

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

CRI 2008-088-6068

THE QUEEN

v

TE NEEHI TANIA HILL

Hearing: 24 March 2009

Appearances: A L Hyndman for the Crown
D J Sayes for the prisoner

Judgment: 24 March 2009

SENTENCING NOTES OF STEVENS J

Solicitors/Counsel:

A L Hyndman, Crown Solicitor, PO Box 146, Whangarei 0140

D J Sayes, PO Box 903, Whangarei 0140

[1] Ms Hill, you appear for sentence today on three charges. First, there is one charge of possession of cannabis for sale or supply and one charge of selling cannabis to a person over the age of 18 years. These charges relate to an incident on 11 June 2008. The third charge dates from 15 December 2008 in respect of which you were charged with one charge of sale of the Class C drug cannabis to persons over the age of 18 years.

Background

Offending on 11 June 2008

[2] So far as the charges from June 2008 are concerned, the facts are clearly set out in the sentencing notes of Judge Duncan Harvey dated 28 November 2008. By way of background, on 11 June 2008 a search warrant was executed at your address in Ruakaka. At the time you were in the garage of that address. You were searched and in your handbag a plastic jar was found to contain ten cannabis tinnies with cannabis head inside. Inside your handbag was documentation relating to the sale of drugs in the form of a tick list with nine names on it. There was also \$100 in cash in five \$20 notes found in your handbag.

[3] A further search warrant was then executed at your home address. During the search, 15 cannabis tinnies containing cannabis head were discovered inside a jar. This was concealed inside an icecream container wrapped in newspaper in a rubbish sack in the garage area. There was a further tinny and a half found inside the rubbish sack. There were a number of drink bottles that had been adapted for the consumption of cannabis. In the kitchen there was a bread basket on the top of the fridge in which a snaplock bag containing a quantity of cannabis and shake and seed was located along with a \$20 note. Inside a shed at the premises (which was being used as a sleepout) were numerous tick lists relating to the sale of drugs, clearly showing that you were supplying cannabis on a frequent basis to numerous people.

[4] Your counsel, Mr Sayes, confirmed today that you are addicted to cannabis. There is no doubt that the sales disclosed by the evidence to which I have just

referred were at least in part carried out in order to enable you to fund your own cannabis habit.

[5] But there is an even more sinister aspect to your offending at this time. Your granddaughter was present at the time of the execution of the search warrant. She admitted that she had been selling cannabis on your behalf. Your cellphone was seized and it contained numerous text messages relating to your dealing in cannabis.

[6] When you were spoken to by the Police, you admitted supplying cannabis. You said that you had been doing it for about 16 months on a regular basis. You stated that all the drugs and items found at your address belonged to you and you acknowledged that your granddaughter had been selling cannabis on your behalf. You admitted that you bought cannabis in bulk, which would then be made up into tinnies to sell. You said that the tick list found in your possession related to customers who had ordered cannabis and that the \$200 bag of cannabis would normally be sold by you over a period of one to three days. You also acknowledged that the text messages related to people contacting you regarding cannabis for sale. This evidence indicates the scale of the operation in which you were involved.

Offending on 15 December 2008

[7] On 15 December 2008, you were at your home address of 21b Moki Place, Ruakaka, when the Police executed a search warrant. Police found two zip lock bags inside a small brown stool in the lounge. Inside one bag was 11 cannabis tinnies, which contained 14 grams of cannabis head. The other zip lock bag contained five grams of cannabis plant material.

[8] A drinking chocolate container was found hidden under a cushion on the couch with two cannabis tinnies inside. These contained two grams of cannabis head. In total, there was 21 grams of cannabis.

[9] When spoken to by the Police you admitted selling cannabis from the address during the previous two weeks. You also admitted that two of the tinnies were yours. You said you were holding the rest of the cannabis for an associate.

[10] With respect to the December 2008 incident, it is of relevance that, you had appeared before Judge Harvey in the District Court at Whangarei on 28 November 2008 to be sentenced for the two charges relating to the July 2008 incident. The sentence imposed upon you at that time was one of home detention for a period of ten months. I note from the sentencing notes of Judge Harvey that he took as a starting point three years imprisonment and then gave you credit for various matters described.

