

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

CRI-2008-092-015060

THE QUEEN

v

DOBSON PAUL ABRAHAM

Hearing: 27 February 2009

Appearances: N R Webby for the Crown
D L O'Connor for the Prisoner

Judgment: 27 February 2009

**INTERIM JUDGMENT OF DUFFY J
[Re Sentence]**

Counsel: D L O'Connor P O Box 2283 Shortland Street Auckland 1140 for the Prisoner

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

[1] Mr Abraham, you have pleaded guilty to and been convicted of two offences:

- i) Possession of cannabis for supply; and
- ii) Possession of an offensive weapon, which was related to the possession of cannabis for supply charge.

[2] The facts of your offending are that the Police executed a search warrant under the Misuse of Drugs Act 1975 at a property at 6 Tindall Crescent, Otara, on 1 May last year. You were located on the premises. On entering the premises, the Police located a home-made wooden batten placed above the rear door, and this is what gives rise to the possession of an offensive weapon charge. The Police executed a thorough search of the premises and located in a "Milo" tin on the kitchen bench 25 tinnies. Two additional tinnies were found rolled into your track pants. You were also found with \$1,440 in cash. The total weight of the cannabis found was 20.5 grams.

[3] I have read your pre-sentence report carefully. It shows that you had a disturbed childhood, that you have last held employment since 2000, when you were employed in the meat works for seven years. You have a long history of drug dealing, according to the pre-sentence report, and that has made it difficult to find employment. You now live in Dargaville with a long-time friend, Ms De Boar. You stated to the probation officer that you moved to Dargaville to escape the environment and culture that you were involved in when you were living in Auckland.

[4] It seems you have recently become a fully patched member of the Tribesmen motorcycle club but you claim that you did that because the club pulled you out of a rut, though it has also regrettably been a factor in your offending and you need to deal with that.

[5] You do not, it seems, use illicit drugs or alcohol, but you do suffer from poor health. You have difficulty with obstructive sleep apnoea and obesity

hyperventilation syndrome, diabetes and other illnesses which require regular medical attention.

[6] You have a history of 39 prior convictions. Most of these are for driving and violence. There are 11 charges overall relating to cannabis but this goes back to a period in time up to 1995. Your most recent drug conviction was in 2005 for possession of a cannabis plant, and I note that you received a lenient sentence on that occasion so the offending cannot have been too serious. Before that you have two convictions in 2005 for possession of cannabis for supply.

[7] You currently have outstanding fines totalling almost \$50,000, and I understand that these have been paid off, though I also understand you are currently serving a sentence of imprisonment relating to the fines.

[8] The Crown has submitted that your offending falls with band 2 of a case that sets the tariff for offending in cannabis cases, and that is *R v Terewi* [1999] 3 NZLR 62. The Crown says an appropriate starting point is a sentence of two to three years' imprisonment. The Crown has indicated there are aggravating factors in your offending in relation to a commercial element and that there has been premeditation. The Crown also has identified your prior convictions as aggravating factors. The Crown submits there are no mitigating factors relating to your offending but recognises that your guilty plea is a significant mitigating factor relating to you. The Crown has referred to a passage in *Terewi* at [66] that states in drug offending of a commercial nature, the personal circumstances of the offender are usually not to be given much significance in the sentencing process. This is because deterrence is a fundamental requirement. The Crown, however, has acknowledged that at the conclusion of the pre-sentence report that a sentence of home detention has been suggested, though in submissions today the Crown has indicated its opposition to the sentence of home detention. It also seeks an order for the destruction of the cannabis and forfeiture of the cash found in your possession.

[9] Your counsel's submissions draw attention to your ill-health and submit that an appropriate starting point is two years and that, with the appropriate deductions

for the guilty plea, you are within the range where you would be eligible for home detention, and that is the sentence your counsel seeks to have imposed.

[10] Although the Crown has sought to portray the commercial element of your offending and the premeditation as being aggravating features of the offending, I consider that those features are inherent in the type of offending recognised in band 2 of *Terewi's* case. Band 2 deals with commercial dealing of drugs and in any commercial dealing with drugs, there will be the commercial element and there will be an element of premeditation. I, therefore, do not see that there are any aggravating features relating to your offending.

[11] I have considered the relevant sentencing principles in s 8 and s 7 of the Sentencing Act 2002. Certainly it is important when sentencing persons on drug dealing charges that deterrence and denunciation are kept firmly in mind because drug dealing is a great difficulty for the community. Nonetheless, I am also required by the Sentencing Act to impose the least restrictive sentence.

[12] I have looked at comparable cases. Cases that I consider are comparable are: *R v Awa* HC AK CRI-2007-035-0021 17 February 2009, Asher J; and *R v Packer* HC ROT CRI-2008-063-0444 5 September 2008, Stevens J. In those cases the sentences of imprisonment were ultimately replaced with sentences of home detention.

[13] In your case, Mr Abraham, I consider the appropriate starting point is two years' imprisonment. I consider that there should be an uplift of six months' imprisonment to reflect aggravating features of your past conduct, namely your criminal offending with the cannabis charges in the past, and I also include in the uplift the offensive weapon charge because the possession of the offensive weapon is related to the cannabis dealing. In that way, I will deal with the totality of the offending. That takes the sentence of imprisonment of 30 months, but I intend to give you a discount of one-third to reflect your early guilty plea and because of the indications I have seen in the pre-sentence report that you are attempting to turn your life around and to deal with the health problems you have. That reduces the lead

sentence to one of 20 months' imprisonment. It brings it under a period of two years and makes you eligible for consideration for a sentence of home detention.

[14] When I consider the Court of Appeal's decision in *R v Hill* [2008] NZCA 41 where the Court of Appeal has reminded Judges imposing sentences that the sentence of home detention is a serious sentence to be considered as a proper substitute when the term of imprisonment would be less than two years, I consider it is appropriate in your case and if I were able to impose home detention today, I would impose a period of 10 months' home detention. Because you are currently serving a sentence of six months' imprisonment for the non-payment of fines, it is not possible to do that; but I have discussed with your counsel today the possibility of deferring sentence so that you can serve the sentence for non-payment of fines, and then the sentence of home detention for these offences will be imposed.

[15] What I propose to do is this. I will adjourn the sentencing, having indicated that I have in mind 10 months' home detention. The sentencing is adjourned to come back before me at 9.00 am on 26 March 2009, so at that time I will be able to finalise the sentence.

[16] You may stand down.

Duffy J