

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

**CR NO'S 774/12 & 34/13**

**CROWN**

v

**GENE MATATIA HUNTER**

Hearing: 26 to 28 August 2013

Counsel: Messrs Henry & King for the Crown  
Mr N George for the Defendant

Sentence: 29 August 2013

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**SENTENCING NOTES OF DOHERTY J**

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[FTR 12:23:23]

[1] Gene Matatia Hunter, you are for sentence on a charge of possession of cannabis. You pleaded guilty to that charge partway through a trial where you were on trial for possession of cannabis and for cultivating cannabis.

[2] The possession charge had been an alternative which was proffered at the beginning of the trial by the Crown and they withdrew a more serious charge of possession for supply. Shortly into the trial you pleaded guilty although not right at the outset.

[3] The trial was always going to proceed because you denied the cultivation and you were ultimately acquitted by the Jury. Your guilty plea would have saved some time in the trial because the Crown did not need to adduce evidence directly.

[4] You are a first offender. You have been a person of some standing in your community, both from a sporting point of view, a work point of view and particularly a family point of view. You are described as a kind, gentle and caring individual.

[5] You got into cannabis and you clearly admitted that the cannabis was yours when you were apprehended because I recall the video interview where you accepted that that cannabis was yours and you explained where it had been obtained. The weight of it was very close to the presumption of having it for supply, was about 27.91 grams. Some of it was accepted as having been plucked from a cannabis plant and it was cabbage leaf rather than more intense cannabis for use.

[6] Putting that aside it is still a significant amount. You use cannabis and you gave evidence about how you used up to three joints a day for relaxation, to help you sleep and now, I am told, also for pain relief.

[7] Importantly the Crown has referred me to the case of the *Police v Marcus Enoka* where a man was sentenced recently for having a similar amount of cannabis as you. He was sentenced to three months imprisonment plus some following probation. The Judge was going to start with him at one year imprisonment as a starting point and the Court referred to the *Q v Marsters* case as being an indication that imprisonment ought to be the starting point, and that is what the Crown says in your case.

[8] The Judge in relation to the categories in the *Marsters* case said at paragraph 10, “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.”

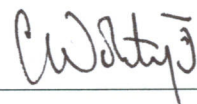
[9] With respect, I think the Judge is mistaken, the Court of Appeal was referring to possession of cannabis for the purpose of dealing or for dealing in cannabis itself as well as cultivation. But in any event I think the *Enoka* case is distinguishable, the only thing that is common is the amount itself. Mr Enoka had a significant history with the Courts and in a four year period to 2009 had had something like a dozen or more convictions ranging from serious property offending,

burglaries, drink driving, wilful damage and a number of contempt type convictions. He had been sentenced to imprisonment before.

[10] So I think, on those two bases, your case can be distinguished. However, any sentence has to do several things. It has to denounce your conduct. It is going to have to make you be accountable for your offending. It is going to have a rehabilitative effect because you do have a problem with cannabis, you say you have now kicked it but I am doubtful about that. I think also there needs to be deterrent aspect to others who are going to possess cannabis for use. So there will be a significant sentence albeit short of imprisonment.

[11] The Probation Service recommend a longish period of probation together with community service and I think that is entirely appropriate. It also recommends a number of special conditions, one of them is to abstain from the purchase and consumption of any illicit drugs. Well, that would be a crime in any event and if that is detected then you will be arrested, you will be back before the Court so I do not think I want to impose that. The other is that you attend any workshop or training as directed by the Probation Service. You already are a qualified tradesman, both as a builder and a tiler, and I do not, from the evidence that you gave in Court, detect any need for any retraining other than in relation to cannabis related matters.

[12] So the sentence is this, 18 months probation with supervision, the first 6 months of that to be community service, so that would give something back to the community. There will be a special condition of the Probation that you attend any treatment or training relating to cannabis use as directed by the Probation Service. There may not be any programs currently directly available but if they are I am sure that the Probation Service will point you in that direction, thank you.



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**Colin Doherty J**