

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

**AIT CR 02/2022
51-52/2022
455/2022
457/2022**

POLICE

v

JEREMIAH LOW

Date: 2 December 2022

Appearance: Ms J Crawford for the Crown
Ms M Tairea for the defendant

SENTENCING NOTES OF DOHERTY J

[9:33:27]

[1] Jeremiah Low, you are for sentence having pleaded guilty to a number of drug related charges.

[2] Before I turn to you as an individual I want to make some comments about you and a number of people to be sentenced today. You have been rounded up as part of a police operation known as Operation Tavake. Police initiated an investigation into the use and dealing of cannabis on Aitutaki in 2021. It is notable that the police investigation came as a result of a number of complaints of concerned members of the Aitutaki community. They were recognising drug use on the island and they obviously did not like it. That leads me to the view that the community in general recognises the scourge of drugs in island community and the Courts have made comment on that in the past. Those comments have been rather historic but I think they still apply today. That the insidious nature of the taking of drugs, no matter what they are, if they are prohibited has wide effects on communities. Not just in relation to it being unlawful but the nature of the game and it often leads to other crime. People need money to buy drugs, they do not have the money so they commit other crimes to get it. So there is a wide-ranging ripple effect.

[3] In this case the Crown have advised me that the operation uncovered a number of individuals such as you who were using, sometimes growing but often supplying cannabis to others at various levels.

[4] This Court has been dealing with drug related offending here in the Cook Islands generally for some time. The primary approach in terms of investigation and perhaps the largest in relation to cannabis and other drugs was an undercover operation in 2011. As a result of that operation there were a number of charges laid against individuals and a number of trials. Ultimately, some of the sentencing that was carried out reached the Court of Appeal. And in a case called *R v Marsters and Tangaroa* the Court of Appeal approved a categorisation which reflects the different degrees of criminality in drug dealing in the islands and it used as examples, or adopted what this Court used as examples, coming from the New Zealand drug scene and the New Zealand court system.

[5] In the *Marsters and Tangaroa* case the Court of Appeal agreed with this Court in categorising and giving various categories for both cultivation and supply and selling of drugs. Category 1 is small scale offending, perhaps a little like yours, typical for personal use and a bit of selling. Category 2 was commercial use namely selling drugs or growing and selling drugs for money to derive profit. There the starting point was between 2 to 6 years imprisonment. The third category was for the most serious cases, large scale commercial operations with sophistication in an organisation. The starting point there was between 5 and 10 years imprisonment.

[6] The Crown says that in this case you fall within category 2, perhaps the lower end of category 2 which is a starting point of some 2 to 2½ years. So that gives the context of where I come to in relation to you today.

[7] You were part of the investigation of Operation Tavake. You were an individual who was both using and selling.

[8] Search warrants were obtained and your phone records showed that you were using that medium to both get and to sell the cannabis to others. As a result of what they found there, police executed a warrant on your home and there found a number of items which confirmed

that you were both a user and a seller. There was \$450 in cash, tin foil, cannabis plants, dried cannabis, bongs and things used for using cannabis.

[9] You were arrested in January of this year and taken for questioning. As a result you have been charged with supplying or offering to supply cannabis – a maximum sentence of 10 years imprisonment; possession of cannabis – 2 years imprisonment; possession of cannabis seeds – 5 years imprisonment; possession of a utensil – 5 years imprisonment; and cultivation of cannabis which has a maximum penalty of 20 years imprisonment.

[10] I have had the benefit of careful submissions from your lawyer. I have had submissions from the Crown and I have also had advice from the Probation Service. Part of the information provided by your counsel includes a number of letters of reference from those in the community who know you.

[11] The Crown puts you in the small time and not particularly sophisticated street dealer category, though you were using for yourself you were supplying. And that shows that you were within that lower end of category 2 in the *Marsters* case that I have referred to with the starting points that I referred to. The Crown says that I should start with you from the point of view of sentencing of around the 2½ year mark.

[12] On your behalf your counsel Ms Tairea has accentuated a number of things which also come up in the probation report. In particular she says that your cannabis use was related to medical conditions and affects, particularly of injuries to your back and your hand where cannabis gives you relief as opposed to pharmaceutical medicines. That is the reason for your use of cannabis. She cannot explain your supply of cannabis for any other reason than you are wanting to make some profit.

[13] To your credit you are a first offender. She has provided me with information from Kimi Ora which is a family life counselling service and of your contact with them where you self-initiated. She accentuates that you are now shameful and that you are sorry for your actions.

[14] The references that I have read this morning speak rather highly of you as an individual and as a good worker and a skilled worker in what you do.

[15] Your counsel has also reminded me that part of the sentencing process is consistency where one must look at other sentences for like offending. And that is the reason that the *Marsters* case points the Court to those categories so that there can be some consistency between cases. However it is true that each of those who are sentenced for this offending must be taken on their own merits.

[16] The Probation Service has given me some insight into your personal situation and I have appreciated the views of your wife who describes you as a humble person who is a good father and she describes you as one of the nicest guys she has ever known. The Probation Service too have dipped into the local community and have found that you are described by people who know you as honest, dependable, hardworking, and a committed and devoted father. Their recommendation however is a sentence of imprisonment, probably recognising what the law says. But significantly the Probation Service are also echoing what the community has said by making the complaints to the police. The Probation Service says this:

“Drug related offences of this kind are becoming frequent on our small island where law enforcement agencies are trying their best to eliminate such criminal activity.”

So the Probation Service too are seeing the trends.

[17] The purpose of my sentencing you today is to denounce your conduct, to make you accountable for your conduct and perhaps on top of that as a deterrent both to you and to others who are using illegal drugs. I know there are different views in the community about cannabis in particular. But the Parliament in the Cook Islands has given a clear steer that those who deal in these sorts of drugs and cultivate them should expect significant sentences of imprisonment.

[18] The aggravating features of your offending are the range of it – you grow it, you use it, you sell it.

[19] The mitigating features for which you will get a credit are, or is the fact that you pleaded guilty at the first available opportunity. The Courts have said that for people that do that they should expect a significant reduction in what would otherwise be the sentence, and in this case it is one-third. But as I have said also, the Courts recognise drug offending as a scourge and say that even though you are a good person maybe in other spheres and you are hardworking,

and you are a good dad, those things count for very little or nothing when it comes to drug offending.

[20] I think the starting point for you is a sentence of 2 years imprisonment. From that you will receive a reduction of one-third which is 8 months.

[21] You will therefore serve a sentence of 16 months imprisonment.

[22] You may stand down.



Colin Doherty, J