[11] The reason that you appear before me today for sentence on these same two charges is that once you had been arrested on the charge relating to the December 2008 incident, an application was made under s 80F(2) of the Sentencing Act 2002 to cancel the sentence of home detention and substitute another sentence. You consented to this course and invited the District Court to decline jurisdiction so that you could be sentenced on all charges in the High Court today.

[12] For the purposes of your sentencing today, I have been assisted by helpful written and oral submissions from your counsel, Mr Sayes, and written submissions from the Crown which dealt with the December 2008 offending. These were supplemented by further oral submissions from Ms Hyndman dealing with the earlier offending. There are pre-sentence reports for both incidents.

Personal circumstances and pre-sentence report

[13] You are 55 years of age, a Maori woman of Tuhoe descent. You were born in Whakatane, as the seventh of nine children. At the age of eight, you were adopted by your aunt and moved to live in Kaingaroa. You lived with your aunt until you ran away at the age of 13 years.

[14] Later you entered into a relationship with the father of your child, born when you were 16 years. You worked for a shearing gang for about nine years until your relationship with your partner ended. After that you moved back to Ruakaka in 1979 and worked at the Marsden Point Oil Refinery as a cleaner. You lived with your son and his family for five years. However, after the June offending you moved into

your own unit, where you were serving a sentence of home detention in respect of the sentence imposed upon you on 28 November 2008.

[15] You were in receipt of an invalid's benefit for osteoarthritis in your joints. You also suffer from high blood pressure. This condition leaves you with chronic pain, which you have advanced as a reason for taking cannabis as a means of relief.

[16] You have exhibited little remorse to the probation officer for your offending. You are identified as not having great motivation to benefit from a drug programme. You declined to consent to canvassing community detention or home detention. A sentence of imprisonment was recommended.

[17] With respect to the appropriate sentence, your counsel emphasised that you have a serious addiction to cannabis and now appreciated that, having remained cannabis-free while you have been in prison, you are finally seeing the benefits of being drug-free.

Previous convictions

[18] You have a number of previous convictions. The one relevant to today's sentencing is a conviction for possession of cannabis in 1993. In addition to this, you have a range of offending relating to driving with excess blood alcohol, driving whilst disqualified and other lesser offending.

Crown submissions

[19] The Crown referred to the aggravating features of both sets of offending. In particular, the December offending occurred whilst you were the subject of a sentence that was imposed upon you on 28 November 2008. The Crown also referred to the fact that the December offending happened only six months after the first set of offending and two weeks after you had been sentenced for the earlier offending.

[20] Ms Hyndman also referred to the aggravating feature from the June offending that your granddaughter had been selling cannabis on your behalf.

[21] The Crown acknowledged that you deserve credit for your guilty pleas, which in each case were entered prior to the preliminary hearing.

[22] The Crown submitted that a sentence of imprisonment is appropriate. Reference was made to the starting point used by Judge Harvey of three years' imprisonment for the June offending. The Crown accepted that the offending falls in band 2 of *R v Terewi* [1999] 3 NZLR 62 and that the starting point should be increased to reflect two sets of offending, although it was accepted that sentencing on a totality basis was appropriate.

Defence submissions

[23] Mr Sayes drew the Court's attention to a number of mitigating factors including the early guilty pleas. He also referred to the extensive co-operation with the Police, not only with regard to the June offending but also the second set of offending.

[24] Mr Sayes acknowledged the starting point used by Judge Harvey in his sentencing notes, but submitted that was a reasonably stern sentence particularly in comparison to the case of *R v Heremaia* HC AK CRI 2008-088-2483 14 October 2008, Venning J, to which I shall refer later.

Purposes and principles of sentencing

[25] The Sentencing Act 2002 requires that I keep in mind a number of purposes and principles. In your case, I have had regard to the following purposes as set out in s 7 of the Act: the need to hold you accountable for the harm done to the victims and the community; the need to promote in you a sense of responsibility for, and acknowledgement of that harm; the need to denounce your conduct and the need to deter you and others like you from committing the same or similar offences. There

is also the need to assist in your rehabilitation and reintegration, which I will return to later.

[26] So far as principles are concerned, I must take into account the gravity of your offending, the degree of culpability, I need to take into account the seriousness of the type of offence in comparison with other offences. There is a need to consider the general desirability of consistency with other sentencing levels and dealing with offenders with respect to similar offences in similar circumstances. Then I need to impose the least restrictive outcome that is appropriate in the circumstances.

