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

CR 129 of 2021

REX

-v-

Rick RICHAELEMAN

SENTENCING REMARKS

BEFORE : THE HONOURABLE COOPER J

Counsel : Ms. 'E. Lui for the Prosecution
Mr. V. Latu for the defendant

Date of sentencing: 7 September 2021

1. The police raided the defendant's home address in Fangaloto on 24th March 2021 acting under the authority of the warrant that had been issued to search for illicit drugs.
2. On being told why they were there, Mr. Richaelman informed the police they would find cannabis and utensils.
3. He explained that he is suffering from stage 4 cancer and they later recovered a letter from his Doctor in Australia confirming that diagnosis and setting out his medication; 0.4mg B.D. and Panadine Forte 500130mg ii 6 hrly prn.
4. The fact is that Mr. Richaelman is in an advanced stage of this disease and he was smoking cannabis for pain relief and taking it palliatively.
5. He admitted to the police, during the search, what he had done.
6. The police recovered the following :

Item	Weight of packs	Net weight of cannabis
EXH 1 (3 cannabis branches)	6.17g	6.56g
EXH 2 (2 cannabis branches)		1.93g
EXH 6 (1 pack of cannabis)	0.86g	0.30g
EXH 7 (1 pack of cannabis)		0.54g
EXH 8 (599 cannabis seeds)		8.41g

EXH 8B (1 pack of cannabis)	0.34g	0.46g
EXH 10 (1 pack of cannabis pack)	1.06g	0.21g
EXH 11 (1 cannabis branch)		0.31g
EXH 13 (2 cannabis plants)		161.52g

7. The total weight of cannabis plants recovered was 170.32 g and 8.41 g of seeds.
8. Mr. Richaelman pleaded guilty at the first opportunity and the case was adjourned for reports.
9. This case presents a dilemma over the weight of cannabis. Whilst the plants and branches are said to weigh 170.32 g, that is not the weight of usable drugs. The branches would not be able to be used, and there is no indication that the leaves were dried to the required state so as to be smoked.

10. As Lord Chief Justice Whitten QC in *R v Wolfgramm* 35 of 41 2019 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.”

11. This case presents a dilemma, while the quantity of drugs means under the new provisions of section 4 that Mr. Richaelman shall be deemed to have had possession with the intention to supply there being more than the statutory 28g, there is no evidence before me that the actual amount of usable drugs was over 28 g.
12. The possession of the plants equates more closely with cases of cannabis cultivation.
13. That being so I turn again to consider the sentencing bands as set out in *R v Terewi* [1999] NZCA 92 :

“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.”

14. The reality is that in this case the plants seized would fall to be sentenced under band one.
15. There are then the seeds and what is left after that is 1.51 g of cannabis.

16. Taking all this together; the medical situation the defendant faces, his early guilty plea and the issue of the weights as set out above I find that this case falls outside the scope of other cannabis cases that have been before these courts.
17. The comparable sentences to do with weight of cannabis, weight of plant or number or weight of seeds become eclipsed by the health issues this defendant faces and why he was using this illegal drug.
18. The court in no way encourages or advocates the use of illegal drugs and it is to be deplored.
19. But, in this situation a prison sentence is not merited in my view when I take together all the factors I have identified.
20. Accordingly I consider that the sort of range as in *R v Maile* 132/2020, a sentence of 30 months for 47.89 g cannabis 1.46 g seed and 1.97 g plants, were Lord Chief Justice Whitten QC imposed 30 months, the last 12 suspended.
21. I therefore take 30 months as my starting point. I reduce that by 9 because of the early guilty plea attracting a discount of 30% that gives 21 months.
22. With the medical situation being extenuating I sentence Mr. Richaelman to 21 months imprisonment, fully suspended for a year.
23. Drugs and paraphernalia is forfeited and to be destroyed.
24. The money found, exhibit 8B forms no part of this case and is to be returned to Mr. Richaelman.
25. Any breach is to be reserved to me.

NUKU'ALOFA
7 September 2021



N. J. Cooper
JUDGE