

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

CR NO. 552/17

POLICE

v

VILMA WACHTER

Sentence: 23 March 2018

Counsel: Ms A Herman for the Crown
Mr W Rasmussen for the Defendant

**SENTENCING NOTES OF THE HONOURABLE JUSTICE DAME JUDITH
POTTER**

[09:37:16]

[1] Vilma Wachter, you are before the Court on serious criminal offending. You are for sentence on one charge of cultivating 50 prohibited plants, namely cannabis.

[2] That is an offence under s 9 of the Narcotics and Misuse Drugs Act 2004 and it carries a maximum penalty of 20 years imprisonment. That penalty indicates how seriously Parliament and the community view the offence of cultivation of cannabis.

[3] On 17 August 2017, police executed a search warrant on your husband Richard Wachter to search your family home at Arorangi. The house has four levels – you live on the fourth level and your sons occupy the ground and third floor levels while the second floor level consists of community facilities, lounge, kitchen and amenities.

[4] As a result of that search police found 50 cannabis plants on the balcony of your level. Those plants were inside 20 litre buckets, medium size pots with potting mix, soil and manure. The Police also found utensils, tools, water containers, water hose, liquid spray cans near the cannabis plants, they being used for the purposes of cultivation.

[5] The police catalogued and measured the cannabis plants. They ranged and height from 1 centimetre to 73 centimetres. The police estimate was that the plants found had been planted

six weeks to four months prior to the police search. You declined to make a statement to the police.

[6] The sentencing principles which I must apply are to hold you accountable for your offending, to denounce your conduct, to deter you and other people who might be minded to commit the same offence, and to promote in you a sense of responsibility for your conduct.

[7] The aggravating factors of this offending are the number of plants which is significant, and the fact that the varying ages of the plants show an ongoing operation.

[8] In mitigation are your early guilty plea, your co-operation with the police and the fact that you come to this Court as a first offender at the age of 54 years. It is regretful indeed that this is the situation. I am told by Mr Rasmussen that you are remorseful, not just that you regret having being detected, but that you regret the criminality in which you have been involved.

[9] The case law, importantly the Court of Appeal judgment in *Police v Marsters* adopts with variations, the categories in New Zealand in the tariff case of *Terewi* which defines Category 1 as growing a small number of plants for personal use without sale to third parties intended. The penalty ranges from a fine to a short term of imprisonment. Beyond that, Categories 2 and 3 which have commercial aspects, require much heavier penalties.

[10] I accept that this is a category 1 case. No indications of commerciality were found such as tick lists or other items which indicate a commercial operation. But I have to say it is at the top end of Category 1 because the sheer number of plants could tend to suggest more than a personal use undertaking.

[11] The Courts in the Cook Islands have been at pains to point out that convictions for cultivating cannabis attract a starting point of imprisonment. I have been referred to a number of cases; they tend to be case specific, but always the iteration from the Court is that if you engage in cannabis cultivation you will go to jail.

[12] The personal circumstances of the offender play little part in the sentencing process for drug offending which I confirmed in discussion with Mr Rasmussen this morning.

[13] The Crown seeks a term of imprisonment of 18 months to 2 years.

[14] I have thought long and hard about the sentence I should impose upon you Mrs Wachter. I have to say at the age of 54 years I am reluctant to send you to prison. But it is quite a stretch for me to keep you out of prison given the maximum sentence of 20 years that applies to this offending and the repeated warnings from the Court that a jail sentence will follow this type of offending.

[15] Nevertheless, in all the circumstances and taking into account your early guilty plea, your cooperation with the police and the fact at the age of 54 you come to the Court as a first offender, I do not intend to impose a custodial sentence.

[16] The sentence I impose on you is a fine of \$2,000. You are placed on probation supervision for 18 months the first nine of those is to be on community service.

[17] The conditions imposed with your Probation supervision are:

- a) that you are to abstain from the consumption of or any involvement direct or indirect with prohibited drugs other than prescribed drugs;
- b) you are to undertake any training or workshops, counselling as directed by the Probation Service; and
- c) you are not to leave the country without the approval of the High Court.

[18] I have inserted those conditions advisedly Mrs Wachter because it may well be that you are addicted to cannabis and dealing with that addiction is going to be a very serious matter for you. You should take all the assistance you can get and you will need it.

[19] There will be Court costs of \$50 and there will be an order for destruction of the cannabis material and all utensils connected with cultivation.

[20] You may stand down.



Judith Potter, J