

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

CRI-2008-070-8612

THE QUEEN

v

DANIELLE NATASHA MORRISSEY

Hearing: 25 March 2009

Appearances: Mr L G Meredith for Crown
Mr C G Tuck for Ms Morrissey

Judgment: 25 March 2009

SENTENCING REMARKS OF LANG J

Solicitors:
Crown Solicitor, Rotorua
Counsel:
Mr G C Tuck, Tauranga

[1] Ms Morrissey, you appear for sentence having pleaded guilty at an early stage in the District Court to a charge of being in possession of methamphetamine for supply. The maximum sentence for that charge, as you well know, is one of life imprisonment.

Factual background

[2] The charge arises as a result of a search that the police carried out of your house at 7.30 am on Friday 21 November 2008. When the police entered the address they spoke to you and you confirmed that you were the occupant of the address. You also told the police at that time that they would not find any drugs in your home. Sadly for you, this was not the case.

[3] During the search the police found a point bag of methamphetamine wrapped in a piece of paper that was a short note in your name. The note was in a sealed courier bag that was addressed to an address in Whakatane. The courier bag was found in your purse. Quite clearly you were about to send the courier bag to an associate in Whakatane. Indeed, you later confirmed that that was the case.

[4] You told the police that a friend had requested you to obtain methamphetamine on her behalf. The friend had been quite persistent and eventually you had obtained .1 of a gram of methamphetamine from a supplier for the sum of \$100. You expected to receive the same sum from the person who had requested the methamphetamine. In other words, you were doing this as a favour for a friend in the face of persistent requests and knowing that you would receive no profit from it.

[5] Significantly, however, the police found several other items during the search of your property. In particular, they found a set of digital scales, they found a set of digital scales and several unused point bags. Those items were located in your bedroom. You said, when asked for an explanation, that you had received the scales from a friend and that you used the point bags for storing diamantes and rhinestones that you used on your nails. I shall return to that topic shortly.

Sentencing Act 2002

[6] In any case involving the supply of methamphetamine, issues of deterrence and denunciation are to the forefront. The public and those involved in the dealing of Class A drugs must know that severe penalties await those who are caught infringing the provisions of the Misuse of Drugs Act 1975. For that reason sentences of imprisonment are virtually inevitable for offenders who deal in Class A drugs.

[7] The real issue for a sentencing Judge is to select a sentence that is consistent both with appellate authority and also with sentences imposed in broadly similar cases. I say “broadly similar” because the circumstances of no two cases are ever exactly the same.

Starting point

[8] In selecting the starting point for your offending I have to apply the principles set out in a decision of the Court of Appeal called *R v Fatu* [2006] 2 NZLR 72. In that case the Court of Appeal identified three bands of offending involving the Class A controlled drug methamphetamine. The first, or lowest, band is for offending involving up to five grams of methamphetamine. The Court of Appeal has determined that offending involving the supply of methamphetamine of up to five grams will generally attract a starting point of between two and four years imprisonment.

[9] Both counsel accept, given the fact that only .1 of a gram was found in your possession, that your offending obviously falls at the bottom of Band 1. Ordinarily, therefore, your offending would attract a starting point of around two years imprisonment.

[10] This Court has, however, on several occasions selected a starting point of less than two years imprisonment in circumstances where only a very small amount of methamphetamine is involved and where there is no commercial element to the supply or proposed supply. I consider that I can do that in your case because of the

fact that a very small amount of methamphetamine was found and because of the fact that you were not to make any profit from the transaction.

[11] The Crown contends that a starting point of around 20 months imprisonment is appropriate. Your counsel submits that a starting point of 18 months to 20 months is more realistic.

[12] I am prepared to accept your counsel's submission on this point. The small amount of the drug, coupled with the circumstances in which you proposed to supply it to your associate, persuade me that I should adopt a starting point of 18 months imprisonment.

[13] I now need to consider whether or not to increase that starting point to take account of aggravating factors that are personal to you.

Aggravating factors

[14] There is only one aggravating factor in your case and that is your previous convictions. You have numerous previous convictions for a wide variety of offences. Of most importance, however, for present purposes is the fact that on 26 July 2004 you received a sentence of two years imprisonment on a number of charges of supplying methamphetamine and selling cannabis.

[15] I have had the advantage of reading the Judge's sentencing notes from that series of charges. Those charges arose out of a police undercover operation. It appears that you were relatively high up in the food chain, so to speak. You were involved in the supply of methamphetamine and cannabis to others. This led the Judge to set a starting point of three years imprisonment for that offending. He reduced it to two years after taking into account your pleas of guilty.

