

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

**CRI-2008-025-4670**

**THE QUEEN**

v

**REGAN MATHEW TUHAKARAINA**

Hearing: 30 March 2009

Appearances: Mr M D Morris for Crown  
Mr D G Slater for Prisoner

Sentence: 30 March 2009

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**SENTENCING REMARKS OF LANG J**

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Solicitors:  
Crown Solicitor, Invercargill  
Counsel:  
Mr D G Slater, Invercargill

[1] Mr Tuhakaraina, you appear for sentence having pleaded guilty to a large number of charges. You have pleaded guilty to three charges of being in possession of the Class A controlled drug lysergide. The maximum penalty for each of those charges is one of life imprisonment. You have also pleaded guilty to 15 charges of offering to supply a Class A drug, namely lysergide. Again, the maximum penalty for those charges is life imprisonment. You are also charged with 44 charges of being in possession of the Class C controlled drug cannabis for the purposes of supply. The maximum penalty for that offence is one of eight years imprisonment. In addition, you pleaded guilty to 176 charges of offering to supply cannabis. The maximum penalty for that offence is also eight years imprisonment.

### **Factual background**

[2] The charges against you flow from an operation that the police in Invercargill carried out in November 2008. As part and parcel of that operation they obtained a warrant to intercept text messages that you were receiving and sending on a cellphone. Over a period of just three weeks the police found that you had sent or received approximately 250 text messages which related to dealing in drugs. 43 of these identified you as having cannabis in your possession for the purpose of supply or sale. 153 text messages involved an offer by you to sell cannabis. 16 of the text messages identified you as offering to supply LSD. Three of the text messages identified you as having LSD in your possession at the time of the text messages for the purpose of supply to others.

[3] In all, Mr Tuhakaraina you dealt with 111 separate and unknown persons during the course of this three week period. It is evident from the transcript of text messages that I have read that you were involved virtually on a daily basis in drug dealing in both Class A and Class C drugs during this period.

[4] Of some concern is the fact that towards the end of the police operation you were even prepared to ask people to come to the maternity hospital, where your partner was giving birth to your child, so that you could supply them with drugs. It is not suggested, of course, that you were supplying drugs to people who were engaged in business or going about their affairs at the hospital. Nevertheless, you

were prepared to use the hospital premises as a place where you were dealing in drugs.

[5] The police searched your premises on 10 December 2008 at the termination of the operation. There they found the cellphone that you had been using. You candidly accepted that it was yours and that you were the only person who had access to it.

[6] The police did not find any drugs at your property, but they did find a large number of clear plastic snaplock bags of the type that is commonly used to package cannabis for the purpose of sale or supply.

[7] The police spoke to you about your offending and you candidly admitted it. You told them that you were selling cannabis and LSD in order to buy baby accessories because of the need for those items following the birth of your child. You said that you had been purchasing ounce lots of cannabis for between \$350 and \$400. You would break these down into tinnies or bullets and then on-sell them for \$25 each in order to make a profit. You also admitted selling tabs of LSD for \$50 each.

[8] I now make an order for destruction of all of the bags that were found at your address.

### **Sentencing Act 2002**

[9] In sentencing you I need to bear in mind the principles set out in the Sentencing Act 2002. In any case involving drug-dealing offences, issues of denunciation and deterrence are always to the forefront. As your counsel realistically accepts, drug dealing charges inevitably carry a sentence of imprisonment, particularly when Class A drugs are concerned. The only issue is how long the sentence of imprisonment should be.

[10] This is important because the Court is required to impose a sentence that is consistent that it imposed in cases of broadly similar offending. I say “broadly similar” because the circumstances of no two cases are ever exactly the same.

[11] I must also impose a sentence that is the least restrictive outcome possible and one that provides, so far as that is possible, for your rehabilitation and reintegration into your family and the community. This really means imposing the shortest sentence of imprisonment that I can having regard to the nature of your offending and your personal circumstances.

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

[12] The first issue I need to determine is the approach that I should take in relation to sentence. It is quite clear that all this offending occurred together although it has varying degrees of blameworthiness or culpability. For that reason I propose to take the charges relating to the supply of LSD as being the most serious charges. I will impose a sentence on those charges that reflects the culpability or blameworthiness of all of your offending. I will then impose concurrent sentences on the Class C charges.

### **Starting point**

[13] The next issue I need to determine is the starting point that I need to adopt in relation to the two types of offending.

### *LSD Offending*

[14] In this case there were 15 separate offers to supply LSD. You were then, on three occasions, known to have been in possession of LSD for the purposes of supply.

[15] It is impossible, however, to ascertain how much LSD you actually sold or supplied to other people. The most that can be said is that you were involved in that activity on a reasonably regular basis and that you dealt in “tabs” which is, of course, the retail or street level of dealing in LSD.

[16] I derive some assistance from two cases that have been referred to me by your counsel. One of these arises out of the same operation in which you were apprehended. In *R v Edwards* HC Invercargill CRI-2009-425-001 9 February 2009, Panckhurst J sentenced an offender who had pleaded guilty to a charge of being in possession of LSD and to eight charges of offering to supply LSD. The scale of his offending was perhaps lower than yours because of the lesser number of incidents that occurred. Nevertheless, the Judge in that case took a starting point of four years imprisonment.

[17] The next case is a case called *R v MacDonald* HC Invercargill CRI 2008-025-2024, 4 August 2008, Priestley J. I consider that there are some very real similarities between that case and the circumstances of your offending. The offender in that case pleaded guilty to 15 charges of offering to supply a Class A controlled drug. 13 of these charges related to LSD. Again, the Judge took a starting point of four years imprisonment, although he acknowledged that that could probably be viewed as lenient.

