

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

**CRI 2008-019-9546  
CRI 2008-019-10263**

**THE QUEEN**

v

**TAHI PAEWHENUA  
NAUMAI WHITEHEAD**

Hearing: 20 February 2009

Appearances: A M Beveridge for Crown  
J Parlane for Paewhenua  
S Pandaram for Whitehead

Judgment: 20 February 2009

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**SENTENCING REMARKS OF ALLAN J**

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*Solicitors: Crown Solicitor, Box 19173, Hamilton  
J. Parlane, Te Awamutu  
S. Pandaram, Box 4033, Hamilton*

[1] Mr Paewhenua and Ms Whitehead, you appear for sentence this morning, having each pleaded guilty to charges of possession of cannabis for supply, selling cannabis, possession of utensils and possession of cannabis oil. The first two charges carry maximum penalties of eight years imprisonment, possession of utensils carries a maximum penalty of one year imprisonment, and possession of cannabis oil three months imprisonment.

### **Background**

[2] On 6 November 2008 the police executed a search warrant at your home address, which you share with your three teenage children. The police found 68 tinnies, each containing between 0.8 and 1.2 grams of cannabis. They sell for \$20 - \$30 each at street level. The police also found \$2780 in cash, some loose cannabis stalks, and records of sales and of sums of money owing to you for the sale of cannabis.

[3] During the search a member of the public arrived at the house, seeking to purchase a tinny. The house was furnished with a surveillance camera, trained on the driveway, and upon the entry to the house. A monitor connected to that camera was set up in the kitchen/dining area.

[4] You each admitted that you had been selling cannabis from your home address for some time. There is something of a dispute about the period concerned, but it is accepted by counsel for the defence that this had been going on for at least three months. On average, you would purchase three to six ounces of cannabis each week, at a cost of about \$350 per ounce. The cannabis was re-packaged into tinnies and sold from the house.

### **Personal circumstances**

[5] Mr Paewhenua, you are 40 years of age and of Maori ethnicity. You have been married to Ms Whitehead for some 20 years. Although you worked for a

significant period as a commercial truck driver, you now suffer from chronic back pain and have been on a sickness benefit over the last year or so.

[6] Ms Whitehead, you are 36 years old, also Maori, and generally in good health.

[7] Each of you uses cannabis regularly; indeed it appears that you smoke cannabis together most nights of the week. It may well be that your personal cannabis habits gave rise to this offending. It appears that these commercial sales activities were planned, in the sense that they were the subject of a formal arrangement between the two of you, and that the selling operation grew by degrees. You made enquiries as to costs and sources of supply and set out to build a retail cannabis selling business. You each say that financial reasons underpinned the offending, that you had limited income, and that you needed to support your family. But of course there are lawful ways of doing that.

[8] You are each highly remorseful and say that you are determined not to offend again. You are both concerned about your family and there is a particular issue about your oldest child who has some health issues and is in need of close care and oversight.

[9] Mr Paewhenua, you have nine previous convictions dating between 1985 and 2001. There is a conviction for possessing cannabis for supply and a further conviction for possession of cannabis, both in 2001. The remaining convictions are for dishonesty and driving offences.

[10] Ms Whitehead, you have only one prior conviction in May 1993 for obtaining by false pretences. You were then very young.

### **Sentencing principles**

[11] I am required, in the course of determining an appropriate sentence, to hold each of you accountable for the harm done to the community by your offending, to promote in you a sense of responsibility for the harm you have done, and to

denounce your conduct and deter you and others from committing similar offences in the future. This last consideration is of particular relevance to drug offences, and in particular to drug offences having an element of commerciality. Although cannabis is a Class C drug, it is nevertheless responsible for a great deal of human misery and is, of itself, the cause of much criminal offending in this country. So there is a need to protect the community from you. I do not, of course, overlook the need to assist you in your rehabilitation and re-integration. I take into account, also, the matters set out in s8 of the Sentencing Act.

