

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

**CRI-2007-004-18479**

**THE QUEEN**

v

**SHELLEY ROWENA TURNER**

Hearing: 13 March 2009

Appearances: Mr N Flanagan for Crown  
Mr P Kaye for Ms Turner

Judgment: 13 March 2009

---

**SENTENCING REMARKS OF LANG J**

---

Solicitors:  
Crown Solicitor, Auckland  
Counsel:  
Mr P Kaye, Auckland

[1] Ms Turner, you appear for sentence at the age of 36 years having been found guilty by a jury on seven charges. The most serious of those, as your counsel recognises, is possession of methamphetamine for the purposes of supply. That charge carries a maximum sentence of life imprisonment.

[2] You were also found guilty of being in possession of approximately 75 grams of cannabis for supply. The maximum penalty for that offence is eight years imprisonment. In addition, you were found guilty of being in possession of equipment and a precursor substance with the intention that those items be used in the manufacture of methamphetamine. Both of those charges carry maximum sentences of five years imprisonment. Finally, you were convicted on four charges of being in unlawful possession of a firearm and one charge of being in possession of explosives, namely ammunition. The maximum penalty for each of those charges is four years imprisonment.

### **Summary of Facts**

[3] The facts that give rise to your offending were thoroughly canvassed at trial. I presided over your trial so I have some familiarity with them, as you would expect.

[4] The charges flowed from a search that the police carried out on 20 August 2007 of a residential address that you were then renting in Glen Innes. You and your 3-year-old son were living at the address at that time.

[5] When the police searched the address they found all of the trademarks of a drug dealing operation. First, they found a relatively sophisticated surveillance system that involved the use of both television cameras and two television monitors. One of the monitors was in your bedroom and the other was in a living area of the address.

[6] The police also found a scanner of the type used by drug dealers to monitor police transmissions. Pinned to the wall in the vicinity of the scanner was a printout of police codes.

[7] The police also found a large quantity of cannabis in several different locations. Some of it was in bags on a table but a more significant quantity was in a small refrigerator in your kitchen. As I have said, this added up to about 75 grams in all.

[8] The police also located a large quantity of empty snaplock bags of the type that drug dealers commonly use to package small quantities of methamphetamine. These are commonly known as point bags. In total they found about 180 of these.

[9] They also found several snaplock bags containing a cream crystalline substance. Upon analysis this was found to be methamphetamine and had a total weight of approximately three grams. These items were again found in the living area of the address. Near them the police found a set of digital scales, again of a type commonly used by methamphetamine dealers to weigh quantities of methamphetamine.

[10] In your wallet the police found just under \$5000 in cash. When they searched the bedroom of your address they found a shotgun under your bed. They also found a false compartment in the laundry of the address where two rifles were found and a pistol. Quantities of ammunition were also found at your address.

[11] When the police looked in the bathroom, they found a sealed chilly bin that contained a large amount of plastic and glass equipment of the type commonly used to manufacture methamphetamine.

[12] When they looked in the garage they found a pressure cooker and metal tube or cylinder of a type also used in the manufacture of that drug. Also located in the garage was a two-litre container containing hydrochloric acid which, as you well know, is a precursor substance for the manufacture of methamphetamine.

[13] When the police asked you at the time about the items that they had found, you made some ambivalent comments that suggested that you knew about some of them. Very quickly, however, you exercised your right to speak to a lawyer and thereafter you made no further statement.

[14] At trial you gave evidence in your own defence. For the most part you said that the items that the police had found at your address had either been taken there or created at your address at the request of a person you referred to as "TC". This was a person whom you clearly had had some dealings with, and he was part of the gang culture, or he appears to have been, part of a gang culture, in which your former partner and the father of your son was evidently immersed.

[15] You told the jury that you had engaged in carrying out errands for TC. This included travelling to various places to pick up packages on his behalf. On occasions you said that you were also asked to pick up quantities of cash for him. You said that in return for this he would provide you with items for your own use. I take that to be methamphetamine and/or other drugs.