[18] You, of course, have three charges of being in possession of LSD and 15 charges of offering to sell LSD. I consider that a starting point of four and a half years could easily be justified in relation to that offending. I will need to reconsider that starting point, however, when I come to consider the overall sentence to be imposed upon you.

### *Cannabis offending*

[19] Both counsel agree that your cannabis offending would fall to be dealt with under a sentencing authority known as *R v Terewi* [1999] 3 NZLR 62. In that case the Court of Appeal identified different categories of cannabis offending. The scale of your offending is such that I have no doubt, and counsel agree, that it falls within Category 2 which calls for a starting point of between two and four years imprisonment. Again, the level of activity in your case was such that it could easily justify a starting point of three to three and a half years imprisonment.

*Conclusion: Totality*

[20] I need to select a sentence that reflects your overall culpability. I have identified the fact that in the ordinary course of events your offending could easily justify a starting point of seven to seven and a half years imprisonment.

[21] There is one factor in your case that suggests to me that that may be a little high to reflect your overall culpability. I accept the Crown's submission that the charges that you face represent a snapshot of your position over the three-week period during which the electronic monitoring operation occurred. Quite clearly you had been involved in dealing in drugs from a point prior to the commencement of the operation. There is no other explanation for the fact that you could have been involved in so many transactions right from the beginning of the operation.

[22] I am persuaded, however, that I should give some recognition to your assertion that you ended your involvement in drug dealing shortly after your child was born. I consider that this is perhaps reflected best from the fact that, when the police searched your premises on 10 December 2008, they found no drugs at all. The empty plastic bags may well have been a relic of your past drug dealing activities.

[23] I am prepared to give you the benefit of the doubt on that score. I consider that an appropriate starting point, having regard to the totality of your offending and the fact that I accept that it may well have stopped at around the 27<sup>th</sup> to 30<sup>th</sup> November 2008, is to select a starting point of six and a half years imprisonment.

**Aggravating factors**

[24] From that starting point I need to determine whether the sentence should be adjusted upwards or downwards to reflect factors that are personal to you. There are, however, no aggravating factors personal to you such as previous relevant convictions that would operate to increase the starting point I have selected. For that reason it will not be adjusted upwards.

## **Mitigating factors**

[25] There are two mitigating factors that I believe I can take into account.

[26] The first of these relates to your personal circumstances. You appear for sentence at the age of 22 years. Although you have appeared before the Court, you have never appeared for drug dealing charges. You have not faced a custodial sentence before.

[27] You have a strongly supportive family. They are here today to support you in your hour of need. They clearly believe that you have been the victim of an injustice because of the fact that you were charged with these offences notwithstanding the fact that you had ceased drug dealing by the time that you were apprehended. That is only a matter that I can take into account to a limited extent, because it is necessary to impose a sentence in relation to the offending that you actually carried out. They say, and I accept, that they will support you throughout the sentence of imprisonment that you must now undergo.

[28] It is clear that you have many good qualities. You are obviously a caring partner, son and father. You have something of a work record and, indeed, your employer has left your job open for you at this stage so that you can undertake gainful employment when you get out of prison.

[29] I accept, from the letter that I have read, that you are genuinely remorseful about your offending. Indeed, Mr Tuhakaraina, it would be surprising if that were not the case. You must now sit in prison at a time when ordinarily you would be taking care of your very young child and your partner. That is a matter of tremendous sadness but, in the end, you have brought that upon yourself by your actions. In choosing to deal in drugs to meet your family's needs, you left yourself exposed inevitably to a sentence of imprisonment if you were caught.

[30] The greatest factor for which I can give you credit is your pleas of guilty which I accept came at a relatively early stage.

[31] I am prepared to reduce your sentence by a full third to reflect the two matters that I have identified. This means that the sentence of six and a half years imprisonment is reduced by two years two months to an end sentence of four years four months imprisonment.

### **Sentence**

[32] On each of the charges relating to the Class A controlled drugs, you are sentenced to four years four months imprisonment. Those sentences are to be served concurrently with each other.

[33] On each of the charges relating to the Class C controlled drug cannabis, you are sentenced to two years imprisonment. Each of those sentences is to be served concurrently with each other and concurrently with the sentences that I have imposed in relation to the Class A offending.

[34] The Crown asks that I also impose a minimum term of imprisonment upon you. This Court has the power to do that in any case where it has sentenced an offender to two years imprisonment. In reaching a decision on this point the Court must take into account the need to deter other people from becoming involved in similar conduct, the need to denounce offending of the type in question and the need to hold the offender accountable for his or her actions. The Court can also take into account the need to protect the community from the actions of the offender in the future.

[35] In the two cases to which I have referred, that is *MacDonald* and *Edwards*, the outcome on this point was different in each case. In *MacDonald* the Judge required the offender to serve a minimum term of imprisonment. That offender had already served a previous sentence for being involved in drug dealing. In *Edwards* the personal qualities of the offender and the fact that he was appearing for the first time persuaded the Judge that no minimum sentence should be imposed.

[36] Mr Tuhakaraina, I am going to adopt the latter course. I am not going to impose a minimum term of imprisonment. I do this because of the fact that this is



the first time in which you have appeared on drug dealing charges. I do not consider, on the basis of the material that you have made available, that you pose a risk in the future. I believe that it should be a matter for the Parole Board to determine the point at which you should be released.

[37] You should be under no illusion, however, that this will be the one and only occasion on which you will not receive a minimum term of imprisonment if you appear on drug dealing charges. From now on, if you get involved in drug dealing offending, the sentences that are imposed on you will become longer. In addition, it is virtually inevitable that the Judge, on each occasion on which you appear, will direct that you serve a minimum term of imprisonment.

[38] Stand down.

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Lang J