample resources for criminal rehabilitation in a small economy, approaches such as those suggested by the New Zealand Law Commission and by counsel for the appellants might be possible and desirable. However, this Court has to operate within the existing legal structures where the legislation has sent a clear message about the distaste with which it views drug-dealing in this community.”

[15] And that pretty much sums up where the Court of Appeal has left this Court in its sentencing discretion. In that case, which was *Marsters & Ors v The Queen*, for drug dealing the Court confirmed three categories. Category 1, which is for dealing in small amounts generally for non-profit – for example, supplying others for non-profit – somewhere from a fine to a short term of imprisonment which is up to 2

years. Category 2, where there are larger amounts for definite commercial purposes, a sentence in the range of 2 to 6 years imprisonment. And Category 3, where there is large-scale dealing, a range between 5 and 10 years imprisonment.

[16] I assess you as in Category 1 as to the amount, that is a smallish amount but in Category 2 for commerciality. So I agree with the Crown that the starting point for your sentence is somewhere around 2 years or a little under.

[17] You offended three separate occasions over a six month period. I am sentencing you only for the drug dealing that you were convicted of. I have, of course, the flavour of the evidence which the jury heard. And it is the deterrent factor referred to by the Court of Appeal, generally, not necessarily for you personally, that is the primary purpose of sentencing.

[18] The Court of Appeal have said that this Court must send deterrent messages to those who would want to behave in the way in which you have been convicted of behaving.

[19] The Court of Appeal have said that personal factors carry little weight. In my view that is true in relation to the category of sentence, namely personal factors should not distract a Court such as this from imposing imprisonment where that is proper and appropriate but that does not mean, in my view, that personal factors cannot be taken into account in setting the length of any prison sentence.

[20] As best as I have been able to assess, the starting point for your offending is 21 months imprisonment. From that I am going to give you a credit of 3 months for your good character to date and your remorse. As I have said I am not so sure about the remorse of the dealing but certainly your post-remand behaviour and attitude in the prison means there should be an appropriate credit. So that brings 21 months down to 18 months imprisonment, and that would be your sentence.

[21] You have however been on remand for 5 months. Under Cook Islands law that is not credited against any imposed sentence and of course it would not be right or just that you have to do an extra 5 months. So I intend to give you a credit for that

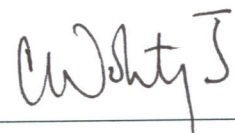
5 months imprisonment. That would bring the starting point to 13 months imprisonment today.

[22] However, because of that remand it would mean that the 5 months that you have currently spent on remand would not be part of a calculation for your eligibility for parole. I am informed, primarily through the decision of the Court of Appeal, that in the Cook Islands there is no set parole period but generally one would expect for good behaviour to be eligible for parole after serving two-thirds of a sentence of less than 5 years.

[23] That would mean if I was starting at 18 months you would be eligible for parole after 12 months. With the attitude that you have currently shown when you have been on remand, I would expect that parole would be likely granted although that is not my decision.

[24] So it would be only fair that I further adjust the 13 months end point to ensure that you are eligible for parole after serving a total of 12 months imprisonment. When I look at the remand period, the calculation brings me to a final sentence to allow that to happen of 10 months imprisonment from now. And that is the sentence that I impose in relation to each of the counts, the term to be served concurrently.

[25] I also remind those in Court and the press that final Orders for suppression of the names and details of the undercover officer have been made and must be observed. Thank you.



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**Colin Doherty J**