

POLICE

v

ISAAKA DANIEL

Hearing: 28 May 2021
Counsel: M Iro for the Crown
L Rokoika for the Defendant
Sentence: 28 May 2021

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

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[1] Mr Daniel is before the Court today for sentence on two charges:

- a) Possession of cannabis seeds under the Narcotic and Misuse of Drugs Act 2004. This charge carries a maximum penalty of two years' imprisonment, or a maximum fine of \$5,000.
- b) Secondly, he has pleaded guilty to a charge of cultivation of cannabis, under the same Act; that offence carries a maximum penalty of 20 years' imprisonment. That maximum penalty indicates how seriously Parliament views this type of offending.

[2] Briefly summarised the facts of the matter are these. On 16 July 2020, the Police executed a search warrant at Mr Daniel's home and surrounding premises at Aretea, Aitutaki.

In the execution of their search warrants they found three marijuana plants and two bowls with seeds. The number of seeds was stated to be 10,462.

[3] There has been some confusion about the guilty pleas entered to the two charges. It is clear from a notification on the outside of Information 20/20, that a guilty plea was taken on 20 August 2020. That was not the case in relation to the cultivation of cannabis charge, Mr Daniel entered a guilty plea to that charge in Court this morning.

[4] A pre-sentence report has been prepared. Mr Daniel lives in Aitutaki. He has 11 children, 10 of his own and one belonging to his former partner. He is employed, and from Neibaa Trading Limited there is a supportive letter in respect of Mr Daniel. The Probation report notes this is Mr Daniel's first appearance before the Court, at the age of 41 years. The report notes the high penalties in the Cook Islands, highlighting the seriousness of these types of offences, and the recommendation is for a custodial sentence.

[5] There are no victim impact statements because in this type of offending, while there is no direct victim, the whole of the community is a victim; which is reflected in the maximum sentences imposed by Parliament.

[6] I have received helpful submissions from the Crown and the defence. The Crown have referred me to a number of cases to assist the Court in reaching an appropriate starting point for sentencing. They are: *R v Upu*,¹ *Police v Ngaeruaiti*,² *R v Ioane*³ and *Police v Murchie*.⁴ It is accepted this offending falls within Category 1 of *Terewi*⁵ as the New Zealand categories are adopted for the Cook Islands in *R v Marsters*.⁶ Accordingly, the appropriate starting point within Category 1 varies from a fine to a short term of imprisonment.

[7] Importantly, in the *Marsters* case, the Court of Appeal stated, in this type of offending deterrence outweighs consideration of personal circumstances. The Court may not place any great significance on the personal circumstances of the offender. And it goes without saying

¹ *R v Upu* [2011] CR 248/2011 (3 June 2011), Hugh Williams J.

² *Police v Ngaeruaiti* [2013] CKHC 10 (22 March 2013), Hugh Williams J.

³ *R v Ioane* [2016] CKHC 20 (25 November 2016), Grice J.

⁴ *Police v Murchie* [2016] CKHC 2 (7 March 2016), Potter J.

⁵ *R v Terewi* [1999] 3 NZLR (CA).

⁶ *R v Marsters* [2012] CKCA 1 (30 November 2012), Barker, P., David Williams J., Paterson J.

that any offender who becomes involved in cannabis cultivation surely must know the consequences that are likely to follow.

[8] The principles and purposes of the New Zealand Sentencing Act 2002 I bear in mind, primarily accountability and deterrence – both of you, Mr Daniel, and deterrence of the community at large in being involved in this type of offending.

[9] Mitigating factors, as pointed out by your counsel, are primarily that you come before the Court as a first offender at the age of 41. She also seeks credit for your early guilty pleas. I have explained the difficulty with that, but overall I am prepared to proceed on the basis that you entered early guilty pleas to these charges.

[10] The lead charge is the cultivation of cannabis. I take a starting point of three months' imprisonment. I allow a discount of one-third, one month, reflecting that you are a first offender and that you have entered guilty pleas. The end sentence is two months' imprisonment. That is the sentence imposed on you.

[11] On the charge of possession of seeds the sentence is one month, to be served concurrently with the sentence of two months for cultivating cannabis.

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

[13] You may stand down, Mr Daniel.



Judith Potter, J