

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

AIT CR 8/2022

POLICE

v

RIMAMOTU PIRIANGAOA PAORA

Date: 2 December 2022

Appearance: Ms J Crawford for the Crown
Mr K Ahsin for the defendant

SENTENCING NOTES OF DOHERTY J

[10:18:41]

[1] Rimamotu Paora, you are for sentence having pleaded guilty to cultivating cannabis, possessing cannabis for supply and supplying cannabis. Those three drug offending charges carry maximum penalties of 20 years, 2 years and 10 years imprisonment respectively.

[2] You have been in Court and will have heard me sentencing other people who were caught up in the Police Operation Tavake. And in particular in the sentencing of Mr Low, I went to some lengths to explain that operation and to explain its context and the context of where the Courts and the community see drug offending in these islands. So I am not going to repeat that but those remarks should be read into my remarks that I am about to relate to you personally.

[3] As I have said to others, locals in the community have been worried for some time about drug offending on Aitutaki or drug dealing on Aitutaki. And in 2021 Operation Tavake was commenced.

[4] In January 2022, as a result of information received, a search warrant was executed on your home. Cannabis leaves were found hidden and covered by a blanket at the back of your

house. You admitted that cannabis was yours and you were further questioned. You told Police at that time that the cannabis was used by you personally and that that was for medical reasons. The Police did not really believe that because you did not have a prescription and they made further enquiries and came across your plantation of cannabis in an arrowroot plantation near your village. There they found 14 cannabis plants measuring in average of 2 metres. You admitted they were yours. These were significant plants. You accepted that you had been a significant harvester of them up to, perhaps more than ten times. You were assessed as being a pretty sophisticated grower of cannabis or at least a successful grower of cannabis. You admitted that you were not only using it yourself but you would regularly supply Aitutaki residents for medical purposes and that this was consumed by your customers in the form of a herbal tea. Police accept that you did not receive any payment for it and that you were being altruistic in the sense of supplying people who said they needed cannabis for their own health purposes. Therefore this is a low level commercial operation.

[5] I have had the benefit of a probation report and, like others, this is the first time you have appeared in Court. You are 47 years of age. You were cooperative, you were open and honest, clearly regretful for what you have done. You, like others, had a hard time of growing up but you have focussed that into being a good, hard worker.

[6] I have had very careful submissions from your counsel. He has gone to some length to persuade me that your circumstances are different.

[7] The Crown too accepts that you are hard to place in the hierarchy of this operation compared with the others. There is no commerciality. You seem to be driven altruistically. But against that, you are a very successful and, on your own admission, prolific harvester of these plants. The growing of cannabis or the cultivation of cannabis can of course take many forms. It grows of course but there are the big high powered hydroponic operations which produce a lot of cannabis.

[8] The Crown place you in the second category in the *Marsters*¹ case which, in terms of cultivation adopted the New Zealand Court of Appeal's hierarchy in a case called *Terewi*².

¹ [2012] CKHC 24; Cr 313-314/2011 (20 July 2012).

² [1999] NZCA 92; [1999] 3 NZLR 62; (1999) 16 CRNZ 429 (25 May 1999).

Because of the maximum sentence the Crown says that your culpability is higher than others that I have dealt with today. I am convinced by Mr Ahsin on your behalf that that is not the case. He has referred me to a number of other cases of this Court and particularly the cases of *Police v. Henry Wachter and Joseph Wachter*³, *Police v. Murchie*⁴ and *Police v. Benioni*⁵. To say that in this Court at least there has been a slightly different approach taken in individual cases.

[9] I think that the starting point for you is at the upper end of category 1 of *Marsters* and the lower end of category 2, so a shorter term of imprisonment, not a longer one as the Crown is arguing. And I think the appropriate starting point for you is 18 months imprisonment. That starting point is to recognise that your behaviour needs to be denounced, you need to be made accountable, and others need to be deterred.

[10] You have heard me say that personal circumstances count for very little in drug offending if anything at all. But you have pleaded guilty at an early opportunity and being cooperative so you will receive the discount of one-third from the 18 months, which means an endpoint of 12 months imprisonment.

[11] I have a discretion under the Criminal Justice Act that even where I think that imprisonment is a starting point, that I need not send someone to prison and instead impose an alternative sentence. Your counsel has gone to lengths to convince me of that. He puts up a convincing argument and particularly in relation to other sentences where the Court has stepped back from imposing imprisonment; I referred to some of those cases a little earlier. He is suggesting a fine with significant amount of probation and community work. In the face of that, I have the Probation Service who are recommending a sentence of imprisonment.

[12] The exercise of a discretion not to send to prison in these circumstances is very wide, and I can take into account personal circumstances as well as more general circumstances. But I do not intend to exercise that discretion.

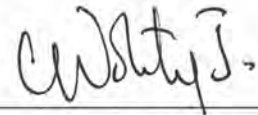
³ [2018] CKHC 8; CR 411/2017 (23 March 2018).

⁴ [2016] CKHC 2; CR 393/15 (7 March 2016).

⁵ [2017] CKHC 9; CR 18 & 480/2016 (8 March 2017); [2021] CKHC 10; Ait CR 27/2020 (28 May 2021).

[13] I am left with the fact that the most important thing out of this operation and the sentencing and the thoughts conveyed through the Probation Service and the Crown of the local community that they are worried about drug offending on their island, that deterrence ought to be a primary factor and that you should serve a sentence of imprisonment. With the discount it will be 12 months from now.

[14] Thank you.



Colin Doherty, J