

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

**CRI-2008-025-001849**

**THE QUEEN**

v

**LOGAN NEILSON REYNOLDS**

Hearing: 31 March 2009

Appearances: Ms M Sinclair for Crown  
Mr A Tobeck for Prisoner

Judgment: 31 March 2009

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**SENTENCING REMARKS OF LANG J**

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Solicitors:  
Crown Solicitor, Invercargill  
Counsel:  
Mr A Tobeck, Invercargill

[1] Mr Reynolds, you appear for sentence having pleaded guilty at various stages during the criminal justice process to eight charges of being in possession of cannabis for supply, 22 charges of offering to sell cannabis, one charge of offering to supply the Class B controlled drug Ritalin, one charge of attempted arson and one charge of intentional damage.

[2] The charges against you really encompass two separate sets of offending and I propose to treat them on that basis.

[3] The drugs charges fall to be determined quite separately from the charges of intentional damage and attempted arson.

### ***The drugs charges***

[4] The drugs charges arise as a result of a police operation between February and May 2008. During this operation the police targeted a number of active local drug dealers within the Invercargill area. You were one of those who was identified as being a worthy target.

[5] The police obtained a warrant enabling them to gain access to text messages that you received and sent from your cellphone. During a ten day period between 20 and 30 April 2008, the police were able to download approximately 51 text messages which dealt predominantly with the supply of cannabis and one text message which related to an offer the Class B controlled drug Ritalin. Eleven of the text messages clearly identified you as having cannabis plants in your possession for the purpose of sale. Eleven of the text messages also identified the fact that you had actually sold cannabis.

[6] During the course of this ten-day period you dealt with no fewer than 29 unknown persons. It is clear on any view of events that you were a reasonably active dealer in cannabis at the retail level.

[7] The police searched your property on 29 May 2008. There they located your cellphone. You confirmed that you were the sole user of that cellphone. You

accepted that you had been actively selling cannabis using your cellphone for that purpose. You also accepted that you had sold the medication known as Ritalin.

### *Sentencing Act 2002*

[8] As you must by now be aware, in any case involving dealing in drugs, the issues of denunciation and deterrence are at the forefront. Quite simply, people who deal in cannabis and other drugs must know that when they are caught they go to jail, it is as simple as that.

[9] The only real issues are the need to select the correct sentence of imprisonment for you, having regard to the need to achieve consistency between sentences for like offending and the need to impose the least restrictive outcome possible.

### *Starting point*

[10] Both counsel agree that sentencing for your offending falls to be determined on the basis of a decision of the Court of Appeal known as *R v Terewi* [1999] 3 NZLR 62. In that case the Court identified various bands of offending. The emphasis is really on the scale of the drug dealing activity in this context rather than on actual amounts which, as your case demonstrates, can often be difficult to ascertain.

[11] Counsel agree also that your offending falls within the second band identified in *Terewi*, which requires a starting point of between two and four years imprisonment. The issue is to identify where in that band your offending lies.

[12] You are not as prolific an offender as others I have dealt with recently during other sentencings in this area. You dealt with a less number of unknown persons than did others but nevertheless, your drug offending was done on a virtually daily basis. I consider that a realistic starting point in your case on the Class C offences is two and a half years imprisonment.

[13] Some uplift is, I consider, required in relation to the Ritalin charge. Although this was a single incident and you may have been the middleman, it demonstrates that you were, when the opportunity presented itself, prepared to engage in dealing in drugs other than cannabis. If you continue along that path then, as I am sure you know, the sentences that will be imposed on you in the future will be much greater. I propose to add three months to that starting point to reflect the fact that you were prepared to deal in a Class B drug albeit as a middleman. This leads to an end starting point in relation to the drug offending of six months imprisonment.

### *The other charges*

[14] I now turn to the charges of attempted arson and wilful damage. These arise as a result of a trip that you and several associates made from Invercargill to Queenstown on the evening of 18 April 2008. It seems that you left Invercargill in the evening. You went to Queenstown. On the way you stopped in the forecourt area of the Fairlight Railway Station, which is a railway station on the Kingston to Garston Highway. It seems that the purpose of the stop was to enable some of the occupants of your vehicle could go to the toilet. Whilst at the station, though, three of the party including you began to smash the windows on all four sides of the railway station. You used empty bourbon bottles to break the windows and, it would appear, rocks. The summary records that some of the windows were broken with bare fists.

[15] As a result of that damage the interior and exterior of the station were littered with broken glass and glass fragments. Glass fragments went into the shop premises inside and became embedded in goods on the shelves. This caused a significant amount of damage and reparation in the amount of \$7696.20 is sought.

[16] You and your associates then went back to the vehicle and continued on to Queenstown. I infer that you continued drinking in Queenstown for a number of hours before leaving to return to Invercargill at about 2.15 am. Whilst you were passing the Frankton area, the vehicle stopped and some of your associates set alight a Hitachi excavator. You were not party to that offending because you remained in

the vehicle. Nevertheless, it demonstrates the mood of those who were in the vehicle that night.

