

**POLICE**

v

**TEINA SIMIONA ATAERA**

Date: 25 July 2018

Counsel: Mr T Manavaroa for the Prosecution  
Mr M Short for the Defendant

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**SENTENCING NOTES OF DOHERTY J**

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[9:18:31]

[1] Teina Ataera, you are now for sentence on two charges against the Narcotics and Misuse of Drugs Act. The first of those relates to you having in possession a utensil for the purpose of smoking cannabis; that is, what is known as a cannabis bong. More importantly you were found in possession of a considerable number of cannabis seeds, I do not know who counted them but I am told there are 11,793 which is a huge amount of cannabis and in fact puts you into the category where you could have been charged with being in possession for supply of those, namely as a dealer. When it gets above a certain weight there is a presumption that you had them for that purpose. I do not know what purpose you had them for but I note the Police have charged you under the lesser charge of straight possession. Both of these matters are deemed serious under Cook Islands law and carry significant sentences of up to 5 years imprisonment as a maximum.

[2] You have been before the Courts once recently on a completely unrelated matter and I put that really to one side.

[3] I have had the benefit of submissions from your counsel and from the police. And just as importantly I have had a report from the Probation Service who have spoken both to

you and to your partner and to others in the community. That report tells me you had a normal upbringing. You were in a loving religious family. You did not endure any hardships. You were a good rugby player and you threw yourself into your rugby. As a result of that and injuries that you received from it and your rheumatoid arthritis you have significant issues with pain and I am informed particularly by your partner who has written a note through counsel and has spoken to the Probation Service that you used cannabis to medicate your significant pain.

[4] You have five boys that you are bringing up, the most recent one is only a few months old. You are described as a good provider, a good worker, a person of good standing in the community. I have read also from counsel who accentuates your remorse for this, the fact that you regret where you are, your apology to the Court, an appeal for leniency because of your personal circumstances and he provides a number of references from local community members talking of your standing and your responsibility.

[5] The purposes of sentencing are many and varied but for drug related sentencing in this county the major purposes are to deter you and to deter others from offending like this and to denounce drug offending in this country. To your credit you have recognised that you have done wrong, you cooperated fully with the police and that is a good thing.

[6] Recently this Court and the Court of Appeal have made it very clear to the citizens of the Cook Islands that sentences of imprisonment are the starting point for this type of offending. And the Police have referred me to a number of cases, particularly the case of *Valu*<sup>1</sup> and the case of *Hunt*<sup>2</sup> where cannabis seeds of significant quantities were also subject of the charges. They were combined with other charges as well. In *Valu* there were nineteen cannabis seeds and in *Hunt* there were 193 cannabis seeds. So your 11,000 nearly 12,000 puts us in a different category.

[7] I see from the information that you say the seeds were rotten. I do not know what that means as to whether or not any of them were viable or none of them were viable. And if they were rotten cannabis seeds were they cannabis at all? I have to deal with this on the basis

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<sup>1</sup> R v Valu, CRN 151/13, 234-236/13, (6 December 2013) Grice J

<sup>2</sup> R v Hunt, CRN 412-13/2017 (1 June 2018) Williams CJ

that you had in your possession nearly 12,000 cannabis seeds that could well have been used to grow your own cannabis. I can think of no other reason why you would have them.

[8] The Court of Appeal in the *Masters* and *Tangaroa*<sup>3</sup> case also looked at a range of sentences that had been imposed on a number of dealers and possessors after a large drug operation in this country. The two appellants had appealed their sentences and effectively the regime of sentencing that had been proposed by this Court. The Court of Appeal endorsed the approach that possession of large quantities of drugs and those that were prepared to deal in them, although you are not in that category, must face a sentence of imprisonment.

[9] They have also said that unfortunately to reinforce the deterrent aspect of sentencing, personal circumstances do not count for much in drug offending. You have significant personal factors but I am sorry that I have to put them effectively to one side.

[10] The aggravating feature is the amount of cannabis. Your counsel really in the course of his submissions to me while asking for leniency, implicitly accepts the sentencing regime.

[11] The Probation Service who, in my experience, lean over backwards for those people that it has under its wing, also recommends in this case a custodial sentence.

[12] The aggravating feature is the number of seeds and the fact that you admit to being a habitual user.

[13] In mitigation there is your cooperation with the Police and you say that while they came to exercise a search warrant you effectively handed over those things in your possession. I am going to take that as a fact.

[14] You entered an immediate guilty plea and you have apologized to the community and this Court for your offending.

[15] Given that a starting point in *Valu* and *Hunt* was 18 months imprisonment, I could not find any starting point that could be any less than that. As a credit for your cooperation and your guilty plea, I will deduct six months from that sentence.

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<sup>3</sup> R v Marsters & Tangaroa, CA 3/12 (30 November 2012)

[16] On each of these charges you are therefore sentenced to 12 months imprisonment. The terms to be concurrent which means you will serve a maximum of sentence of 12 months.

[17] Thank you.



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**Colin Doherty, J**