

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

**CR 248/2011**

**QUEEN**

**-v-**

**TINA UPU**

**Counsel:** Ms M Henry for Crown  
Mr C Petero for Offender

**Date:** 3 June 2011

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**SENTENCING NOTES OF HON HUGH WILLIAMS J**

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- [1] As a result of a number of search warrants executed under the code name "Operation Eagle" on 4 May 2011 you were charged with one count of possession of cannabis. The maximum penalty which could be imposed on you is two years imprisonment or a fine of up to \$5,000.
- [2] You spent about seven days in custody after being arrested, but pleaded guilty to the charge on the first possible opportunity, namely on 12 May.
- [3] It seems that you may not have been the primary object of the search warrant executed on your residence that day, but nonetheless when the residence was searched, and in particular when your wallet was searched, a snaplock bag was discovered containing "a small quantity" of cannabis; we do not know the precise amount. Mr Petero suggests that it was less than the amount required to make one
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cannabis cigarette but the Crown does not accept that. You told the officers that you had the cannabis for your own use.

- [4] The Probation Service has filed their usual helpful report detailing some concerns on your part as to the manner in which the warrant was executed and you were questioned by the Police. That is not a matter on which the court can comment and certainly forms no part of sentencing. But it seems that you are attentive, along with your sisters, to your mother and that you are a hardworking person in the community. What is a little disturbing is the Probation Officer's report that you have a "nonchalant" attitude towards cannabis. Quizzed about that, it does seem that this was certainly not the first time in which you might have been involved in the possession of cannabis.
- [5] Ms Henry for the Crown says that there is an increasing concern in this community about cannabis offending, possession, growing, importing, possession for supply and the like, but by reference to a helpful schedule of previous cannabis sentencings Ms Henry accepts that you are entitled to a reduction in the punishment to be imposed upon you because you are a first offender and you pleaded guilty at an early stage, and suggests one year's probation with the first six months to be served on community service.
- [6] On your behalf Mr Petero points out that you pleaded guilty at your first appearance; you were completely cooperative with the Police; this is only a small amount; you have a number of testimonials supporting you; and he directs attention to the week in jail you spent before entering the plea.
- [7] The Crown has put before the court a schedule of previous cannabis sentences imposed over the past two or three years. In general, possession of cannabis in the past has resulted in relatively lenient sentences; probation, community service, orders to come up for sentence if called upon, small fines. But it is clear from the material on this file and on others placed before the court during the last fortnight that there is an increasing concern in this community at the prevalence of cannabis and cannabis offending, and in view of that fact it would appear the responsible position for the court to take is to reflect those increasing community concerns to an extent at least

and impose stiffer sentences for cannabis offending than has been the case in the past.

- [8] In earlier sentencing during the current sessions it was suggested is that cannabis offenders should be looking as a starting point at perhaps a month in jail for each 100 grams of cannabis in their possession. Now, that cannot be a hard-and-fast rule; it produces too heavy a sentence at the lower end of the scale, and possibly too high a sentence at the top end of the scale. But it is certainly necessary that persons in this community who envisage getting involved in cannabis offending from this point on can expect courts to start by considering a jail sentence. That will of course vary according to whether it is simple possession or possession for supply, and according to whether there is other offending such as growing cannabis or conspiracy to supply, but jail sentences for cannabis offending should be seen as a starting point in my view from this point onwards. So the schedule of previous sentences is, in view of the increasing community concern about cannabis offending, now to be seen as somewhat outmoded.
- [9] The court's task in sentencing is to try and fashion a sentence which will bring home to the offender their accountability for the harm done to the community by drug offending, try and promote a sense of responsibility and, of course, to punish the offending and endeavour to deter others from similar offending.
- [10] In your case, in my view the starting point for sentencing you is to consider a short term of imprisonment, perhaps a month. In this case, although you are guilty only of simple possession of a small amount of cannabis, it is reasonably clear that you were part of a fairly widespread drug ring centered on your then place of work and other licensed outlets.
- [11] You said that the cannabis was all for your own use, but that is scarcely an excuse given that possession of any amount is illegal.
- [12] However, it is important to note that you have pleaded guilty at the first opportunity. It is well recognised as a matter of sentencing principle that a plea of guilty at any stage of the process which brings with it an acceptance of responsibility, will result

in a reduction in sentence. The usual scale is that a plea of guilty at an early stage in the criminal process is likely to reduce the sentence imposed by about a third, with that percentage reducing as the process continues until a plea of guilty just before trial or even during trial is only going to produce a reduction in sentence of a small amount, perhaps 10, 12, 15%.

- [13] In your case the very early plea of guilty, plus the week you spent in jail, is in my view just sufficient to ensure that you do not go to jail as a result of this offending. In my view therefore, the appropriate sentence to impose on you is a substantial fine, \$750, and you will be placed on probation for a year with the first six months to be served by way of community service. There will, of course, be an order for destruction of the cannabis found in your possession.

A handwritten signature in black ink, appearing to read 'Hugh Williams J', written in a cursive style.

**Hon Hugh Williams J**