[16] The cash that was found in your possession provides an example, you said, of what you were talking about. You said that on the Saturday before the police arrived you travelled to Tauranga where you met a man in Greerton. You were acting at that time under instructions from TC. The man gave you the quantity of cash and you put it in your wallet before travelling back to Auckland. You said that other matters had prevented you from giving the cash to TC before the police arrived at your address and discovered it.

[17] Likewise, you said that the firearms had been brought to the address by TC. The same applied to the equipment and the precursor substance. You said that you knew, not surprisingly, about the false compartment in the laundry. You also clearly knew about the items in the chilly bin. You said that all of those items had been put there, not because you consented to it, but because you were scared by what TC had threatened to do to you and your son if you did not comply with his wishes.

[18] Likewise, you said that TC had installed the police scanner. He, too, had installed the television cameras and monitors and he had asked you to print off from the internet the police codes that were found pinned to the wall.

[19] You said that you had no knowledge of the cannabis and that when you had gone to bed on the previous evening, neither the digital scales nor the

methamphetamine had been on the table. The clear inference that you asked the jury to draw was that TC had placed the items in your address. You said that you had given him the key to the address and that he had used that on several occasions to gain access to it even though he did not have your express permission to do so.

[20] So overall, Ms Turner, the picture that you painted for the jury was that of a person who was effectively under the spell of an intimidating gang member who got you to carry out errands and who used your address as if it was his own.

[21] I will come back to my own findings in relation to the evidence when I come to discuss your culpability in relation to each of the charges.

### **Sentencing Act 2002**

[22] In sentencing you I have to bear in mind the principles of the Sentencing Act 2002. As the courts have repeatedly said, in cases involving Class A offending generally and methamphetamine in particular, issues of deterrence and denunciation are to the forefront.

[23] You, Ms Turner, are a living example of the havoc that methamphetamine is wreaking on our society. You present as a person with a university degree and a bright future ahead of them now staring instead at a sentence of imprisonment or home detention. The only reason that you are here now is your involvement with methamphetamine. That is precisely the reason the courts have no option but to impose deterrent sentences. People who involve themselves in the dealing of methamphetamine have to know that if they are caught they go to jail or, at least, suffer very serious consequences.

[24] So, the principal issue for me is to select a sentence that is consistent with the type of sentences imposed in broadly similar cases and to impose what is the least restrictive outcome in the circumstances - an outcome that provides, so far as possible, for your rehabilitation and reintegration into the community. That essentially boils down to a sentence of home detention or a sentence of

imprisonment that is the shortest term possible having regard to the circumstances of your offending.

### **The approach to be taken**

[25] The approach that I propose to take is to treat the charge of being in possession of methamphetamine for supply as the lead, or most serious, charge. That is an obvious approach to take because of the fact that the maximum sentence for that offence is one of life imprisonment.

[26] I propose to fix a starting point in relation to that charge and then to build into that starting point an uplift to reflect your culpability in relation to the other forms of offending in respect of which you have been found guilty. I do that because I am satisfied that the police effectively disturbed a single drug dealing operation and that all of the offending falls to be considered within the context of that drug dealing operation. I do not consider that there would be any utility or logic in applying cumulative sentences. Nevertheless, the overall effect will be the same as if I had imposed cumulative sentences on the different categories of offending in respect of which you have been found guilty.

### **Starting point**

[27] Counsel agree that the leading authority in fixing a starting point for your methamphetamine offending is the decision of the Court of Appeal in *R v Fatu* [2006] 2 NZLR 72. In that case the Court of Appeal identified three separate bands of offending in relation to methamphetamine. Category one, which will attract a starting point of between two and four years imprisonment, will generally relate to offending where two to four grams of methamphetamine is involved.

[28] You were found in possession of three grams of methamphetamine so it would seem that you fall squarely in the middle of that band. Although the weight of the methamphetamine is clearly a very relevant factor, the courts have repeatedly said that all aspects of the culpability of the offender must be taken into account in

assessing where the starting point should be fixed. That means that I really need to assess where you fall within the drug-dealing spectrum.

