

**IN THE HIGH COURT OF NEW ZEALAND  
NELSON REGISTRY**

**CRI 2008-042-003203**

**THE QUEEN**

v

**ROBERT MARTIN HEEMSKERK**

Counsel: H J Boyd-Wilson for the Crown  
J C S Sandston for the Prisoner

Date: 18 February 2009

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**SENTENCE NOTES OF WILD J**

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[1] Mr Heemskerk, you appear for sentence having pleaded guilty to one charge, laid indictably, of dealing in cannabis.

[2] You are charged that, at Nelson, you were in possession of cannabis for supply during August last year.

[3] The charge was laid on 1 September. You appeared in Court four times before you requested, on 9 December last year, to plead guilty. Judge Zohrab declined sentencing jurisdiction on 10 February this year. That is why I am sentencing you this morning.

[4] For several years the Police have received complaints and information about a 'tinnie house' operating from a house in Washington Road in Nelson. Some of the

complaints and information was to the effect that you and a Mr Webb were the operators. The complainants were mainly neighbours. They referred to the two of you by your nicknames.

[5] I do not know why the Police did not act earlier on that string of complaints. But, on 9 August last year, the Police received a complaint that a man had been assaulted and his car stolen by a member of the Black Power gang. This was apparently debt collecting by the gang: the man had not paid you for 10 cannabis tinnies he had bought from your tinnie house the previous week, he bought them on the 'tick'.

(Prisoner: Can I say something?

Judge: Yes.

Prisoner: I never gave any 'tick' and I never knew the person they are talking about.)

Judge: Right, I note that.)

[6] The Police executed a search warrant at the Washington Road house on 12 August. They found you sitting at a makeshift desk at the doorway. You had three cannabis tinnies in or on the desk, and a separate small amount of cannabis which you said was for your own personal use.

[7] You told the Police that the only other cannabis in the house was in the bathroom. In the bathroom the Police found about eight grams of cannabis head plus foil, scissors and scales, indicating that the bathroom was the work area where you prepared the tinnies.

[8] The Police also found five further tinnies under a water filter near the desk you had been sitting at. You had not mentioned those to the Police.

[9] In the bedroom where your house-mate Mr Webb was sleeping, the Police found a small cannabis plant growing in a pot.

[10] You had \$555 in cash on your person, all of it in notes of various denominations.

[11] You admitted to the Police that you were selling tinnies for \$20 each. You said it had been a very quiet night – you had only sold about four tinnies. You claimed this was not a money making venture, but that you were just supplying people with “a bit of smoke”.

[12] Mr Heemskerk, you will have heard me say to your counsel that I am not impressed by your attitude, your unrepentant attitude to dealing in cannabis. You don't seem to have any insight into the effects it has when it is used for long enough and in sufficient quantities, no insight at all.

[13] I am not told what action the Police took following the 12 August search warrant. Whatever it was, you just went right on operating your tinnie house.

[14] On 16 August the Police noticed several people coming and going from your address. They stopped two of these people, and each of them admitted they had just bought a tinnie for \$20. One of them was a 16 year old boy.

[15] Again on 21, 22 and 23 August the Police observed quite large numbers of people visiting your address. On one occasion, over an hour and a quarter, the Police counted 12 customers coming and going.

[16] On the evening of 29 August the Police executed a further search warrant. Mr Webb was there at the time with two other men. One of those men was a Black Power gang associate. That man had \$120 cash on him in \$20 denominations.

[17] The Police found four cannabis tinnies in the makeshift desk and seven further tinnies under the water filter near the desk. Again, in the bathroom, there was evidence that further tinnies were being prepared.

[18] You arrived home shortly afterwards and the Police again found a small quantity of cannabis in a plastic container in your pocket.

[19] While the Police were there two customers arrived. One of them admitted to the Police that he was there to buy a tinnie.

[20] You, Mr Heemskerk, admitted that you were preparing and also selling the tinnies. You said you bought about 10 ounces per week on average, paying \$400 per ounce. You declined to tell the Police who you were buying the cannabis from. You claimed that the Black Power associate who was in the house was not involved in the cannabis dealing, but was just there to provide a bit of security.

[21] One ounce of cannabis will make about 30 tinnies. Based on the figures you gave the Police, Mr Heemskerk, they estimate that your tinnie house had a weekly turnover of \$6,000, \$2,000 of that would have been gross profit. That \$2,000 is the difference between the \$6,000 weekly turnover, and the \$4,000 weekly cost of buying the cannabis.

[22] You were dealing in cannabis on a comparatively small scale for profit. As your counsel accepts, that puts your offending in the second category identified by the Court of Appeal in the leading case of *R v Terewi* [1999] 3 NZLR 62. The Court of Appeal indicated that sentencing starting points should be between 2 and 4 years. It added that “where sales are infrequent and of very limited extent a lower starting point may be justified”. *Terewi* applies to cannabis dealing as well as to cannabis growing. The Court of Appeal made that clear in *R v Gray* [2008] NZCA 224.

