



CROWN

v

TEAKA MATAITI

Sentence: 7 December 2017

Counsel: Ms A Mills for the Crown
Mr M Short for the Defendant

SENTENCING NOTES OF THE HONOURABLE JUSTICE CHRISTINE GRICE

[10:55:41]

[1] Mr Mataiti you are here today for sentencing by me on one charge of cultivation of cannabis. That is a charge under the Narcotics and Misuse of Drugs Act. It carries a maximum penalty of 20 years imprisonment.

[2] The facts indicate that the cannabis was found after your property was searched. Cannabis plants were seen your property. When the police arrived they found one cannabis plant in a pot of a height of 1½ metres. It was about 4 months old. You candidly admitted that it was yours – so you did not put the blame on anyone else – and that is to your credit. You said that you had it for medicinal purposes, not for sale. You were going to boil it up for some reason. Mr Short says you might have been experimenting.

[3] The Crown pointed to the sentencing principles which I must take into account in sentencing you on a drug offence. I have to promote responsibility for this type of offending, and accountability to the community as well as denounce the conduct. I must impose a sentence which is going to deter you from doing it again and also a message to the community that this offending is not acceptable.

[4] The Crown says there are few aggravating factors. It was in the lesser range of seriousness set of cultivation of cannabis offences. It said you had admitted to growing some other plants but you are not charged with those. I put those to one side.

[5] The Crown noted the strict attitude that is taken to cannabis offending in the Cook Islands. The maximum penalties on these drug offences are greater than similar offences in New Zealand. Parliament has indicated that the community does not accept this type of offending and wants to stamp it out of the islands. The Crown referred me to a number of decisions including the decision of *R v Marsters* which is the leading case on sentencing for drug offences. That referred to the bands of sentencing which I must consider. It also pointed me to a case similar to this one called *R v Rakanui*. In that case Mr Rakanui had also grown some plants. He had a small number that he had grown for his personal use and for medicinal purposes. In that case, Mr Rakanui was told by the Judge that he had escaped prison by a very small whisker. In the end he was admitted to probation for a year with 8 months on community service. The Crown submits that level of penalty is about right for this offence today.

[6] Mr Short went into careful detail about your circumstances. He emphasised that this is a first offence. Your background is good as evidenced by the testimonial that I have in your favour. The testimonials including one that is attached to his written submissions indicate that you are a hard worker, have great potential. You have four children whom you care for, and a partner who is very concerned about you at the moment. All of whom have been embarrassed by this offending given the small island community of Aitutaki. Mr Short said the family was here to support you and apologised. Mr Short realistically noted the importance and the seriousness of this sort of offending and what the courts have said about these drug offences.

[7] The Crown has accepted that this offence is at the bottom end of the scale on the categories of offending. It would normally attract a small imprisonment sentencing or a fine.

[8] However, in the circumstances a fine is inappropriate. You have a family to support and do not have much to come and go on. The Crown has also submitted it is probably appropriate for a non-custodial sentence to be imposed given it is your first offence and it refers to the less serious nature of the offending. It would seem that a sentence of probation

would send a message of deterrence to the community. That suggestion is supported strongly by Mr Short on your behalf.

[9] So given those indications and given the nature of the offending I impose a sentence of 12 months probation with 8 months community service to be served on Aitutaki with such arrangements as the Probation Service can make there. This allows you to go back and continue to earn money and support your family.

[10] I impose probation of 12 months, with 8 months on community service on the following conditions:

1. That you serve your probation term in Aitutaki.
2. That you attend any training or workshops that the Probation Service direct you to go to. It will be useful if they did have any drug workshops that would help you and your family understand the importance of keeping away from drugs.
3. That you not leave the country without the approval of the High Court so you need to talk to Mr Short but you can have your passport back.

[11] I make an order for the destruction of the cannabis and for \$50 Court costs on the one charge.

[12] Please stand down.


Grice J