

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

CR NO. 126/13

POLICE

v

MARCUS ENOKA

Hearing: 26 July 2013

Counsel: Ms M Henry for the Crown
Mr C Petero for the Defendant

Sentence: 26 July 2013

SENTENCING NOTES OF HUGH WILLIAMS J

[1] Marcus Enoka, at the age of 22 you appear here for sentence on one charge of possessing cannabis on Christmas Day last. You pleaded guilty on either 6 June or 2 May this year.

[2] It appears there was a domestic incident at your home largely arising, so I am now reminded from looking at my sentencing notes relating to Metuamoeroa Ngaeruaiti, when you and he – who is essentially your father-in-law – went out all night drinking and there was a domestic incident involving his daughter and your partner as a result of which the Police were called. A consent search was undertaken of the premises. He was ultimately convicted of cultivating the cannabis plants that were on the property, to which he pleaded guilty – and in your possession were found 18 strands of cannabis weighing 23.8 grams.

[3] You denied that you had ever sold the cannabis and there was no evidence that you did, but as Ms King says, this is not the ordinary possession of cannabis charge where somebody obtains the “weed” for their own purposes. 23.8 grams is a large volume of cannabis. There would at least have been a temptation on your part to sell it in order to fund further purchases, which is common enough in drug offences, and at least it is difficult to take the view that with 23.8 grams there you could have consumed it all yourself. However, you are to be sentenced just on the one possession charge that you face.

[4] The Probation Service tells me that after your good beginning your behaviour worsened in your teens. They tell me that you are illiterate in the sense that you cannot read or write, or barely they say, and have little understanding because of your background of the consequences of what you do. They say, and I quote, that you are “very well-known to the judicial system” and when we look at the list of previous convictions, that is certainly true. Between 2005 and 2009 there were two burglaries, seven breaches of probation, two convictions for contempt of Court, plus a drunk driving and a wilful damage conviction. And on one of the breach of probation charges you were sentenced to 6 months in jail.

[5] It seems as though your relationship may have broken up as a result of this offending.

[6] You did not have a full-time job but you now do.

[7] The Crown takes the view that the 23.8 gram weight is high in relation to possession of cannabis charges, and I agree with that, and also, as I have said, says this is not your standard possession of cannabis charge. So, they suggest that the starting point for sentencing you should be a short jail term. But they acknowledge that that should be reduced by the early plea of guilty that you entered.

[8] Mr Petero on your behalf draws attention to the family circumstances and particularly, effectively your father-in-law’s jailing for 3 months plus 12 months community service imposed in March this year. He accepts that the amount of cannabis places your offending towards the higher end of possession charges but

points to the fact that although you have a number of previous convictions, this is the first one for drugs.

[9] Sentences for drug offending in the Cook Islands have recently been reviewed by the Court of Appeal in *Queen v Marsters* (CA 3/12) and the new level set should be more widely known. Although that was a case of selling drugs and a charge of cultivation, plus a number of other drug charges, the Court of Appeal makes it clear there that as in New Zealand drug offending is divided into three categories which were essentially growing or possessing a small amount for personal use, cultivation or small-scale selling, and large-scale commercial operations.

[10] The Court of Appeal makes a point there that the maximum sentence for drug offending in the Cook Islands is in many cases much greater than in New Zealand and therefore sentences for drug offending in the Cook Islands need to be longer than for comparable charges in New Zealand. So, the Court of Appeal says that small-scale possession or cultivation for personal use the starting point should be a fine with short-term imprisonment, the second category, up to 2 to 2½ years starting point and the commercial category 5 to 10 years imprisonment. That decision was not available when I sentenced Mr Metuamoeroa Ngaeruaiti.

[11] Here, there is a 2 year jail term as a maximum. Your offending on a simple possession basis must be regarded as being towards the top of that range.

[12] Your personal circumstances as in all drug offending have very little part to play. So, initially, I thought that the proper starting point was 1 year in jail for you with a reduction for the fact that you pleaded guilty, to about 8 months in jail.

[13] However your offending, and that of Mr Metuamoeroa Ngaeruaiti, resume a link. In fact the two of you essentially were involved in this cannabis operation yourselves together. And in that case, although I did not have *Marsters* available, I sentenced him to 3 months jail plus 18 months probation.

[14] In light of the fact that your offending and his grew out of the same incident it is a matter what the lawyers call totality - that is to say comparison between what

he got and what you are going to get. The jail term to which you need to be sentenced is to bear some relation to his.

[15] On the other hand you have a much worse record for previous convictions than he did.

[16] In all those circumstances, I think the appropriate sentence is to jail you for 3 months instead of the 8 months I had in mind and direct that on your release you be placed on probation for 12 months with conditions that you do not involve yourself in illicit drugs.

[17] I am told that the Probation Service here has access to volunteers who assist people such as yourself to learn to read and write and I direct you to undertake such courses as the Probation Service directs in the hope that something can be done to combat your illiteracy.

[18] Stand down.

A handwritten signature in black ink, appearing to read 'Hugh Williams, J.', written in a cursive style. The signature is positioned above a horizontal line.

Hugh Williams, J