[29] I accept your counsel's submission that the activities of other people are very closely aligned to your own activities in this context. I reach my conclusion as to your level of culpability based on two factors.

[30] The first is the set-up that the police found in your home. By any standards this was relatively sophisticated. The use of closed circuit television, the use of scanners, police codes and the presence of large numbers of snaplock bags all point, Ms Turner to a drug retailing operation. That is where you fit, in my view. You are a retailer of drugs. Finally on that point, I also look at the way in which the drug here was packaged. It was packaged in small quantities and a relatively small quantity was found. Similarly, a relatively small quantity of cash was found, in drug dealing terms at least. Those factors all point to drug dealing, albeit at the retail end.

[31] The second factor that leads me to that conclusion is the letter to which your counsel has referred in making submissions this morning. It may well have been, Ms Turner, the single factor that got you convicted because in that letter, in your own words, you describe what you were doing.

[32] I appreciate your counsel's comments at trial when he said that the letter must be read overall and that passages from it shouldn't be taken out of context. It is quite difficult, actually, to make sense overall of the letter. That is possibly due to the fact that you may well have been at that time, as you said at trial, in a state influenced by the use of drugs. But, nevertheless, what I take from the letter is that you had just received a visit from this person TC. Quite clearly there had been an argument between the two of you. It seems that he had accused you of being a junkie. He had also accused you, it would seem, of altering the material that came into your possession in some way. You denied that vehemently in the letter and, in doing so, you made comments that put your offending in its true light.

[33] I am going to read out to you some of the passages that assist:

I DO NOT CHANGE THE ESSENCE OF WHAT I SELL!!! I did not alter what I was passing on to you (and I have never, ever done this is my dealings thank you very much).

[34] Then you go on:

I know it happens. I know why it happens. I know people who do it. But in this cut-throat world, it is not the competitive strategy I'd like to adopt. Instead, I have built a reputation based on quality. People know I have good products available. Hey, I only have an extremely minimal share of the market, but ask everyone of them - I don't sell shit. Any shit that has passed through my business has been made that way elsewhere, and I've been too naïve or ignorant to know until it's too late.

People think I've been playing in this game for a long time. I haven't. I tell you, I haven't. Three weeks ago approximately, I was the middle connection for a wheel. In the last two weeks, that has increased to 3. This 3rd attempt however, hasn't been pleasant. Two different packages - both shit. The end result is that I am to blame, and consequently I find myself sitting here writing this.

[35] Those passages, Ms Turner, tell me exactly where you fit in the drug chain. I consider, as I have said, that you are a retailer. You obtain quantities of drugs from others and then you on-sell it, probably to users.

[36] That doesn't put you at the highest level of culpability in Band 1 of *Fatu* but I consider that it puts you firmly in the middle. For that reason, on the charge of being in possession of methamphetamine alone, I would select a starting point of three years imprisonment.

[37] Now I must consider how to take into account the other forms of your offending. The difficulty here is that, on their own, each of them would probably attract a reasonably significant sentence. On their own the charges of being in possession of equipment and substances could easily attract a sentence of 12 to 18 months imprisonment. So far as they are concerned, I am prepared to accept that you stored them for others. You did so not with the intention that you would use them yourself or that you would obtain any reward for storing them. But, nevertheless, you were prepared to make your property available for those items to be stored in the full knowledge that somebody down the track was going to use them to make methamphetamine. So, some account has to be taken of that.



[38] The charge of being in possession of cannabis would also attract a sentence of 12 to 15 months imprisonment. This was part of a commercial operation. The authorities are clear that in such cases a person found in possession of cannabis for supply can expect a sentence of that order. This was not a small amount of cannabis. It was over 70 grams.

[39] The firearms charges, too, are serious. You were found in possession of no less than three rifles or shotguns and a pistol. I accept that some of those items may have been stored for the use of others. In this, I am referring to the items behind the false compartment, but I have no doubt that you were in possession of the shotgun under your own bed for the purposes of self defence should the need arise. That is the only realistic conclusion that can be drawn from the fact that you were prepared to hold it in that location.

