

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

**CR NO'S 115/2021, 205/21  
460/21, 470/21  
472/21**

**R**

v

**PHILIP WALTER MONTGOMERY STRICKLAND**

Date: 12 December 2022  
Counsel: Ms J Crawford for Crown  
Mr N George for Defendant

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**SENTENCING NOTES OF KEANE, CJ**

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[1] Walter Strickland, you appear for sentence for two offences established at trial: (i) conspiring with Rutril Enoka, Tepine Tama, and others to supply cannabis on Rarotonga between 1 January 2019 – 31 January 2021; (ii) supplying, or offering to supply, cannabis between 25 May 2021 – 11 August 2021. This morning you have pleaded to a related charge of contempt.

[2] The Crown case at trial was that most of your cannabis came from Tere Junior Makita, a Cook Island national living in Auckland. In this, the Crown relied on text messages, records showing he often visited Rarotonga, and co-conspirator and wider evidence that you arranged where he stayed and picked him up. He was once seen to hand you a parcel.

[3] On 21 November 2019, the Crown case was, you ceased to be able to rely on Mr Makita when his courier that day was apprehended with a consignment at Auckland Airport. On 25 February 2021 at the District Court, Manukau, they pleaded to and were sentenced for attempted export to the Cook Islands.

[4] The Crown case was, secondly, that here on Rarotonga you created and actively controlled a network to sell the cannabis you imported; and, though no sales were proved directly, extensive text messages established very considerable sales; a conclusion directly supported by evidence from your co-conspirators.

[5] Finally, bank records between 18 April 2018 – 13 December 2019 showed that you and those you controlled deposited NZ\$398,164 to the bank accounts of Mr Makita and his mother; and that, often on the same day, NZ\$204,888 was withdrawn mostly from Auckland ATMs. Some part of those withdrawals, on the Crown case, was to buy further cannabis.

[6] The Crown case as to your second offence was that, after you were apprehended for your first offence, you continued to supply cannabis. That was more limited and, while there was evidence of sales, there was little as to their scale and value.

[7] As its nearly immediate verdict showed the jury was clearly convinced by the Crown case, as was I independently. Despite the fact that you and those you controlled were never apprehended possessing or selling cannabis, the Crown case was cogent and compelling.

### **Sentencing principles**

[8] Your two offences each attract a maximum sentence of 10 years imprisonment, and the sentence I must impose on you for your primary offence especially, the conspiracy to supply, is governed by a decision of our Court of Appeal, *R v Marsters*.<sup>1</sup>

[9] In endorsing the sentence there under appeal, and the principles underlying that sentence derived from two New Zealand cases, *Terewi* and *Ho*<sup>2</sup>, our Court of Appeal confirmed that commercial cannabis offending in the Cook Islands requires a deterrent sentence of imprisonment. Personal circumstances must mostly be set to one side.

[10] The Court also held that the starting point for such a sentence is to be fixed by applying two scales derived from those two New Zealand cases, increased to reflect our higher

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<sup>1</sup> [2012] CKCA 1.

<sup>2</sup> *R v Terewi* [1999] 3 NZLR 62; *R v Ho* CRI 2005-092-000567, Winkelmann J (12 April 2005).

maximum sentences: (i) the *Terewi* scale, which rates primarily the order and seriousness of the offending; and (ii) the *Ho* scale, which rates primarily the part played by the offender.

[11] *Terewi* sets three sentencing bands for cannabis offending the first of which for small-scale offending does not apply. Category 2, small-scale offending for a commercial purpose, attracts under *Marsters* a starting point in the range 2-6 years imprisonment. Category 3, large scale, sophisticated, commercial offending, a starting point in the range 5-10 years imprisonment.

[12] *Ho* sets two sentencing bands reflecting the role of the offender. Category 1 requires a starting point for instigators, masterminds, prime movers and controllers in the range 5-9 years imprisonment. Category 2 a starting point for lesser but crucial players in the range 3-5 years imprisonment.

[13] Your sentence must also, as a matter of parity, be consistent relatively with the unchallenged starting points taken by Williams CJ for your co-conspirators Mr Enoka and Mr Tama.<sup>3</sup> (Their end sentences cannot be compared because they pleaded and cooperated.)

