

THE QUEEN

308

v.

MARK RICHARD WILCOX

Coram: Eichelbaum CJ
Casey J
Henry J

Hearing: 22 March 1994

Counsel: M A Woolford for Crown
M I Koya for Appellant

Judgment: 22 March 1994

JUDGMENT OF THE COURT DELIVERED BY HENRY J

Mark Richard Wilcox appeals against a sentence of 6 years 3 months' imprisonment imposed in the High Court at Hamilton on charges relating to the class 'A' controlled drug heroin. Two of those charges related to the manufacture of the drug; two to supply and two to possession for supply. Pleas of guilty were entered on arraignment.

The appellant, together with two co-offenders, Kevin John Williams and Christine Marie Smith, were the subjects of a surveillance operation carried out by the police in early 1993 on a property at Whenuakite in the Coromandel area occupied by Williams and Smith. The group were involved in the manufacture of heroin from a homebake operation which was carried out over the 12-day period of

the surveillance, and also in the associated supply of the product. The total quantity of heroin involved in the production over the 12-day period was 9.1gms with a street value of \$45,000, thus indicating an operation on a reasonably substantial scale. The co-offender, Williams, pleaded to 5 charges of manufacture and 7 of supply. He was sentenced to 7 years' imprisonment. We are advised his appeal against that sentence was abandoned. The co-offender, Smith, faced 3 charges of manufacture and 5 of supply. Her sentence of 3 years' imprisonment was upheld on appeal by this Court.

The Judge found that the appellant as well as supplying chemicals for the purpose of the manufacture was a distributor for the operation, which had undoubted commercial overtones, although it is accepted that personal use by these three was also involved. The Judge assessed the culpability of the appellant as being less than that of Williams but greater than that of Smith.

The appellant is now 31 years of age; he has been resident in New Zealand since 1976 and was in employment prior to his arrest. In 1987 he was sentenced to imprisonment on a charge of manslaughter but of more direct relevance he also has previous drug related offences including possession of cannabis, and of more significance three offences of possession of heroin. His pre-sentence report discloses a long record of alcohol and drug abuse and he is said now to suffer from hepatitis C.

In his case the Judge used a starting point of 8 years' imprisonment. We do not think that assessment can be questioned. It is consistent with the approach taken by this Court on other occasions. We repeat what has been said in earlier cases that in drug-dealing cases of this kind it is not possible to achieve a fine tuning of sentencing to reflect the exact quantity or value of the drugs in question. This was an on-going operation of some substance involving the distribution of heroin outside

the membership of the group, which only ceased due to police intervention. It can only be regarded as serious. The evils associated with this trade need no repetition, and offending at this level must result, and be known to result, in a lengthy term of imprisonment. Those involved must know this consequence will follow conviction.

The Judge's allowance of one year 9 months for the pleas of guilty adequately reflect that aspect of the sentencing process. . The pleas do not appear here to have represented remorse or contrition, but rather the inevitable result of the police surveillance operation.

We see no disparity in the respective sentences passed on the appellant and Williams, and note that their respective degrees of culpability were carefully assessed by the Judge.

There is nothing to warrant interference by this Court with this sentence, and accordingly the appeal must be and is dismissed.

A handwritten signature in black ink, appearing to read "Henry J.", is written on the page.