[17] You then came across a Nissan Primera motor vehicle parked on the side of the road. It was there because the owner of the vehicle had run out of petrol and had left it there intending to return the next day. You and others went to this vehicle. Access was gained by smashing the rear window of the vehicle. You then used a cigarette lighter in an attempt to set fire to a seatbelt in the back seat area of the vehicle. I am unsure whether or not your efforts had any lasting effect. Your counsel is of the view that the real damage was done by another of your associates who set fire to papers in the glovebox of the vehicle. Whatever the cause, the vehicle was completely destroyed by the fire.

[18] You then went back to your motor vehicle and continued your journey to Invercargill. The Nissan motor vehicle was written off as a result of the fire and the owner suffered a \$2000 as a result. Reparation in that sum is sought.

[19] Unfortunately for you, another motorist noticed your vehicle shortly before seeing the blazing excavator and Nissan motor vehicle. He got hold of the police and the police then stopped your vehicle in or around the Lumsden area. Although you initially denied being involved in any of these incidents, you ultimately accepted that you were a party to both the damage at the railway station and the destruction of the vehicle by fire.

[20] One of the factors that I am entitled to take into account is the effect that your offending has had on your victims. I hope that you have had the opportunity to read the victim impact statement prepared by the manager of the railway station. This shows that your offending had a very real personal cost.

[21] The station is largely manned by volunteers who work during the summer season and rely on income generated during that season. Not surprisingly, they are dedicated volunteers. You can imagine their horror when they arrived on the following morning to find every window in their station smashed and glass shards strewn throughout the exterior of the premises. The lady who works in the shop has

been described as having been “gutted” by your actions. It took the volunteer train crew some considerable time to clear up the mess that you had left.

[22] Similarly, I hope you will have read that the vehicle that you set fire to was owned by a man who was travelling to visit his sick mother in Invercargill. She was, in fact, terminally ill and died a short time after this. You forced him to borrow a vehicle to have to go and see his dying mother. So your offending has had a very real impact on the people who were affected.

### *Starting point*

[23] It is very difficult to set a starting point in this kind of offending because the offences of intended arson and wilful and intentional damage can be committed in widely varying circumstances. The Crown suggests that, had you been charged on the attempted arson alone, a starting point in the region of two years would be warranted.

[24] To me, the most relevant factor is the manner in which your co-offenders have been dealt with. They were not sentenced to terms of imprisonment because they did not have the other serious charges to which you have pleaded guilty. Instead, they have, by and large, been sentenced to four months community detention and ordered to perform between 200 and 300 hours of community work. Obviously, those are significant sentences in themselves but I cannot impose that sentence on you because of the fact that you will be going to prison on the drugs charges.

[25] Doing the best that I can, I consider that a starting point of six months imprisonment is warranted on the charges of intentional damage and attempted arson. I make no distinction between the two. I believe that they are equally culpable. That sentence would be cumulative on the starting point of two years nine months that I have identified in relation to the drugs charges.

[26] In selecting the starting point of six months for intentional damage, I have also taken into account the fact that you have been convicted before on other similar

charges. This is but one more instance of your determination to become involved in mindless destruction and vandalism. I am sure you know, Mr Reynolds, that if you keep continuing to offend in this way, prison terms will become increasingly inevitable.

[27] Having elected to impose cumulative charges, I need to sit back and determine whether, in totality, a sentence of three years three months imprisonment is proportionate to your offending and your culpability. I think that I need to have regard to that principle in this case. I consider that an end sentence of three years imprisonment is one that properly reflects your culpability overall and that is the final starting point that I select.

### **Mitigating factors**

[28] I now need to determine the extent to which I should reduce the starting point that I have selected to take into account mitigating factors. Your counsel has suggested that your age might be a mitigating factor. I take the view, however, that you are now 21 years of age. You are an adult and you need to be sentenced as an adult.

[29] I am unsure of the extent to which you are truly remorseful in relation to your overall offending. It seems to me that you elected to get involved in drug dealing simply because you needed the money. Similarly, you got involved in the offending on the way to Queenstown simply because that seemed like a good thing to do at the time.

[30] It is quite clear from the pre-sentence report that your choice of associates has had a major effect on your offending. I have no doubt that your choice of associates in the future will determine whether or not you stay out of prison.

[31] The only real factor that I can give any weight to in terms of mitigation is your guilty pleas. I do not propose to distinguish between the various points at which your guilty pleas were entered. Some were entered in the District Court pursuant to s 153A of the Summary Proceedings Act 1957. Others were entered

once you were arraigned in this Court. It is clear to me that these proceedings have had quite a tortuous process of reaching final resolution. It would be artificial, in my view, to give you a greater discount for one set of charges than for others. I propose to accept that you have pleaded guilty at an early stage and to give you full discount for that. I therefore propose to reduce your sentence by one year to reflect that fact.

### **Sentence**

[32] On all the charges relating to cannabis, you are sentenced to two years imprisonment.

[33] On the charge of offering to supply Ritalin, you are sentenced to three months imprisonment.

[34] On the charges of attempted arson and intentional damage, you are sentenced to four months imprisonment.

[35] All of those sentences are to be served concurrently with each other.

[36] I impose no special conditions on your release.

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Lang J