

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

CR NO'S 241/13 & 243/13

COMPTROLLER OF CUSTOMS

v

TAIAU JOSEPH CLINT JOAN BAPTISTE TAUIRA

Hearing: 19 July 2013
Counsel: Ms W Pogi for the Crown
Mr C Petero for the Defendant
Sentence: 19 July 2013

SENTENCING NOTES OF HUGH WILLIAMS J

[FTR 09:38:56]

[1] Taiau Joseph Clint Joan Baptiste Tauira (“Clint”), at the age of 29 you appear here for sentence having pleaded guilty on 26 May 2013 to one charge of making a false declaration under the Customs Revenue and Border Protection Act 2012 and one of importing prohibited items, namely two pipes capable of being used for smoking illicit drugs. These are serious offences as is shown by the fact by the maximum penalties. On the first, it is imprisonment for 6 months or a fine of up to \$30,000 and on the second, a fine of up to \$300,000.

[2] At the commencement of the sentencing I need to record that there was discussion between the Bench and bar as to whether your pleas might not have been correctly entered and you might have pleaded guilty solely because you are a

Tahitian and you want to return to Tahiti as soon as you can. After that discussion we adjourned in order that Mr Petero, acting for you throughout this matter, could confirm that you wanted to keep your pleas of guilty and have this matter dealt with.

[3] The facts are that on 26 May you arrived at the Rarotonga Airport from New Zealand. Because of your behaviour and appearance you alerted the Customs officials and they searched your baggage and asked you the standard questions concerning the arrival card you filled out on the aircraft. On that card you answered “no” to whether you were carrying any goods that might be prohibited or restricted and the Customs officials confirmed that, although French is your first language, you understood what was written on the card. You were then given a Customs Declaration and you completed that saying the only goods you were bringing with you were alcohol.

[4] However when your luggage was searched, Customs located two items wrapped in newspaper which proved to be glass pipes used by drug users for smoking drugs, often cannabis, sometimes methamphetamine. Both items still had their price tags attached. And when you were asked where you got them, you told the Customs officials that you had been to a party the night before and those at the party had accompanied you to the airport on the morning you flew out and gave you a number of items including, what turned out to be, these two pipes.

[5] You had not unwrapped them in the plane (or any other of the gifts) and you said you did not know that the newspaper contained the prohibited imports, namely the pipes. That explanation carries a certain credence about it because you are a navigator who had sailed from Tahiti to the New Zealand shores previously on a vaka and you had been at the party the night before with those who had been associated with you as crew on the voyage.

[6] You want to make a living out of that sort of work and have come to Rarotonga to increase your experience.

[7] This is the first prosecution, Ms Pogi for Comptroller of Customs tells me, under the Customs Revenue and Border Protection Act passed just last year. Section

261 of the Act makes it an offence to make “a declaration or written statement under this Act that is erroneous in a material particular”. Essentially that is whether you were telling lies on the declaration. You now accept you did. And s 268, the other offence under which you are charged, makes it an offence for somebody to import into the Cook Islands prohibited goods.

[8] It is important to note that s 268(4) says – and I recognise you are likely not to understand this Mr Taurira but because this is the first time these charges have come before the Court I need to explain the situation legally a little more comprehensively – “It is not a defence in a prosecution for an offence referred to in subsection 3” – which includes an offence like this which provides the penalties for an offence under s 268(1)(a) – “that the defendant had no knowledge or no reasonable cause to believe that the goods in respect of which the offence was committed were prohibited imports or prohibited exports as the case may be.”

[9] As discussed with counsel at the commencement of this sentencing, s 268 creates what the law calls an offence of strict liability in the sense that no person prosecuted under the section for importing prohibited goods can claim that they did not know that the goods which they imported were prohibited goods. But what s 268 leaves open is whether a person can defend a charge of importing prohibited goods on the basis that they did not know that they had the goods on them, that they were unaware of the situation. All subsection 4 does, is say that if a person is proved to have imported prohibited goods they cannot say they did not know they were goods which are prohibited. And it is important to make that distinction not just for your case but for future cases under this new Act.

[10] However, as noted, the point was discussed with counsel when we began the sentencing and you maintained your plea of guilty despite the defence which might possibly have been open to on the facts.

