

POLICE

v

KAKINO NOOROA KAKINO

Hearing: 18 May 2021
Counsel: F Tararo for Prosecution
K Ahsin for Defendant
Sentence: 18 May 2021

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

[10:58:00]

Application to amend Informations

[1] Senior Sergeant Tararo, appearing for the prosecution, has applied to have amendments made to both Informations. After hearing from both prosecution and defence counsel by consent, I grant the application to amend both Informations:

- a) to show the date of birth of the defendant as 11 October 1980, and his age as 40 years; and
- b) to amend the Information charging cultivation of cannabis to show the period as between 18 January 2021 to 26 March 2021.

Sentence

[2] Kakino Nooroa Kakino, is before the Court for sentence today on two charges: one of cultivating cannabis; that charge carries a maximum penalty of 20 years' imprisonment, which indicates how seriously Parliament views this type of offending in the Cook Islands. He is also charged with possession of a utensil, a bong, which carries a maximum penalty of five years' imprisonment or a fine not exceeding \$5,000.

[3] Mr Kakino pleaded guilty very promptly to both those charges. He is convicted.

[4] The facts are not in dispute. On 26 March 2021, the Police executed a search warrant at the defendant's property in Arorangi. They found the bong, which is the subject of the second charge, which the defendant explained he used for smoking his cannabis leaves, and had done so that morning. They found a total of 11 cannabis plants; six were new and five had been cultivated two months previously, which were found near the carport at the property. These plants had reached a height of 1.4 metres. The defendant had been watering and fertilising them and the plants were in a healthy condition. He stated that he had no intention of selling the cannabis, but was taking cannabis for pain relief, he said, for old injuries during his rugby days.

[5] The defendant has been in custody since 27 March 2021, the day following the search warrant being executed. A bail application was declined.

[6] Counsel for Mr Kakino submits that given the small number of plants and the stated intention that the cannabis was for personal use, this offending falls within Category 1 of *R v Terewi*.¹ The number of plants found might raise a question about that, but for the purposes of sentencing I accept that this offending falls within Category 1 of *Terewi*.

[7] A helpful probation report has been provided, and to it is attached an accurate list of the defendant's previous convictions. Unfortunately, when this matter came before me for sentencing on 7 May, it became immediately apparent that the list of convictions upon which both the Police and the defendant's counsel had relied, was incomplete and inaccurate. The list

¹ *R v Terewi* [1999] 3 NZLR (CA).

attached to the probation report, and now confirmed by the Police, shows an offending history dating back 18 years to 1996, which includes two previous drug related convictions; the first in 1997 for possession of cannabis, when the defendant was sentenced for that offence and for theft, to 24 months' supervision. The second drug related offending was cultivation of cannabis in 2003, when a sentence of 12 months' imprisonment was imposed, to be served following and after a term of imprisonment imposed for other offending.

[8] Other offending extends to 2019, but does not include drug related offending, the most recent being assault on a female in November 2019 which resulted in a sentence of imprisonment of five months, followed by six months' supervision. It is fair to say, therefore, as the probation report notes, the defendant is no stranger to the Justice system; having previously received sentences of imprisonment for serious offending, and also having been given opportunities for rehabilitation by a number of terms of probation supervision. The probation report reluctantly notes that a custodial sentence is recommended; but, of course, as counsel acknowledge, the matter of sentence finally is in the discretion of the Court.

[9] In submissions today the Police, through Senior Sergeant Tararo, acknowledged that for this offending a sentence of imprisonment is appropriate.

[10] Mr Ahsin, for the defendant, made very responsible and thorough submissions on his behalf. He noted that the most recent drug offending was 18 years ago. He submitted that the defendant is now a different man, a mature man with his previous offending history behind him. He now has three children and a stable relationship, which is supported by his partner who filed an affidavit. He is a responsible father and a full-time carer for his children.

[11] While acknowledging serious previous offending, particularly the drug-related offending, Mr Ahsin seeks a non-custodial sentence and provided details of the type of sentence he submitted is appropriate. He submitted that the cannabis grown on this occasion by the defendant was to relieve pain, said to be kidney pain. A medical report produced to the Court today, does not refer specifically to that medical problem.

[12] As to mitigating factors, Mr Ahsin noted the early guilty pleas, the defendant's cooperation with the Police, his apology for his offending and that he takes full responsibility for his actions and admits it was wrong. Mr Ahsin emphasised his important role as a full-time

father and carer for the family, and submitted that a term of imprisonment, particularly a long term of imprisonment, would be unhelpful to the rehabilitation of the defendant.

[13] I take all those submissions into account, Mr Kakino, but the Court cannot see its way clear to do other than impose on you a term of imprisonment. This is a sentence for drug offending previously imposed on you, and despite your now firm commitment to your family, and your acknowledged responsibility for your family, you have elected to participate in behaviour which you knew was criminal and would undoubtedly result in a sentence of imprisonment were you to be apprehended; which, of course, you have been.

[14] The sentence I impose on you is eight months' imprisonment. This is calculated from a starting point of 12 months' imprisonment, with an allowance of one-third for your early guilty pleas and your cooperation, and the other factors that have been drawn to the Court's attention as mitigating in your case. There is also to be deducted the length of time you have served in prison since you were remanded in custody on 27 March 2021. The end sentence, therefore, is 6 months and 10 days imprisonment.

[15] There will be orders for confiscation of the bong and of the cannabis plants, and for destruction of the cannabis plants.

[16] That is the sentence imposed upon you; you may stand down, Mr Kakino.



Judith Potter, J

ADDENDUM:

[17] The sentence imposed as above is on the lead charge of cultivating cannabis.

[18] On the charge of possession of a utensil, a bong, the defendant is sentenced to 2 months imprisonment to be served concurrently with the sentence on the lead charge.



Judith Potter, J