[40] The seriousness of charges such as this has been stressed by the courts on many occasions. Perhaps the most helpful example is the decision of the Court of Appeal *R v Fonotia* CA413/06 10 May 2007. In that case, too, the offender had been found in possession of no less than four firearms. The Court of Appeal had this to say at [40]:

It is, of course, a seriously aggravating factor that Ms Fonotia was in unlawful possession of no fewer than four different weapons: a loaded shotgun, a loaded Beretta pistol, a tubular stun gun and a Blizzard Spray. This Court in *R v Richardson* CA450/02 25 March 2003 referred to “loaded firearms” as being an “anathema within our community”: at [33]. The court said that every court has a clear obligation to impose sentences which in unequivocal terms express society’s condemnation of unlawful possession of such firearms because of their potential for danger. In *R v Faifua* CA287/05 27 March 2006, this court referred to “the presence of a firearm” as “one of the most serious aggravating features that can be found in drug cases”. *R v Bunning* CA 378/04 6 April 2005 is another example of a case where possession of a loaded pistol and of a stun gun were seen as a serious aggravating factor in relation to drug offending: at [29].

[41] Now I accept, of course, that there are distinctions in your case to those other cases because they involved loaded guns but, nevertheless, there were four different types of firearms here together with a significant quantity of explosives. In *Fonotia* the Court of Appeal said that the smallest uplift that the Court could provide was one

of 15 months imprisonment. In your case, an uplift of 12 months imprisonment could easily be justified on the firearms charges alone.

[42] So the issue that I have to decide is where, putting all of those factors together, I end up with in terms of starting point.

[43] I have decided that, having regard to the totality of your offending, that means all of your offending, and taking care to ensure that the overall sentence is not too high, an appropriate starting point is one of five years imprisonment. It does not matter how the additional two years is calculated, whether it is nine months for the firearms, nine months for the cannabis and six months for the equipment and precursor substances, in the end I am satisfied that five years imprisonment takes account adequately of all of your offending.

#### **Aggravating factors**

[44] Next, I have to consider whether there are any aggravating factors that operate to increase that starting point.

[45] I have to say there are none. You have a previous conviction for driving with excess breath alcohol, but that is neither here nor there.

#### **Mitigating factors**

[46] The next stage of the process is to look at the factors that I can take into account to reduce the starting point that I have already selected.

[47] You do not have the benefit of a guilty plea so I cannot give you credit for that. The fact that you did not plead guilty is not a factor that increases your sentence in any way. It is merely something that I can't now give you credit for. In many ways, Ms Turner, it is such a pity that you did not plead guilty, because once the police got hold of that letter, coupled with the items they found at your address, your conviction, in my view, was virtually inevitable and once you were convicted you would lose the benefit that is given in every case to an offender who pleads guilty.

[48] Really, the mitigating factors here that I can take into account can be described in two ways. The first is your previous, I take it to be, unblemished record. The second is your personal situation and, in particular, your young son.

[49] I am tempted to say there is a third, and that is remorse. But really, the only expression of remorse comes in the probation report where it is contained in a single sentence to the effect that you expressed remorse to the probation officer.

[50] As against that, I have to take into account the way that you defended the case at trial. You were cross-examined, reasonably vigorously. You maintained in the face of that your absolute innocence on all of these matters. Your intelligence, Ms Turner, shone through in that cross-examination. You knew where the prosecutor was coming from with questions and you were able to parry them. But I have to say I didn't detect any form of remorse for anything you had done at that point.

[51] The Probation Service, of course, in their report say that you expressed great remorse for your actions. Immediately after that they say that you stated that you just want to get all of this to end and get on with your life. You then express what I think is at the heart of your remorse:

Ms Turner also expressed great sorrow for the situation she has put her son in at the moment. She said that her son doesn't have to suffer like this for something I did.

