

POLICE

v

NAPOUA BENIONI

Hearing: 28 May 2021
Counsel: M Iro for Crown
N George for Defendant
Sentence: 28 May 2021

**SENTENCING NOTES
OF THE HONOURABLE JUSTICE DAME JUDITH POTTER**

[10:52:18]

[1] Mr Benioni is before the Court for sentencing on two charges:

- a) Possession of cannabis seeds, under the Narcotic and Misuse of Drugs Act 2004. This offence carries a maximum penalty of two years' imprisonment, or a maximum fine of \$5,000.
- b) Secondly, cultivation of cannabis under the same Act, which carries a maximum penalty of 20 years' imprisonment.

[2] As I have previously noted in sentencing Mr Daniel this morning, that high maximum penalty reflects the concern with which the Parliament of the Cook Islands views this type of offending.

[3] Mr Benioni has entered guilty pleas to both charges. To the cultivation charge, only through his counsel in Court this morning, but Mr George has explained the delay in entering that plea. The plea to the possession of seeds charge was entered on 20 August 2020.

[4] There is no victim impact statement. Again, as I have noted this morning in sentencing Mr Daniel, this type of offending is a crime against the whole of society. It is not possible to isolate those who are direct victims, but the whole of our society victimised by drug offending; which is why Parliament has elected to impose very high penalties.

[5] A pre-sentence report has been prepared. Mr Benioni is a young man, 31 years. He lives in Aitutaki with his family. The pre-sentence report refers to the move to Aitutaki with his family being a positive step for Mr Benioni; that it would give him a fresh start and get him away from the troubles in Rarotonga. It is very disappointing that this has not proved to be the case.

[6] Mr Benioni has convictions for possession of cannabis in 2014, when he was placed on 12 months' probation supervision, the first six months on community service. That was an opportunity for him to understand why this offending can only result in ongoing trouble for himself and his family. But he did not take advantage of that. He has two other offences in 2014 and then in 2017 relevant to this sentencing, two charges of cultivating cannabis in respect of which he was sentenced to 15 months' imprisonment. So Mr Benioni is no stranger to the Court system and no stranger to what follows when one becomes involved in drug offending, including cultivation of cannabis.

[7] I have received helpful submissions from the Crown who, as they did in respect of Mr Daniel's sentencing – and more so in the case of Mr Benioni because of his previous convictions – seek a custodial sentence. Counsel noted the observations in the Court of Appeal judgment in *R v Marsters*,¹ of the corrosive impact on the community of drug offending.

[8] I have referred to the several cases detailed in their submissions by the Crown, which are helpful in trying to determine the appropriate starting point. It is accepted that this

¹ *R v Marsters* [2012] CKCA 1 (30 November 2021), Barker, P., Williams, J., Paterson, J.

offending falls within Category 1 of *R v Terewi*² as applied in the Cook Islands by the decision of the Court of Appeal of the Cook Islands in *Marsters*.³

[9] Mr George, for Mr Benioni, acknowledging that the sentence must be a custodial one and that personal circumstances can account for very little when drug offending is involved, seeks leniency from the Court for his client.

[10] I take into account the principles and purposes of the Sentencing Act 2002 in New Zealand. As I have previously stated, deterrence is a major factor in drug sentencing; deterrence, both of you, Mr Benioni, and of the community at large. You must be held accountable for your criminal offending.

[11] I take as the starting point in sentencing, 12 months' imprisonment on the lead charge of cultivating cannabis. That start point reflects the prior offending of Mr Benioni to which I have already referred. A particularly aggravating factor, of course, is his previous offending in relation to the cultivation of cannabis: two charges in 2017 and previously in 2014.

[12] I allow a discount of one-third for the guilty pleas and for remorse. The end sentence is eight months' imprisonment.

[13] On the charge of possession of cannabis seeds, the sentence is one month imprisonment to be served concurrently with the lead sentence.

[14] There will be orders for destruction of the cannabis seeds and plants.

[15] That is the sentence imposed on you, Mr Benioni. Please stand down.



Judith Potter, J

² *R v Terewi* [1999] 3 NZLR 62.
³ Above fn 1.