[11] Ms Pogi for the Comptroller, after noting that this was the first prosecution for this new Act, suggested that New Zealand cases concerning the appropriate sentence to be imposed were relevant in the Cook Islands because the Cook Islands legislation is modelled on the New Zealand Customs and Excise Act 1996 and she

helpfully referred me to two cases *L v New Zealand Customs*¹ and *Van Der Merwe v New Zealand Customs Service*². In *L* a woman had been convicted in the District Court despite seeking discharge without conviction. She successfully appealed to the High Court and the convictions were overturned, the only penalty imposed being the payment of Court costs. *L* had imported into New Zealand objectionable material she had sourced over the internet. But it is clear from reading that decision that the outcome of the Appeal should not be regarded as a precedent for other cases since the Judgment emphasises that it was Ms L's personal circumstances relating to the imported material that led to the convictions being overturned.

[12] Somewhat more useful in terms of precedent is the *Van Der Merwe* decision but that too is factually very different from Mr Taurira's case. *Van Der Merwe* involved a man who had brought a number of precious stones into New Zealand and made a false declaration concerning what he was bringing with him. He had intended to sell the precious stones had he been successful in bringing them into the country. He appealed against a sentence of a \$9,000 fine on each of the three charges plus a valuation fee, plus Court costs, Solicitors costs and witnesses expenses, but the penalty was upheld on appeal. Once again, while the seriousness of the offence was emphasised by the Judge, he was clear that the evasion of a substantial amount of excise duty and goods and services tax also impacted on the amount of the fines.

[13] Mr Petero also filed helpful submissions repeating the background to this case and suggesting that despite the seriousness, because you pleaded guilty at the earliest opportunity, were remorseful and apologetic, a fine should be imposed, initially somewhat similar to the modest fine Ms Pogi suggested was appropriate.

[14] Mr Petero and the Probation Service tell me that you have no previous convictions. You are now unemployed and are awaiting return to Tahiti following completion of this case and the Probation Service suggests that you were completely unaware, not of the gifts but of the contents of the packages you had been given. They suggest that you be sentenced to a "hefty" fine.

¹ HC Auckland A82/03, 3 February 2004, Nicholson J

² HC Auckland A154/01, 28 November 2001, Randerson J

[15] The sentence which needs to be imposed on you needs to promote a sense of responsibility on your part. This was a silly thing to have done and it was particularly silly when you repeated the fact that you had brought no prohibited goods into the country. It clearly needs to denounce the conduct and try and deter other people from doing the sort of thing that you did in this case – bringing prohibited goods into the country and then lying about it.

[16] In deciding what are the appropriate fines to be imposed on you – because nobody suggests you should be jailed – I need to take account firstly that these are serious offences and there is an air of dishonesty in the way you went about your offending. The seriousness of the offences is shown by the maximum penalty which might be imposed.

[17] As the title to the statute says this is a measure designed to protect the borders of the Cook Islands. While circumstances of offences must always be taken into account, I am unable to accept Ms Pogi's suggestion that this offending was right at the lower end of culpability. The offences to which you pleaded guilty are offences which could range from mere forgetfulness to a deliberate attempt to evade Customs and excise duty and a deliberate attempt to hoodwink the authorities.

[18] In terms of the sentence there is probably a distinction to be made if the importation of the goods is of material, the possession of which is an offence in itself. Being in possession of implements capable of being used for drug taking is an offence. You could have been charged with that offence in addition to those with which you are charged. Importation or obscene material as in L is another in the same category. A deliberate attempt to evade excise duty would be another.

[19] However in your case, whilst I don't accept that this was right at the lower end of accountability, it is not in the most serious category. But it is still a serious matter: you imported prohibited goods, possession of which is an offence, and then you lied about it.

[20] During the adjournment I asked Mr Petero to find out what your financial situation was. He tells me you can afford to pay, immediately, total fines of up to

\$1000, and you are prepared to pay those in order to leave Rarotonga and not have your passport impounded until such time as you meet the fines you are ordered to pay.

[21] In those circumstances the sentence will be, first, that the pipes be destroyed; secondly, that you meet Court costs on each of the charges and, thirdly, that you are fined \$500 on each charge.

[22] Given that this is the first prosecution of its kind, I need to make it clear that in my view fines of \$500 for offences of this nature are very much on the modest side. Had you been able to pay more, more may have been appropriately imposed.

[23] So that is the outcome of the case for you – two fines of \$500 plus Court costs. Stand down.

A handwritten signature in black ink, appearing to read 'H Williams', with a long, sweeping flourish extending upwards and to the left.

Hugh Williams, J