

COMPTROLLER OF CUSTOMS

v

SAMUEL MATAROA

Date: 22 May 2019

Counsel: Mr F Hawkins for Customs
Mr M Short for Defendant

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

[12:18:06]

[1] Mr Mataroa appears for sentence having entered guilty pleas to a charge of making an erroneous declaration under s 261(1)(a) and 3(a) of the Customs Revenue and Border Protection Act which carries a maximum sentence of a fine not exceeding \$1,000.

[2] Also, a charge of defrauding the revenue of customs duty under the same Act. The duty evaded was \$2,150. This offence carries a maximum sentence of 5 years imprisonment and a fine not exceeding \$300,000. The breadth of that sentencing range reflects the amount defrauded made vary significantly.

Facts

[3] Briefly stated, the facts are that on 3 November 2018 the defendant arrived at Rarotonga International Airport from Auckland on flight NZ46. Upon entering the building he went to the two duty free outlets available at the airport and was seen by customs staff. Customs

decided to implement the standard procedures related to questioning and a full inspection of the defendant's personal belongings.

[4] Upon examination a total of ten lots of tobacco were found which the defendant did not declare on his arrival card. The amount exceeds the duty free limits, which are currently set at 200 cigarettes and two 50gms of tobacco. The 50 individual packs of tobacco represent 2500gms of tobacco being ten times the duty free allowance.

[5] The retail value with each tobacco pack was around \$40, bringing the estimated retail value of the tobacco to \$2,000. Allowing for duty, the profit the defendant anticipated he might make from selling these items, was in the vicinity of \$1,600.

[6] The defendant admits the offences and he also admits that his purpose in bringing these products into the Cook Islands was to try to sell them at a profit to clear some of his debts. He is currently unemployed.

Aggravating and mitigating factors

[7] The aggravating factors are the premeditation and sophistication in the concealment applied by the defendant in attempting to conceal the tobacco from customs officials. I have mentioned the quantity and amount of the duty evaded, the duty being \$2,150.

[8] In mitigation there was an early guilty plea and a record of previous good character.

Authorities

[9] The prosecution submissions refer me to a number of cases. Some of these do not equate with this case, where there was no breach of trust. Frequently those in employment have breached the trust of their employer in arranging such importations.

Sentencing

[10] I have discussed with counsel and also with the probation officer present in Court, the recommendation of the Probation Service that the sentence should be 18 months' probation with 9 months of community service subject to the following special conditions; payment of

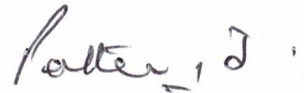
reparation of \$2,150 and attending at training or workshops as directed by the Probation Service; the defendant not to leave the Cook Islands without the approval of the Cook Islands High Court.

[11] I have discussed this morning with Mr Mataroa, who appeared in person, his ability to pay reparation or pay any fine which the Court may impose. The Court may not order reparation where there is no means to pay. I consider that is the situation here and therefore regretfully no order for reparation will be made.

Sentence

[12] Mr Mataroa, the sentence passed on you for this offending is that you will be placed on 18 months' probation supervision. You will serve the first 9 months on community service. The following conditions will be imposed:

- a) You are to attend any training or workshops directed by the probation service;
- b) You are not to leave the Cook Islands without the approval of the High Court of the Cook Islands.



Judith Potter, J