

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

CRI-2008-017-483

THE QUEEN

v

ALAN JOHN WILSON

Hearing: 31 March 2009

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

Sentence: 31 March 2009

SENTENCING REMARKS OF LANG J

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

[1] Mr Wilson, you appear for sentence having pleaded guilty in the District Court to charges of cultivating cannabis, being in possession of cannabis for supply and being in possession of utensils for the use and consumption of cannabis.

[2] The maximum sentence in respect of the charge of being in possession for cannabis for supply is eight years imprisonment. The maximum sentence on the charge of cultivating cannabis is one of seven years imprisonment. The maximum sentence on the charge of being in possession of utensils is one year's imprisonment.

Factual background

[3] All of the charges to which you have pleaded guilty are the result of a search carried out by the police of your residential address in Matura. You were present at the address at that time of the search, as was your partner and your teenage son.

[4] When the police arrived they explained to you the fact that they had a search warrant to search your property. You then told them that there was cannabis on your bed in your bedroom. When the police went to your bedroom, they found two large plastic containers sitting on the bed. This held dried cannabis head and leaf material. In addition, there was a large plastic bag of dried cannabis material down to the right hand side of your bed. The police also located a metal cashbox in a drawer in your bedroom. This was found to contain \$500 in \$50 notes.

[5] In addition, the police opened a drawer and found a large quantity of small plastic snaplock bags. When they looked in the water cylinder cupboard, the police found two brown paper bags with dried cannabis head material in it. There was also a small plastic tray holding 12 cannabis seeds on a moist paper towel. The seeds were sprouting.

[6] When the police searched the garage, they found a built-in room that housed seven cannabis plants growing in a hydroponics set-up. You had installed a lighting and watering system to nurture the plants. Also in attendance were the usual accessories to a cultivation operation, including fertiliser and pesticide sprays.

[7] Also in the garage were several containers of cannabis leaves that were in the process of drying. The summary of facts describes this material as being “cabbage”, which is not of premium quality but can be soaked and cooked into cannabis oil.

[8] When the police asked you about your offending, you said that you had been growing cannabis for the last two years. You said that you rotated crops every three to four months between planting seedlings and harvesting. You told the police that the plants that they had found were about three weeks old.

[9] In addition, when the police searched your address they also found flattened spoons and a broken glass bottle that had been used for the consumption of cannabis together with a small glass cannabis pipe.

[10] When the police weighed the cannabis at the police station they found that the cannabis from the cannabis in the bedroom and hot-water cupboard weighed a total of 369 grams. This was head material. This was the equivalent of approximately 13 ounces. The summary records that this was of high quality. The cabbage material weighed 868 grams. The police estimate that the good quality head material had an approximate street value of between \$4000 and \$4500.

[11] You have told the police that all of the cannabis was for your own use and was not intended for sale. You said that you could not afford to pay for cannabis and that is why you grew your own.

[12] As you must by now be aware, when it comes to the cultivation of drugs and the possession of drugs in significant quantities, issues of denunciation and deterrence come to the forefront. The courts have no option but to make it clear that when people get involved in this type of activity they will virtually inevitably face a sentence of imprisonment.

[13] The real issue is to fix a sentence that is broadly consistent with those imposed in similar cases. It is impossible, however, to rely on other cases to any great degree because the circumstances of every case are somewhat different.

Starting point

[14] I need to fix a starting point for your offending. This reflects the sentence that would be imposed having regard to the overall culpability or blameworthiness of your offending. Thereafter I need to consider whether there are aggravating or mitigating factors personal to you that would operate to increase or reduce the starting point that I have selected.

[15] Both counsel agree that your offending falls to be assessed in accordance with a decision of the Court of Appeal known as *R v Terewi* [1999] 3 NZLR 62. In that case the Court of Appeal identified different categories of drug offending. Counsel agree that your offending falls within Band 2 identified in *Terewi*. This means that the starting point in your case is somewhere between two and four years imprisonment. I therefore need to assess your overall culpability in order to determine where within that range you fit.

[16] Before I came into Court, I was of the view that the scale of your offending was towards the upper end because it had significant commercial elements. These included the cash that was found in your possession and the fact that the police had found a diary that contained notations similar to those found in a “tick list” often kept by commercial drug dealers.

[17] Those are no longer factors that need to be weighed into the equation. This is because the Crown accepts that the diary did not amount to a tick list, so that factor must be placed to one side. In addition, you have provided me with a satisfactory explanation for the cash that was found in your possession. This comes in the form of your partner’s bank statement, which reveals that she received the sum of \$527.91 from her employer on 8 September 2008 and that she withdrew the sum of \$500 in cash from an ATM machine in Gore on the same date. I am prepared to give you the benefit of the doubt on this matter and to proceed on the basis that the \$50 notes in the cashbox represent the cash that your partner withdrew on 8 September 2008.

