

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

CRI-2007-057-002376

THE QUEEN

v

ANTHONY WIKITERA

Hearing: 17 December 2008 and 24 February 2009

Appearances: B M Finn for the Crown
M S Gibson for the Prisoner

Judgment: 24 February 2009

SENTENCE OF DUFFY J

Counsel: M S Gibson 34 London Street St Marys Bay Auckland 1011 for the Prisoner

Solicitors: Meredith Connell P O Box 2213 Downtown Auckland 1140 for the Crown

[1] Mr Wikitera, you have pleaded guilty to and been convicted of one representative charge of manufacturing the class A controlled drug, methamphetamine between 1 January 2007 and 4 December 2007. This is a serious charge that attracts a sentence of up to life imprisonment.

Facts

[2] The facts are that in early October 2007, the Police commenced a surveillance operation of a pharmacy at Pukekohe. The Police were aware there was a large supply of quantities of pseudoephedrine being obtained from that pharmacy. You were one of the persons whom the surveillance operation established was part of a group of persons receiving some of the pseudoephedrine being supplied.

[3] On 4 December 2007, the Police executed a search warrant at the address where you resided. At this address they located a clandestine drug laboratory for the purpose of manufacturing methamphetamine. They found there chemicals and equipment used to manufacture methamphetamine, a number of empty packets of pseudoephedrine based medicine and a "Parr" bomb, which is a device used in the manufacture of methamphetamine. Also found were a number of empty blister strips which would, if full, have contained 420 pseudoephedrine tablets of 30 milligrams pseudoephedrine hydrochloride each. A further packet of pseudoephedrine based medicine was found, factory sealed, containing 48 tablets of 30 milligrams of pseudoephedrine hydrochloride each. Once extracted, this amount of pseudoephedrine hydrochloride is capable of being converted into 12.93 grams of methamphetamine, which has a street value of between \$9,000 and \$12,000.

[4] When spoken to by the Police, you stated that you had manufactured methamphetamine on three to four occasions in recent times and, most recently, three days prior to the execution of the search warrant. You further stated that you had purchased pseudoephedrine from an employee of the pharmacy under surveillance on three to four occasions in recent times. You claimed you had manufactured the methamphetamine for your personal use.

[5] Analysis of items found at the address revealed that pseudoephedrine had been extracted and that methamphetamine had been manufactured.

[6] I am not prepared to accept your explanation that the pseudoephedrine was simply for your personal use. I consider 12.93 grams of methamphetamine to be an amount well in excess of that likely to be manufactured for personal use. Given the street value of the methamphetamine found in your possession and the number of pseudoephedrine tablets you had obtained in order to manufacture methamphetamine, I consider it proper to draw the inference that, at very least in part, the manufacture was for commercial purposes.

[7] I now turn to your personal circumstances.

Personal circumstances

[8] You are a 39 year old male; you have two children (aged 12 and nine) to your partner of 15 years. The probation report says you have been unable to see your partner while on remand and you have expressed concern about the status of the relationship as a result of your offending. You reported to the probation officer that you do not drink alcohol but prior to your remand in custody, you admitted you had been using methamphetamine and cannabis. Your cannabis use has been ongoing over a long period of time, whereas it seems your use of methamphetamine is only recent.

[9] You have many previous convictions for the use of cannabis and one previous conviction for an offence of manufacturing methamphetamine in 2004. On that occasion you received a sentence of three years, three months' imprisonment.

[10] You have expressed remorse for committing the offending in regards to the repercussions your offending has had on your family. You have expressed motivation to address both your drug use and your personal relationship issues through counselling, and that is to your credit. You are also fortunate in having the support of your mother, who is here in Court today. That insight, plus the support of

your mother, may help you in the future to overcome the problems that have currently led you to this Court.

[11] It seems you have had no real involvement with Community Probation and Psychological Services in the past, and there have been no rehabilitative sentences. It may be that with the additional insight you now have, you are in a position to ensure that this is the last of your offending. In this regard, the pre-sentence report is positive. It notes you are assessed as motivated to address your offending. The probation officer also says that if you are able to follow through with your motivation, your risk of re-offending is assessed as low, due to your good insight into your offending behaviour.

[12] I now turn to the principles of sentencing.