[14] Williams CJ, holding that Mr Enoka was a middleman, who recruited others, made extensive sales himself, and deposited cash to the Makita bank accounts, rated him ‘at the top of category 2 or the lower part of category 3 (*Terewi*)’, and took a five year starting point.

[15] He held that Mr Tama, was not as ‘high in the hierarchy’, and was not a middleman, but was a recruiter and a ‘very active dealer involved in hundreds of transactions over a lengthy period’ within category 2 (*Terewi*), and took a four year starting point.

[16] According to *Terewi* your primary offence, the conspiracy, lies within the third and most serious category, and attracts a starting point of 5-10 years. According to *Ho* your role sits in the first category – that of instigator, prime mover and controller – and attracts equally a starting point of 5-9 years.

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<sup>3</sup> *Police v Enoka, Tama, Napa* CR No’s 461-2, 469/2021, Williams CJ, 13 April 2022.

[17] Finally, your total sentence must be proportionate to your total offending, a principle I must apply when deciding whether to impose on you a cumulative or concurrent sentence for your second offence, selling cannabis while on bail for your first offence. I have decided that a concurrent sentence will suffice.

### **Crown submissions**

[18] The Crown seeks a 6-7 year starting point for your primary offence, the conspiracy to supply, to mark your culpability as mastermind of large-scale and sustained cannabis related offending, involving significant imports, sales and money-laundering.

[19] You are as culpable as *Marsters* was, the Crown contends, even though you are not, as he was, answerable for cannabis cultivation. Your offending was more extensive and far more profitable, and involved a network of dealers whom you recruited and controlled.

[20] The Crown accepts your unrelated previous convictions are not aggravating but contends that there is nothing in your circumstances, in your pre-sentence report, or elsewhere, warranting any discount. It contends for a sentence of 6-7 years imprisonment.

### **Defence submissions**

[21] Your counsel submits I should take a starting point of 3-5 years imprisonment, in terms of *Ho*, category 2. Mr Makita, he contends, was the importer and mastermind. You were Mr Makita's 'wing man', and you acted under pressure from Mr Enoka and Mr Tama. You were at most a crucial but lesser player.

[22] As at trial he challenges the cogency of the Crown's case found mostly on indirect evidence; and invites me to take into account a shift in public attitude to medicinal cannabis use. He has given me references reflecting the evidence of your good character within your community given at trial, and invites me to credit it.

[23] Finally, he invites me to reduce your sentence by 10 months to take into account 8 months you spent in custody on remand before trial, and the two months you have spent in custody since.

## **Conclusion**

[24] Despite your Counsel's careful submission I am satisfied that here on Rarotonga you were at the centre of what proved at your trial to be sustained and large scale commercial cannabis related offending.

[25] On the evidence, Mr Makita was unquestionably your source of supply and may have been your partner. But, apart from his visits to Rarotonga to bring in consignments, whatever part he played was largely on the evidence confined to New Zealand.

[26] The evidence showed rather that you controlled very actively the distribution network you created. You supplied the middlemen and dealers you recruited with the cannabis you imported. You chased them up to make sure they sold actively, and accounted to you, and banked to the Makita accounts.

[27] The evidence showed that you sold at a high premium, at in excess of twice the street price for cannabis in New Zealand; and the deposits to the Makita accounts over just 10 months, just short of NZ\$400,000, graphically demonstrate how active you and your network were, and how successful.

[28] The New Zealand withdrawals also confirm graphically that this was to be an ongoing enterprise and that it only came to an end in the fullest sense when Mr Makita and his accomplice were apprehended, and the COVID regime came into play.

[29] The sentence I impose on you for your primary offence, the conspiracy to supply, must reflect both the scale of the offending you initiated and controlled, and your central animating role. I take as my starting point the higher of the two the Crown contends for, seven years.

[30] In sentencing you I must set aside your personal circumstances. But, in any event, there is no circumstance which assists you. Your good standing in your local community, real though it may be, is offset by your convictions. I do reduce your sentence by 10 months to reflect your time in custody on remand.

[31] I sentence you for your primary offence, the conspiracy, therefore, to imprisonment for six years, two months: and that will be your total effective sentence. For your second offence, the selling offence, aggravating though it was, I sentence you concurrently to imprisonment for two years.



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**Patrick Keane, CJ**