[18] That being the case, the commercial nature of your operation falls to be considered having regard to the relatively sophisticated nature of the growing set-up,

the existence of the snaplock bags and the sheer quantity of the head material that was found in your possession. I do not accept that anybody would have set up a growing operation of this sophistication, with the ability that it has to rotate crops, unless there was a commercial aspect to it. Similarly, the snaplock bags provide a convenient means of packaging cannabis. Thirdly, the quantity of head cannabis that the police found was a relatively large amount.

[19] In addition, you have pleaded guilty to being in possession of cannabis for supply. That indicates to me that you must have said that at least some of the cannabis was destined to be supplied to other people.

[20] Having said that, I view you as a person with a significant drug habit. It obviously goes back some time because you were last convicted of drugs related charges in 1990. The other material before me also confirms that you are a very long-term user of cannabis, and that you recognise that you have a real problem with it. For that reason, whilst I accept that there is a degree of commerciality, I also accept that a reasonably significant portion of the cannabis was to be used for consumption by you and/or your partner.

[21] This reduces the starting point that I propose to select. I had in mind a starting point of three years imprisonment. Having regard to the factors I have referred to, I have reduced that to two years six months or 30 months.

Aggravating factors

[22] Although, as I have said, you have previous convictions for cultivating and being in possession of cannabis, that offending occurred a long time ago. To a great extent it is historic and serves merely to explain your current association with cannabis. I do not take it as an aggravating factor that would operate to increase the starting point that I have adopted.

Mitigating factors

[23] I now need to determine the extent to which the starting point of 30 months imprisonment should be reduced to reflect mitigating factors.

[24] You appear for sentence at the age of 41 years. You cannot claim the benefit of an unblemished record because of the earlier offending to which I have already referred. It is clear also that, up until recently at least, you have not been of the view that an involvement with cannabis is a bad thing. You appear to justify it on the basis that alcohol is a far greater social evil than cannabis.

[25] Recently, however, you have begun to address your association with cannabis. You have now entered into a voluntary health rehabilitation agreement with your employer by which you have made clear your intention to rid yourself of your involvement with cannabis. You accept that your employer may terminate your employment in the event that you are found to be using drugs and you have agreed to be submitted to regular drug testing. Your counsel tells me that you are now drug-free and that you intend to remain that way.

[26] The most significant mitigating factor that I can take into account is the fact that you pleaded guilty at a very early stage in the District Court. This entitles you, of itself, to a discount in the order of one-third. This would reduce your sentence to one of 20 months imprisonment or one year eight months.

[27] I am prepared, Mr Wilson, to take you at your word when you say that you have determined to remain drug-free. I propose to encourage that determination by giving you a further two-month reduction of your sentence. I do so on the basis that you need to know that, if you offend again in this way, I have no doubt that the sentencing Judge will take the sentence that I am imposing on you today as an aggravating factor. In other words, any offending in the future will attract an increase in penalty because of the fact that you will not have learned your lesson and you will have failed to keep the assurances that you have given today.

[28] Your end sentence, therefore, would be one of one year six months imprisonment. I would impose that on the lead, or most serious, charge of cultivating cannabis. Although the charge of being in possession of cannabis for supply carries a greater maximum sentence, I am satisfied that the possession charge in your case really is a by-product of the cultivation operation that you were undertaking.

Home detention

[29] The next issue I need to determine is whether, as your counsel seeks, you should receive a sentence of home detention rather than imprisonment.

[30] I have reached the view that that would not be appropriate for two essential reasons.

[31] First, in any case of reasonably serious drug offending issues of deterrence and denunciation are to the forefront. It would send entirely the wrong message to other persons in the community if a drug offender, in these circumstances, was permitted to serve his or her sentence by way of home detention.

[32] Secondly, there is a real risk in sending persons with drug problems back home to serve their sentence.

[33] The actual offending that you engaged in occurred at your home. There would be nothing to stop you reoffending should you so desire. The stress of home detention is likely to exacerbate that risk. You would be required to remain in your home and you would be electronically monitored. Given your background and that of your partner, I have no doubt that there would be a very great temptation to ease the burden of your sentence by smoking cannabis and perhaps growing it again.

[34] For these reasons I have reached the view that a sentence of home detention is not appropriate.

Sentence

[35] On the charge of cultivating cannabis, you are sentenced to one year six months imprisonment.

[36] On the charge of being in possession of cannabis for supply, you are sentenced to one year's imprisonment.

[37] Those sentences will be served concurrently.

[38] On the charge of being in possession of utensils, you are convicted and discharged.

Ancillary orders

[39] I make no order for the forfeiture of the cash found in your possession. I order that the utensils be destroyed.

Lang J