[52] The report also says that you accept the fact that you were found guilty by a jury of your peers and that you accept your responsibility for your action in not reporting the items found in your house to the police. The real concern I have, Ms Turner, is that that may in fact be the extent of your remorse. I accept that you are truly sorry about the situation that you have placed your son in, but I have to say that ultimately I am sceptical about the extent to which you truly are remorseful for what you did. I think that you may think that your only culpability is in not calling the police. In my view, and as the jury's verdicts record, your culpability goes a lot further than that.

[53] You do have an impressive past record. You came from a family that was not wealthy in material terms. Notwithstanding that, you say that you had a happy childhood. Through your own intelligence, ability and determination, you put yourself through university and obtained a Bachelor of Arts degree and a Masters in Commerce degree. The bundle of references that you provided me with include references from those who were at university with you, both as your fellow students and lecturers. They make it clear that you are a very intelligent person.

[54] Ms Turner, you should be at the stage of applying for a top job in an advertising agency or an accounting firm, not asking for home detention instead of going to jail. I don't have to tell you that. You know that yourself. It is a tragedy to see somebody with your ability turn to drug dealing and put themselves in this position.

[55] Having said that, I accept that much of your predicament has been brought about by your poor choice of associates and partners. It seems that when you came back from London in 2001 you became involved in a relationship with a gang member. He is the father of your child. Not surprisingly, he led you into a culture where drug use was the norm and no doubt, drug dealing was also the norm. And as you now know, people who get in that whirlpool, particularly when they are users of methamphetamine themselves, find it extremely hard to get out.

[56] But, Ms Turner, you are an intelligent person. You must have known what you were getting into along the way. You must have known what you were getting into with drugs. And, overall, I take you as somebody who can stand up for herself. I saw that during your cross-examination. The letter that you wrote to TC makes it clear that you did not bend to him. You have a strength of character and a determination that should have steered you clear of the path that you took. Having said all that, I *am* going to take into account your past in imposing the final sentence that I impose upon you. I believe that that should be taken into account because judges should recognise that people who have made the effort to better themselves, and who still hold qualifications that can assist them in the future, should receive recognition of that fact.

[57] I make that comment in the knowledge that personal circumstances can only be given limited effect in this kind of area. It used to be said that personal circumstances counted for nothing when it came to dealing in Class A drugs. That position is now clarified, probably to reflect what was actually happening, by a recent decision of the Supreme Court. The courts can take into account personal circumstances but because of the seriousness of this kind of offending they are very constrained as to the extent to which they can do it.

[58] The next point, and the one that has given you the most trouble, and me the most trouble, relating to the extent to which I can take into account the fact that a sentence of imprisonment is going to adversely affect your four year old son.

[59] I have had the benefit of a psychological report that you obtained in relation to him, and also various observations made by people who are involved with him in his day to day life.

[60] Thankfully, those materials suggest that he is a relatively well adjusted young boy and that he suffers from no major psychological or physical issues at this stage. I say “relatively” because your lifestyle since your son was born has not been a stable one. It could only really be described as “turbulent” – turbulent in terms of change of address, turbulent in terms of choice of associates, turbulent in the sense of ongoing contact with your former partner who is the father of your child. All of those things, the material shows, has had an effect on your son. Your estrangement from him in the future is likely to exacerbate that.

[61] Again, in this context, I have derived some assistance from the decision of the Court of Appeal in *Fonotia*. In that case the Court made reference to two other cases, *R v Howard* CA315/99 2 December 1999 and *R v Williams* CA23/05 15 March 2005, in which this particular issue was addressed in the context of the amount of discount that can be given for personal circumstances and, in particular, the effect on young children.

[62] The point that comes out of those cases, though, is that policy issues are very much to the forefront. As I have said, general deterrence is the main point of the

sentence that I am imposing on you. It is designed to deter not only you, but other people like you from committing similar offences in the future. And, as the Court of Appeal points out, if women commit offences knowing that it is unlikely they will go to prison because of the fact that they have young children, then there won't be any element of deterrence at all. Secondly, that kind of principle can lead to unscrupulous drug dealers using women as part of their drug dealing operations by assuring them that they are unlikely to go to prison because they have young children. As a matter of public policy neither of those two outcomes can be permitted to happen.