Sentencing principles

[13] In terms of sentencing principles, there is no question that given the nature of the offending in this case, I need to impose a sentence of imprisonment. The question is for how long. Now, Mr Wikitera, as I go through the sentencing principles, it is the way matters are now, and your counsel may have explained it to you, but I have to choose a starting point. I then have to take into account any aggravating factors and then any mitigating factors. So the starting point is not always the end point, and it may be that the starting point increases as a result of aggravating factors appurtenant to you as an offender but then it will decrease as a result of mitigating factors. So until I have finally concluded with my reasoning, you will not know what the ultimate sentence is. So do not be perturbed as I work my way through it.

[14] The Crown has submitted that an appropriate starting point for your offending is four and a half years' imprisonment. The Crown submits that your case falls within band 2 of *R v Fatu* [2006] 2 NZLR 72, which is a case which sets the tariff for sentencing for your type of offending. Your counsel has responsibly recognised that your offending falls within band 2 of *Fatu*, and he has suggested a starting point of four years. It seems to me that both the Crown and your counsel

have realistically perceived that this is a case where the appropriate starting point is around four and a half to four years.

[15] In determining the appropriate sentence, I am required by the Sentencing Act 2002 to take account of the purposes and principles of sentencing and any relevant aggravating or mitigating features. Section 7 sets out the general purposes of sentencing. The list is exhaustive and all the purposes must be considered. I have given consideration to those purposes and I consider that six of the purposes are applicable. They are:

- a) to hold you accountable for the harm done to the community by your offending (and there is no doubt that methamphetamine is a pernicious drug and people who manufacture it and, therefore, make it available for others to use, do considerable harm to the community);
- b) to promote in you a sense of responsibility for and an acknowledgement of that harm;
- c) to denounce your conduct;
- d) to deter you and other persons from committing the same or a similar offence;
- e) to protect the community from persons like you; and
- f) to assist in your rehabilitation and reintegration into the community.

[16] Section 8 of the Sentencing Act sets out the general principles of sentencing that must be considered. That list is not exhaustive. I consider that four of the principles are applicable here. I must take into account the gravity of the offending in your case, including the degree of culpability. I consider I must also take into account the seriousness of the type of offence in comparison with other types of offences, as indicated by the maximum penalties prescribed for the offences. I must also take into account the general desirability of consistency with appropriate sentencing levels and other means of dealing with offenders in respect of similar

offenders committing similar offences in similar circumstances. And I must impose the least restrictive outcome that is appropriate in the circumstances.

[17] The comparable cases to which I have been referred and which I have found to be of assistance are: *R v Hanif* HC AK CRI 2007-057-2376 4 November 2008 John Hansen J; *R v Owens* HC HAM CRI-2008-019-3077 5 June 2008, Venning J; *R v Comrie* [2007] BCL 468, Andrews J.

[18] Taking both s 7 and s 8 into account, and also the comparable cases referred to me, I consider that the appropriate starting point is one of four years' imprisonment. There are no aggravating factors of the offence to be taken into account. Both the level of harm methamphetamine poses to the community and the level of premeditation are inherent in the offence and reflected in the sentencing levels prescribed by the guidelines in *R v Fatu*. There are no mitigating factors of the offence.

[19] In respect of aggravating factors relating to yourself, I have considered your previous convictions. In relation to your previous drug-related convictions, many of these relate back to the 1990's and I do not consider they are relevant. I consider the only relevant conviction is the conviction for manufacturing of methamphetamine in 2004, which I must note seems not to have deterred you from offending again. Taking account of that aggravating factor, I propose to uplift the sentence to five years' imprisonment.

[20] However, I then turn to take into account the mitigating factors. There is your guilty plea, the remorse that you have shown, and the insight you now have into your offending and the need to do something about your drug taking. You are entitled to have this recognised. I propose to discount the five years I have arrived at by approximately one-third. That is to reflect the early guilty plea and the remorse you have shown. The effect of the approximate one-third reduction brings me to a sentence of three years, four months' imprisonment. That will be the end sentence.

[21] Mr Wikitera, would you please stand.

[22] On the count of manufacturing a class A controlled drug, methamphetamine, you are sentenced to three years, four months' imprisonment. I hope this time you take the opportunity to ensure this is the last time you appear in Court.

[23] Please stand down.

Duffy J