[23] I reject your counsel’s submission, Mr Heemskerk, that I should take a starting point of one year’s imprisonment. You were not dealing infrequently or to a very limited extent. Quite the contrary. You told the Police you had been operating this tinnie house for several years. On your own admission you were selling around 300 tinnies a week. What the Police observed last August confirms that you had many customers every day.

[24] I take a sentencing starting point of 3 years imprisonment. That is mid-range in *Terewi* category 2.

[25] I fix that starting point having taken into account that your tinnie house was grossing about \$300,000 a year. I have based my 3 year starting point particularly on the sentencing decision of the Court of Appeal in *R v Tait* CA163/04, 23 September 2004 and the sentences imposed by this Court in the cases of *R v*

*Heremaia* HC WHA CRI 2008-088-002483, *R v Te Paea* HC AK CRI 2004-092-12480, 25 February 2005, Harrison J and *R v Gray & Ors* HC AK CRI 2006-004-3200, 25 September 2007, Allan J. I have looked also, of course, at the High Court sentencing decisions in *R v Leighs* CA360/02 15 September 2003 and *R v Jones* HC ROT CRI 2005 070 4893, 9 December 2005, Allan J referred to me by Crown counsel.

[26] I turn now to consider you, Mr Heemskerk, as the man I am sentencing. Is there anything about you indicating that I should either increase, or reduce, that sentencing starting point of 3 years imprisonment? You are 54. You are a single man: you have never married and have only had one significant relationship, which I think lasted about two years. You think you may have fathered a son to that woman, but have never had any contact with the child, if indeed there was or is one.

[27] Although your addiction to drugs can be traced back to your youth (you said that you first used drugs when you were 16), over the first 30 or so years of your life you showed promise and enterprise. You left High School when you were 17 having gained some School Certificate passes. You were quite an athlete then, you were competing in road cycling events. After leaving school you completed an apprenticeship as a motor mechanic. Then you turned to fishing, and you gained an In-Shore Master's Certificate and you purchased your own fishing boat, and also owned, or I imagine were given, fishing quota before you sold both in 1987 or 1989, when you were in your mid-thirties.

[28] Your life then took a turn for the worse. You were injured in a car accident in 1991, shattering your right femur which was not satisfactorily repaired, and had to be reconstructed surgically about a year later.

[29] In 1992 you lost your In-Shore Master's Certificate, as a consequence of the heavy drugs you were by then using.

[30] Since that time you have not again worked, but have lived on an invalid's benefit and, I find, at least for the last few years, also on the proceeds of your drug dealing. You admitted that to the probation officer who reported on you. In

particular you are a heavy smoker, currently smoking about 30 grams of tobacco a day. You would not be able to afford that on an invalid's benefit alone.

[31] Amongst the reports I have is one from the Addiction Service of the Nelson Marlborough District Health Board. This states that you began using cannabis and heroin when you were 18. You supported your heroin use by burgling chemist shops. After about eight or nine years off heroin, you returned to it when you were fishing. With the money you got from selling your fishing boat and quota you became a very heavy heroin user. Now you are on the methadone programme: you are prescribed methadone on a daily basis.

[32] To summarise, you have a severe nicotine (tobacco) dependence, an opioid dependence (that is related to heroin) and a cannabis dependence, although the latter is said to be in what the report describes as "sustained remission". The reports I have record your claiming that you have not smoked cannabis for the last year. I find that a little difficult to reconcile with the fact that the Police found a small quantity of cannabis, which you said was for your own personal use, on you when they searched you both on 12 August and on 29 August.

[33] There is nothing in any of that which I consider should impact on the sentence I impose today.

[34] But what I must take into account is your past criminal offending. On my count you have 54 criminal convictions, going back to 1976. Your first convictions for drug offending were on 13 November 1991, when you were sentenced, if I read the criminal record correctly, to 10 months imprisonment for supplying cannabis and attempting to manufacture morphine. Subsequently, a further 19 convictions were entered against you for drug offending. I also note that you were again sentenced to imprisonment – 2 months imprisonment – on 5 May 1997, but on that occasion mainly for dishonesty offences.

(Prisoner: I never went to prison in 1997.

Judge: Well, I am basing that on your criminal record.)

[35] Although I am not, this morning, sentencing you for those past offences, I consider that I need to impose a sentence that, hopefully, will bring home to you that dealing in drugs is very serious criminal offending. Accordingly, I increase my starting point from 3 years to 3½ years imprisonment to reflect the fact that you have a significant list of convictions for drug offending. The increase would have been greater, had your recent offending included drug dealing as opposed to simply possession of drugs.

[36] You are entitled to credit for your guilty plea, entered at a fairly early stage. I allow you a 25% discount for that. I make the point that the Crown case against you was overwhelming: you admitted all of it.

[37] The result is that I sentence you to 2 years 8 months imprisonment.

[38] As requested by the Crown, and not opposed by your counsel, I order the forfeiture to the Crown of the \$80 seized by the Police on 12 August 2008.

[39] You can stand down.

Solicitors:  
Crown Solicitor, Tasman for the Crown  
McFadden McMeeken Phillips, Nelson for the Prisoner