

Upland.

IN THE SUPREME COURT OF TONGA
CRIMINAL JURISDICTION
NUKU'ALOFA REGISTRY

CR 103 of 2021

REX

-v-

Netane TAUFA

SENTENCING REMARKS

BEFORE : THE HONOURABLE COOPER J

Counsel : ✓ Mr. T. 'Aho for the Prosecution
Ms. A Kafoa for the defendant

Date of sentence: 20th August 2021

1. Mr. Taufa was arrested for being in possession of 23 cannabis plants.
2. The Crown chose to include a weight for the plants and initially charged him with possession of 23 cannabis plants with a total weight of 1900.20 grams.
3. I have considered *R v Wolgramm & Ors.* 35 of 41 2019 Vava'u Registry.
4. As a consequence I have also considered *R v Terewi* 113/19 CA New Zealand, as well as *Vea v R* [2004] TOLawRp 28; [2004] Tonga LR 177 (30 July 2004).
5. I have turned to consider this: how does this case fit in with the bands as set out in *R v Terewi* and then adopted in *Vea v R* and *R v Wolgramm* ?
6. It is worth noting that those bands in *R v Terewi* were imposed with a view to adapt sentencing to the type of commercial enterprises that were being seized:

“...where intensive cultivation methods are being employed with a view to enhancing the yield of usable cannabis – either by increasing the number of crops beyond what

would occur naturally or by producing plants with higher narcotic levels. For example, by means of indoor growing systems the growth and harvesting of plants can be speeded up, reducing the cycle from four to six months to 40 to 45 days. And in the hydroponic method, plants not only mature earlier but also contain significantly increased levels of tetrahydrocannabinol.”

7. So the sentencing bands were drawn up in this way :

Category 1 consists of the growing of a small number of cannabis plants for personal use by the offender without any sale to another party occurring or being intended. Offending in this category is almost invariably dealt with by a fine or other noncustodial sentence. Where there have been supplies to others on a non-commercial basis the monetary penalty will be greater and in more serious cases or for persistent offending a term of periodic detention or even a short prison term may be merited.

Category 2 encompasses small-scale cultivation of cannabis plants for a commercial purpose, i.e. with the object of deriving profit. The starting point for sentencing is generally between two and four years but where sales are infrequent and of very limited extent a lower starting point may be justified.

Category 3 is the most serious class of such offending. It involves large-scale commercial growing, usually with a considerable degree of sophistication and organisation. The starting point will generally be four years or more.

8. It is to be noted therefore that small non-commercial supply would merit an increase in financial penalty, but not necessarily a prison sentence and for band 2, limited or less frequent dealing could lead to the starting point below 2 years' imprisonment.
9. In *Vea v R* what drove the court to consider that in that case they were sentencing for a commercial enterprise by virtue of the 20 branches of cannabis plant seized; but they were also informed by the 116 marijuana seeds also seized.

10. Here the 23 plants stand on their own in that there is no other evidence to suggest what the nature of this enterprise was; save perhaps one matter, the smoking pipe that was also seized.
11. Only the number of plants is open to the court to inform what this venture was; is this medium level personal use; is it no-profit commercial supply; or medium level commercial supply ?
12. There are no dealer lists, no evidence even of scales or bags to use for supplying. There is no evidence of observations of people attending his address that might give rise to the suggestion of wider supply.
13. That the weight plainly is over the 28 grams in section 4 as amended, still does not help me address the issues as identified in *R v Wolfgramm* at paragraph 24 by Lord Chief Justice Whitten QC as being :

“There is no other metric provided other than quantity, which in turn is not qualified to distinguish between fresh cannabis plants, dried or any particular parts of them.”

14. In view of all these matters and considering carefully the case law I come to the view that the appropriate sentence is one of 1 years’ imprisonment which, because of his early guilty plea I reduce by 30% to 8 month’s imprisonment and then due lack of previous convictions, I shall suspend for a period of 2 years.
 - i. Condition not to commit any further offences punishable by imprisonment
 - ii. 40 hours community service.
15. The plants shall be forfeited and destroyed.

NUKU’ALOFA
20 August 2021

