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

CR 137/2021

REX

-v-

Soane PAPAA

Sentencing Remarks

BEFORE : THE HONOURABLE COOPER J

Counsel : the Prosecution

the defendant

Date of : 7.9.2021

1. The defendant appeared before me for arraignment and pleaded guilty to a count of cultivating a single cannabis plant some 47.17 g in weight. And in relation to possession of the utensils, the single empty packet he also pleaded guilty.
2. On 19th April 2021 at approximately 1800 hrs the police, acting on information, raided the defendant's home in Lapaha.
3. They found there the single plant.
4. He was taken into custody and interviewed and admitted the offence.
5. In considering sentence I follow the guidance in the New Zealand Case of *R v Terewi* [1999] NZCA 92.
6. This has repeatedly been considered and approved of as providing the framework for sentencing bands in cases concerning cannabis cultivation in these courts.
7. Those bands are :

08 SEP 2021
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“*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 non-custodial 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. Plainly this case falls into category 1 offending, there being a single plant and no evidence of any intention to supply.
9. Whilst the weight exceeds the section 4 28 grams so that its possession must be considered as being for the purpose of supply I return to the dilemma that was identified by Lord Chief Justice Whitten QC in *R v Wolfgramm* 35 of 41 2019 who stated at paragraph 24 when referring to cases of cultivation of cannabis plants:

“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.”
10. Count 1 is the head sentence. A sentence of 60 hours community order would be appropriate for this offence taking into account his lack of previous convictions. Given his early guilty plea I reduce that by 30 %.
11. Taking into account all these matter I consider that the right sentence must be to complete 40 hours community order.
12. Mr. Papaa will also complete a drugs awareness course at the direction of probation.
13. Count 2 no separate penalty.

14. Drugs to be forfeited and destroyed.

NUKU'ALOFA
7 September 2021



A handwritten signature in black ink, consisting of stylized, overlapping loops and lines.

N. J. Cooper
J U D G E