

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

**CR NO. 656/16**

**CROWN**

v

**SAMUEL IOANE**

Hearing: 25 November 2016  
Counsel: Ms Herman for the Crown  
Mr M Short for the Defendant  
Sentence: 25 November 2016

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**SENTENCING NOTES OF GRICE J**

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[FTR 11:10:20]

[1] Mr Ioane, you appear for sentence on the charge of cultivating a prohibited plant, namely cannabis, under s 9 of the Narcotics and Misuse of Drugs Act. This carries a maximum penalty of 20 years imprisonment.

[2] The charges arose out of an incident that occurred at your home in the early morning (19 August 2016). The Police came to your property having received a tip-off from a family member. They searched your house and found a wooden box fitted with lighting systems and fans in one of the bedrooms. That contained ten cannabis plants.

[3] The Crown described this as sophisticated. Your counsel said the plants were very small. The box was removed and brought back to the Police station and you were subsequently arrested on a charge of cultivation.

[4] I note you have not appeared on this type of charge or indeed any charges in the Cook Islands however you have some convictions in New Zealand which I will come back to.

[5] You will have also noted having been in Court earlier this morning, that this is the second offence of this nature I dealt with today and the Crown pointed out the growing concern of the numbers of these offences. You also heard me going through the sentencing provisions that apply to these cases. It is important that you understand them so understand why I come to the sentence I impose.

[6] The Court has a number of sentencing principles which are taken from the New Zealand Sentencing Act which applies in these cases. The sentences are intended to hold you accountable for your offending, to also be an example to the community and show that you are accountable to the community for your offending. It is to promote a sense of responsibility in you for your conduct, to denounce the conduct, and also deter others from committing the same or similar offences.

[7] Ms Herman and Mr Short, both referred to the relevant cases. In particular, the Cook Islands cases which have adopted the New Zealand sentencing principles in the cultivation of drugs. The leading case is the Court of Appeal decision of *Marsters*<sup>1</sup> which said that the Court should follow the sentencing categories in the New Zealand case of *Terewi*<sup>2</sup>. The principles of sentencing indicated by that case start at the low end of offending at category 1, that involves growing a small number of plants for personal use without sale to a third party intended. In New Zealand the starting point for that offending is in the range of a fine or a short term of imprisonment.

[8] The Cook Islands Court of Appeal has indicated that because of the more serious penalties attaching to drug offences in this country, the approach here will be more severe. The New Zealand and Cook Islands Parliaments have provided different maximum sentences for Class C drug offences. For instance, the cultivation charge which you face has a penalty in New Zealand of 7 years imprisonment. In the Cook Islands it is 20 years.

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<sup>1</sup> R v Marsters [2012] CKCA 1 (30 November 2012), Barker P, Williams J, Paterson J.

<sup>2</sup> R v Terewi [1993] 3 NZLR 62

[9] Consequently there should not be a lighter approach in sentencing in the Cook Islands. It also must be borne in mind that the profits in the Cook Islands are more rewarding due to the lower wages in the Cook Islands, therefore drug profits can be seen as easy money over here.

[10] Finally, as I have already referred to, cannabis offending is becoming more prevalent in the Cook Islands and the sentence must ensure that people are deterred from this type of offending.

[11] The Courts have indicated that personal circumstances play little part in the sentencing for drug offending. In *Marsters* the Court said that deterrence assumed a greater importance over personal circumstances due to the corrosive effect the drug cases had on the community. This was confirmed in *Cowan*<sup>3</sup>.

[12] In this case the Crown has submitted that taking all factors into account, the starting point in this case is a short term of imprisonment of 2 to 4 months. Your counsel urges a non-custodial sentence.

[13] Looking at the circumstances, taking the best view of those, it appears that the plants were relatively young. However I accept the Crown's submission that there was some sophistication in the system of growing them which is a concern. However you said they were for personal use and there is no indication of commercial intent.

[14] I also consider your previous convictions. While you have none in the Cook Islands, you have convictions in New Zealand. I note they are a different jurisdiction but they nevertheless are relevant. The ones which were a long time ago, ten years in fact, I put to one side. However there was a charge of procuring or possessing cannabis in 2007. It seems from the sentence, although I do not know the circumstances, that it was a minor offence as a small fine of \$250.00 was imposed together with Court costs. It was committed over nine years ago. New Zealand has a different tolerance for this type of offending. While it is relevant, it does not have the same impact in my view as would a more recent offence in the Cook Islands.

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<sup>3</sup> R v Joseph Cowan [2013] CKHC 15 (10 May 2013) Potter J

The lesson though is that now you are here you must live by the rules of this community. Cultivation for any use is not acceptable.

[15] Having taken those circumstances into account, in my view the starting point on this offence is a term of imprisonment of 2 months. I listened carefully to the submissions made by your counsel. Most importantly you candidly admitted the charges and pleaded guilty. You are entitled to a discount on the sentence for that.

[16] You are 27 years of age and you have done well in business. You have a business which employs a number of Cook Islanders who are dependent on you for their income. You are very remorseful for what you have done. You have good references. Your mentor Mr Dwyer who has acted as your mentor and is very disappointed in you. He said you have a great future.

[17] Your partner has also sent an email saying she supports you. You have undertaken counselling at the Rotaiana Mens Support Centre. You have completed some sessions including the alcohol and drug awareness session. The report is encouraging. You are to be commended for that.

[18] You are in a relatively healthy financial position earning about \$1,700 a week.

[19] As I said I take as a starting point 2 months imprisonment. However taking into account the other circumstances, the guilty plea, the fact that while you have a conviction for a minor drug offence quite some time ago in New Zealand, this is a first offence in the Cook Islands and the amount was for personal use. I am of the view that a non-custodial sentence is appropriate.

[20] I propose to include a relatively substantial fine. You have come perilously close to going to jail. There will be no more chances. Your counsel described this as a bad decision, it certainly was.

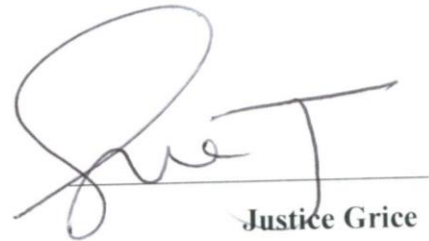
[21] I sentence you to a term of probation of 18 months, of which the first 6 months are to be carried out on community service. The conditions of that probation are:

- (a) to abstain from the consumption of and any involvement, direct or indirect, with prohibited drugs other than prescribed drugs;
- (b) to undertake any training or workshops as directed by the probation service;
- (c) not to leave the country without the approval of the High Court;

[22] You are also fined a sum of \$2,000.

[23] An order is made for destruction of cannabis material.

[24] Courts costs on the charge are imposed of \$50.



Justice Grice