[63] In *Fonotia* itself the offender had two children, aged 11 and 12. She had also expressed great remorse. The Court of Appeal recognised the difficulties that were going to follow for the children as a result of a sentence of imprisonment, but the Court said that the maximum allowance that the Judge was entitled to make was one of six months to take account of the effect on the children. So my hands are very much tied in terms of discount.

[64] In the end, Ms Turner, the greatest discount that I can give you is one of ten months imprisonment. That is making allowance for your child and also for the fact that you have led a blameless life and will be able to in the future. Even then, I suspect, that the Crown will be of the view that I have been overly generous.

### **Home detention**

[65] So the issue then becomes, is a sentence of home detention open? It is available technically to you because your offending occurred before October 2007. Had it occurred after that date, the issue would not arise because home detention is now only available in circumstances where the sentence is one of two years or less. But the transitional provisions of the amending legislation left what some would call a loophole that enables people who committed offences before October 2007 to be sentenced to home detention, even though their end sentence is one of more than two years imprisonment.

[66] As both counsel have recognised, the leading Court of Appeal authority in relation to the application of the transitional provisions is the decision in *R v R v Hill* CA 559/07 29 February 2008.

[67] Your counsel points out that in factual terms there are some similarities between your case and that of *Hill*. The offender in *Hill* was found with approximately six grams of methamphetamine, which is more than you were found with. He was also found with cash and approximately 90 point bags. The cash amounted to about \$5000.

[68] In that case the Judge had adopted a starting point of three years nine months. But that is really where the factual similarities end, because you have the added complication that you have the cannabis, the equipment, the substance and, importantly, the firearms charges to contend with.

[69] The real value of *Hill* lies in the statements of principle that the Court of Appeal made. First, the Court pointed out that a sentence of home detention can only be imposed if it is consistent with the purposes and principles of sentencing as prescribed in the Sentencing Act itself. As I have already said, to the forefront in this context are principles of denunciation and deterrence.

[70] Secondly, the Court referred to the fact that s 6(4) of the Misuse of Drugs Act 1975 contains a presumption that imprisonment will follow in drug dealing offences, so that needs to be taken into account.

[71] Thirdly, the Court said that, generally speaking, home detention will only be available where offending is towards the lower end of the scale. In *Hill* itself I think the end sentence was one of two years six months imprisonment. But home detention has been imposed reasonably often in this Court with end sentences of two years nine months and maybe even more.

[72] Finally, the Court pointed out that home detention will rarely be available in circumstances where offending occurred at a person's home. This is not surprising given the fact that, if a person receives a sentence of home detention, he or she may

be tempted to recommence dealing activities from their home. I accept that, as in *Hill*, that may be a less likely possibility in your case because you are fortunate to have the support of your flatmate, Mr Steiner, who has indicated that he will support you and he appears to have a stable address for yourself and your son.

[73] In the end, Ms Turner, I have concluded that I cannot impose a sentence of home detention. Your offending is simply too serious. It would send entirely the wrong message if home detention was imposed at this level of offending. It may have been available if it had been a simple charge of possession but even then you face the problem that your letter discloses that this was not an isolated event. It really came at the end of what must have been some months of offending.

[74] I find that the only realistic sentence for you is a sentence of imprisonment. That is the only sentence that is truly consistent with the purposes and principles of both the Sentencing Act 2002 and the Misuse of Drugs Act 1975.

### **Sentence**

[75] On the lead charge of being in possession of methamphetamine for supply, you are sentenced to four years two months imprisonment.

[76] On the charge of being in possession of cannabis for supply, you are sentenced to one years imprisonment.

[77] On the charges of being in possession of equipment and the precursor substance, you are sentenced to one years imprisonment.

[78] On the firearms charges, you are sentenced to nine months imprisonment, that includes the explosives charges.

[79] All of those sentences are to be served concurrently with each other, which means there is an effective sentence of four years two months imprisonment.



[80] I make an order for the forfeiture of the cash that was found in your possession and the destruction of the firearms and ammunition.

---

Lang J