[16] Ms Morrissey, you have to know that from now on if you continue to offend by dealing in drugs in any shape or form the sentences are going to get longer. That is an aggravating factor that will now come into play whenever you appear for sentence. I consider that, notwithstanding the fact that it relates to offending in

2002, that it is such a serious matter that it warrants an uplift of three months to reflect that fact. I therefore take an overall starting point of 21 months imprisonment in relation to your offending.

Mitigating factors

[17] You are clearly entitled to credit for your guilty plea. Your guilty plea also came at a very early stage in the District Court. In addition, I have been provided with a comprehensive summary of your personal circumstances. Although your early life appears to have been relatively uneventful, it seems that once you entered the workforce you chose a difficult profession. I have no doubt that your introduction to drugs came during this period. I accept also that you have had a number of tragedies affect you, particularly as a result of the deaths of your brother and sister-in-law in 2004 and the fact that your best friend committed suicide in 2001.

[18] You emphasise that your primary role has been in raising your children. You admit that you have been a heavy user of drugs in the past. You say that, even now, you are a reasonably regular user of cannabis but that you have not used methamphetamine since December 2008.

[19] You have two children aged 15 and 6 years respectively. They have difficulties because your 15-year-old child is blind. In addition, your 6-year-old child is apparently receiving psychological treatment to deal with issues in relation to behaviour. This means that it is important that your children have regular and constant support from immediate family members. I am also told that the effects of your previous incarceration were extremely serious for your children and that you have grave fears for their wellbeing in the event that you are sent to prison again.

[20] I take into account all of those matters, Ms Morrissey. It was not so long ago that sentencing courts were instructed not to take into account personal circumstances at all in fixing sentences for drug offenders. That has now changed to some extent as a result of recent decisions of the Court of Appeal and a recent decision of the Supreme Court: *R v Jarden* [2008] 3 NZLR 612. Nevertheless, there

is only a limited discount that I can give you for the fact that other people, and in particular your children, are going to be affected by any sentence of imprisonment that the Court might impose.

[21] I am also satisfied that you have made some efforts toward rehabilitation but the very fact that you were prepared to become involved in the supply of methamphetamine on this occasion means that there is still some cause for concern. Your guilty plea alone would warrant a discount of one-third. I propose to increase that slightly to reflect the other matters that are personal to you. I would therefore deduct nine months from your sentence to reflect those matters. This leaves me with an end point of 12 months imprisonment.

Home detention

[22] The real issue in sentencing you is whether or not I should impose a sentence of home detention. That has been the focus of submissions from both counsel. The Crown opposes a sentence of home detention because you were offending at your home and you have serious previous convictions for drug offending. Your counsel, on the other hand, submits that home detention is a realistic alternative given the low quantity of drug found on this occasion, the needs of your children and the fact that you have made efforts towards your rehabilitation. Your counsel says that all of those efforts will be wasted if you are now returned to prison.

[23] I have real concerns, Ms Morrissey, about the effect that a sentence of home detention would have, both for the general public and you personally. As I have already said, issues of deterrence are to the forefront in cases involving dealing in Class A drugs. I consider that a sentence of home detention in circumstances where you must be considered as a repeat offender would send entirely the wrong message to the general public. It would not deter people from engaging in like behaviour in the future.

[24] You must have known, Ms Morrissey, once you had served a sentence of imprisonment, that further similar offending would be viewed very seriously by the

courts. You really needed to take that into account before you agreed to assist your friend on this occasion.

[25] Secondly, I have a concern about your determination to rehabilitate yourself. This really arises from the fact that you were willing to supply your associate after already having served a sentence of imprisonment for reasonably significant drug dealing.

[26] The fact that the digital scales and the point bags were also found at your house are also of significance. They are highly suggestive of the fact that you have in fact been engaged in drug dealing on other occasions. I do not take that into account in fixing the sentence to impose on you but I believe it is a relevant factor when assessing whether or not a sentence of home detention is appropriate.

[27] Finally, I have a concern that the stress of home detention is likely to force you to resort to the consumption of drugs. You already accept that you continue to consume cannabis. You clearly have access to methamphetamine. If you were imprisoned in your home for a lengthy term I have a concern that you would resort to the consumption of drugs to ease the stress.

[28] Added to this is the fact that you would need to purchase drugs which are not inexpensive. This would, in turn, lead to a temptation to sell drugs in order to finance your own habit.

[29] For these reasons I have come to the conclusion that a sentence of home detention is clearly inappropriate in your case. Your prior offending, Ms Morrissey, really left me with no option but to reach that conclusion.

Sentence

[30] On the charge to which you have pleaded guilty, you are sentenced to 12 months imprisonment.

[31] Stand down.

Lang J