

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

CR NO. 106/13

POLICE

v

ROGER BLAKE

Hearing: 19 September 2013
Appearances: Ms C King for the Crown
Mr C Petero for the Defendant
Sentence: 19 September 2013

SENTENCING NOTES OF WESTON CJ

[1] Mr Blake you are here today for sentence having pleaded guilty to two charges. The first, importation of cannabis in breach of the Narcotics Misuse of Drugs Act 2004 and the maximum penalty for that is a 10 year period of imprisonment. The second charge is the possession of cannabis for supply under the same Act and the maximum penalty for that is 10 years as well.

[2] The Crown submits that the importation charge is the most serious of the two. That effectively recognises that although you had a very large amount of cannabis in your possession, some 507 grams, that you were not intending to use that for supply. You have been charged however with possessing cannabis for supply because of the statutory provision that deems anyone to have in excess of 28 grams to be a supplier.

[3] I accept, however, Mr Petero's submission that in this case the cannabis was to be used by you for your personal use and that for misguided reasons of your own

you believed the cannabis would be an appropriate painkiller in relation to various injuries that you have suffered including arising out of rugby.

[4] I accept you pleaded guilty to these charges at the first available opportunity and it is common ground that the sentencing principles which I need to apply today were discussed at length by Doherty J in this Court and then the Court of Appeal on appeal who upheld Doherty J in sentencing Marsters & Tangaroa.

[5] I note that Doherty J, at paragraph [48] of his decision, referred to the purposes and principles of sentencing and these apply equally in this case which is to make you accountable and to denounce your conduct. It is to promote responsibility within you but primarily because drug dealing is designed to deter, it is also to make an example of you so that other people do not get into this line of business.

[6] In paragraph [57] of his decision Doherty J made it clear that in sentencing for drug related matters there is relatively little scope to take account of personal circumstances.

[7] As I will say shortly, I am satisfied that in this case to the maximum extent that I can, I should take account of your personal circumstances.

[8] Doherty J sentenced Marsters to a term of 6 years imprisonment which took account of certain aggravating and mitigating circumstances. I do not see that the aggravating circumstances in his case apply in your case. I am aware that the amount of cannabis that you imported was greater than involved in the case of Marsters but, ultimately, I do not see that as being highly material in the sentencing process today.

[9] The Court of Appeal upheld Doherty J. They discussed the various tariffs of sentencing that might apply and did so by reference to various New Zealand decisions. The decision of the Court of Appeal of course is binding upon me.

[10] As I read it, a starting point in your case would fall somewhere around the 4 year period. That is the starting point for assessing the period of imprisonment for you.

[11] The Court of Appeal noted that Justice Doherty's sentencing was perhaps at the top end of acceptable levels but I think it is clear from reading his analysis of the situation in relation to Marsters that there is some distance between Marsters' position and yours.

[12] The Court of Appeal also noted that previous sentencing in the Cook Islands for drug offences may have been too lenient and, while there has been some criticism of the Court for what are seen by some people to be high sentences, that simply reflects the fact that the Parliament of the Cook Islands has set very high penalties for drug offences.

[13] The Crown submissions made by Ms King were as usual helpful. She set out the various principles and gave me copies of the relevant authorities. Ultimately she came out at a sentence somewhere around 4 years in total.

[14] Mr Petero made very extensive submissions and put a large number of references before the Court. He explained that the medical problems suffered by you, Mr Blake, have been the cause of your cannabis use. As you now know that does not provide an excuse but it is something of an explanation on why we are all here today. His submissions note that you accept that you have been foolish and selfish and, indeed in the written statement that you read out to the Court, you accepted that and more. I commend you for taking that extra step. You acknowledged you have let your family down. It is usually the case that the Court gets to sentence one person but at the same time by indirect means manages to sentence the entire family as well.

[15] I have been through the various references which all speak very highly of you. It is clear that by your foolishness you have lost what was beginning to be a promising career in the media. Other people speak of your contributions in positive terms. As Mr Petero has acknowledged, however, there is only relatively limited scope to take account of those sort of factors. As I have already said I intend doing that to the maximum extent I can.

[16] The Probation report is helpful. I have read through it. It largely duplicates the matters I have already addressed. There is a reference in the Police caption

report to a reparation sought by the Police but Ms King tells me that that is no longer sought.

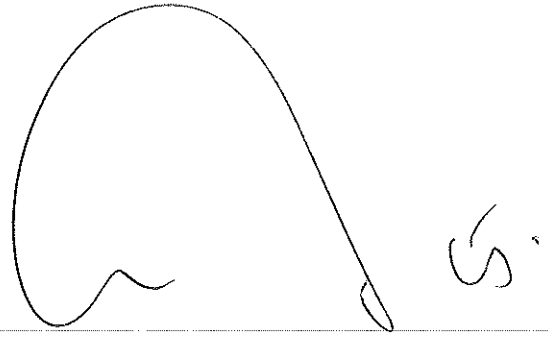
[17] Therefore it falls to me to sentence you for your offending and I do so in relation to the importing cannabis charge which is the lead charge. There will be a separate penalty in relation to the possession but that is to be regarded as concurrent and is made for the record rather than as an extra sentence.

[18] So in my assessment the starting point for your sentencing today is 4 years. There are no aggravating factors which would lead to that being increased. There should be a discount for your guilty plea of 11 months.

[19] I have taken a further discount for your personal circumstances and in doing all of that I arrive at a conclusion that you should be sentenced to 2 years and 7 months imprisonment on the importation charge.

[20] You are also sentenced to two years imprisonment on the possession for supply charge to be served concurrently.

[21] You may stand down.

A large, stylized handwritten signature in black ink, consisting of a large loop and a trailing flourish.

Tom Weston
Chief Justice