### **Guideline judgment**

[12] The starting point for sentencing in respect of cannabis related offending is the guideline judgment in *R v Terewi* [1999] 3 NZLR 62. Although that case discusses cannabis cultivation, it is now well established that the principles outlined apply also to cases of sale and possession for supply of cannabis.

[13] Band 2 of the *Terewi* guidelines covers small scale cultivation for commercial purposes and suggests a starting point of two to four years imprisonment, although where sales are infrequent and of limited extent, a lower starting point may be justified.

[14] The Crown submits that the offending falls at the upper end of Band 2 of *Terewi* and attracts a starting point in the range of three and a half years' imprisonment. Defence counsel put the case at the lower end of Band 2, so justifying a starting point of no more than two and a half years.

### **Discussion**

[15] I propose to refer briefly to three recent cases that are similar to this. In *R v Tupaea* (High Court Auckland, CRI 2006-057-2050 and CRI 2006 057-2052, 15 May 2007), the prisoner pleaded guilty to, and was sentenced for, possession of cannabis for supply and breach of release conditions. The police found 70 tinnies, with an estimated street value of \$1400, five grams of loose cannabis worth \$100, and \$420 cash. The prisoner had 95 prior convictions, seven of which were for

cannabis offending within the last four years. At the time of the offending he was still subject to release conditions for a previous sentence.

[16] The prisoner was placed towards the foot of category 2 of *R v Terewi*. A starting point of two years, four months was adopted, but there was an uplift to three years, two months for personal aggravating factors, namely the prisoner's extensive criminal history, recent cannabis convictions, and the fact that he was offending while still subject to parole conditions from his previous sentence. After a deduction of one-third for a guilty plea, the final sentence was two years, two months imprisonment.

[17] In *R v Mamanu* (High Court Auckland, CRI 2008-090-4426, 18 November 2008) the prisoner pleaded guilty to possession of cannabis for supply and possession of utensils. A search warrant was executed. Ninety-eight tinnies were located, together with two bags of cannabis weighing, in total, 110 grams. Other paraphernalia was also identified and \$2541.50 was seized. The prisoner's premises were furnished with surveillance equipment.

[18] Again, the case was held to fall within category 2 of *R v Terewi*. A starting point of two years, six months was adopted. That was reduced to one year, ten months to recognise the guilty plea. In that particular case home detention was thought to be appropriate and twelve months' home detention was imposed in lieu of a prison sentence.

[19] In *R v Heremaia* (High Court Whangarei, CRI 2008-008-2483, 14 October 2008), the prisoner pleaded guilty to two counts of possession of cannabis for supply and three counts of selling cannabis. The police located at his address 59 tinnies, together with snaplock bags containing a total of 63 grams of cannabis, a number of empty snaplock bags containing cannabis stalk, and \$2875 in cash.

[20] The prisoner admitted buying four to five ounces of cannabis per week, and to making about \$1500 a week from sales. While the prisoner was on bail, a further search of his premises located another 42 tinnies and \$3060 in cash.

[21] The case was again placed within category 2 of *R v Terewi*. A starting point of two years, nine months imprisonment was adopted, increased to three years, three months to account for the re-offending while on bail, and then reduced to an ultimate sentence of two years, two months imprisonment in light of an early guilty plea, acceptance of responsibility, and personal circumstances.

[22] I am satisfied that this case falls towards the lower end of category 2 of the *Terewi* classification and that an appropriate starting point is two years, six months' imprisonment.

[23] There are several mitigating factors. First there is your early guilty pleas and there is your remorse, which I am satisfied is genuine. I am sure that each of you now bitterly regrets what has occurred and that you each genuinely intend to avoid further offending of this sort in the future. Whether you will be able to do so will depend very largely on your ability to put aside your long-standing personal cannabis consumption habits.

[24] I take into account also your previous records, which include no previous drug offending at all in your case Ms Whitehead, and only limited cannabis related offending in relation to Mr Paewhenua. I take into account also, to the extent that I am able, and it is limited, your personal circumstances, and in particular the fact that you are responsible, between you, for three teenage children, including a daughter with special needs.