Features of the offending

[27] The Court of Appeal in *R v Taueki* [2005] 3 NZLR 372 sets out the orthodox approach to sentencing. Accordingly, I will first set the starting point based on the features of the offending, and then adjust the starting point according to any mitigating and aggravating features relating to you, the offender.

[28] The aggravating features are the fact that the first set of offending involved having your granddaughter make sales of cannabis on your behalf. I also have regard to the scope of the operation described in the facts above.

[29] There is also the fact that the December offending occurred within six months of the previous similar offending and within two weeks of your having been sentenced for the earlier offending. I also have regard to the degree of premeditation involved in two sets of offending.

[30] There are no mitigating features relating to the offending.

[31] The aggravating features relating to you, the offender, include the earlier conviction for possession of cannabis that I noted above, but that was some time ago. I do take into account the fact that you are being sentenced on three charges from two separate incidents but I will be careful to apply the totality principle.

[32] In your case the relevant mitigating factors include your early guilty pleas, your health which is effected by your addiction to cannabis, your willingness to disclose the scope of the offending and your co-operation with the Police.

[33] I take into account the presumption against imprisonment in s 16 of the Sentencing Act.

Relevant case law and sentencing approaches

[34] So far as case law is concerned, I refer to the case of *Terewi* which sets out the guidelines for cultivation of cannabis, but which has subsequently been extended to apply in possession for supply and sale of cannabis cases: see *R v Keefe* CA275/02 28 November 2002.

[35] There is no doubt that your offending in each case falls within category 2 of the three categories in *Terewi*. In *Terewi* at [13] the Court of Appeal noted that:

As with any drug offending for the purpose of profit making, the personal circumstances of the offender whose activities fall within categories 2 and 3 are usually not to be given much significance in the sentencing process. The fundamental requirement is that the sentence imposed should act as a deterrent to other persons minded to engage in similar activity.

[36] I have had regard in particular to *Heremaia*. Other cases which I have considered are *R v Te Rangi* HC AK CRI 2007-055-779 29 April 2008, Randerson J; *R v Tau* CA494/05 14 June 2006; *R v Wharawhara* HC HAM CRI 2006-019-9951 28 June 2007, Asher J; and *R v Tupaea* HC AK CRI 2006-057-2050, CRI 2006-057-2052 15 May 2007, Winkelmann J.

Discussion

[37] Having regard to all of the features of your offending, including the aggravating features referred to above, I propose to take a starting point of three year' imprisonment. I am going to uplift that for the second set of offending by two months. I also propose an uplift because of the fact that the offending in December occurred whilst you were serving a sentence of home detention for similar offending.

A further uplift of two months will apply. That means an overall starting point before applying mitigating factors of three years and four months imprisonment.

[38] Adjusting that starting point to take into account the mitigating features in your case, I am going to allow a generous discount of 14 months to cover the guilty pleas, your health (including your addiction) and your co-operation with the Police. That would produce a final sentence of two years and two months' imprisonment. I emphasise that this sentence is imposed having regard to the totality of all of your offending.

[39] I note that no application is made for home detention. Given the nature of the offending and the two incidents involved, home detention is now out of the question.

[40] So the final sentence of the Court on the lead offence, that is the June offences, one charge of possession of cannabis for sale or supply and one charge of selling cannabis to a person over the age of 18 years will be two years and two months' imprisonment. On the charge from the December incident of sale of cannabis to a person over the age of 18 years you are sentenced to 18 months imprisonment. All sentences will be concurrent.

[41] With respect to the topic of special conditions, which I mentioned earlier, the probation report recommended special conditions in your case. These are related to your drug abuse and the urgent need for treatment. I agree with the recommendation in the probation report dated 10 March 2009 and the observations of your counsel.

[42] The difficulty with imposing conditions of the type recommended in the probation report, is that the Court's jurisdiction under s 93(2) of the Sentencing Act is limited to a sentence of not more than 24 months. Nevertheless, I draw recommendations in the probation report to the attention of the authorities and request that any available steps be taken to ensure that you Ms Hill have an assessment for drug abuse and are then required to undertake drug treatment following assessment if that can possibly be arranged during your sentence of imprisonment.

[43] You may stand down.

Stevens J