[25] I deduct one-third for these mitigating factors. That reduces to a sentence of one year, eight months' imprisonment in respect of the two lead offences.

### **Home Detention**

[26] I turn now to the question of home detention, which is sought by defence counsel as an alternative to a sentence of imprisonment, but opposed by counsel for the Crown.

[27] As is noted by Ms Beveridge, the approach to sentences of home detention is authoritatively discussed in the judgment of the Court of Appeal in *R v Hill* [2008] 2 NZLR 381 (CA). There, the Court observed that home detention is intended as a mechanism to reduce the number of people sentenced to imprisonment. In some cases society's interests can be served by imposing restrictions on liberty through home detention rather than through imprisonment.

[28] General policy considerations must be balanced against other sentencing principles, which require sanctions imposed by the Court to reflect the need for denunciation, deterrence and community protection. In short, a sentence of home detention must be imposed in a manner that is consistent with the principles and purposes of sentencing.

[29] In this case the pre-sentence reports identify home detention as a possible option for the Court to consider and there are expressions on your part of remorse and of willingness to engage in remedial programmes. As is noted in *R v Hill*, however, such expressions of intent or hope are to be treated with caution. The Court is likely to be much more influenced in considering home detention by evidence of practical and concrete steps already taken towards rehabilitation.

[30] I accept Ms Beveridge's submission that this was a premeditated, determined and organised course of conduct over a period of time. This was not a case of cannabis offending occurring almost by accident. You each took a decision to engage in the cannabis trade, knowing of, and deliberately taking the risks entailed. There is a need to reflect those considerations in the ultimate sentence. That would not necessarily disqualify you from consideration for a sentence of home detention, but there are, in my view, two further obstacles which, in combination, put home detention out of the question.

[31] The first is the fact that the proffered home detention address is your home address at which the offending occurred. In other words, the proposal is that you each simply return home and that you be subject, at that address, to the usual home detention conditions.

[32] Mr Parlane, this morning, has suggested that intensive supervision, in conjunction with home detention, might ameliorate any concerns that might arise, but the Court of Appeal has made it clear that, other than in exceptional cases, such an outcome, namely that the home detention address is the offending address, cannot be tolerated. First, it sends the wrong message to offenders and to the community. Second, it simply opens up the prospect of further offending from the same address. The risk of that is high in cases involving sales of tinnies from residential addresses.

[33] A second problem arises from the fact that each of you would, in effect, act as sponsor for the other. Neither of you is acceptable to the Crown or to the authorities as a sponsor by reason of your role in this offending. So it is simply not possible to consider a sentence of home detention for you both at the same address. Neither, in my view, would it be proper to impose a sentence of imprisonment on one and a sentence of home detention on the other. You are each equally culpable and it is a basic principle that prisoners who bear a similar responsibility should receive the same sanction.

[34] I have not overlooked the fact that your family needs you and that your daughter is particularly dependent upon you. But I am not permitted to allow that to outweigh other considerations that point inexorably to a sentence of imprisonment in a case of a sale of illicit drugs on a purely commercial basis.

[35] For these reasons I rule out home detention as a viable option.

### **Forfeiture**

[36] On the Crown's application, I make an order for destruction of the drug related exhibits. Ms Beveridge applies for an order forfeiting the money obtained in the searches of your address, pursuant to s32(3) of the Misuse of Drugs Act 1975. It is accepted that \$2500 of this sum represents the proceeds of cannabis sales, and there will accordingly be an order of forfeiture in respect of that sum. Ms Whitehead says that the balance of the amount seized, namely \$280, represented her benefit money. I am not satisfied that that sum ought to be forfeited and I direct that it be repaid to Ms Whitehead.



## **Sentence**

[37] You are each sentenced, on the charges of selling cannabis and of possession of cannabis for supply, to one year, eight months imprisonment.

[38] On the charge of possession of utensils you are sentenced to two months imprisonment.

[39] On the charge of possession of cannabis oil you are sentenced to one months imprisonment.

[40] All sentences are to be served concurrently. The effective sentence is one year, eight months imprisonment.

**C J Allan J**