

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

**CRI 2007-019-10303**

BETWEEN                      VYELLA SHIRLEY APAAPA  
   Applicant

AND                              THE CROWN  
   Respondent

Hearing:            20 April 2009

Appearances: Michael McIvor for Applicant  
                         Ross Douch for Respondent

Judgment:        20 April 2009

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**JUDGMENT OF HARRISON J**

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**SOLICITORS**

Michael McIvor (Hamilton) for Applicant  
Almao Douch (Hamilton) for Respondent

[1] On 28 November 2008 Ms Vyella Apaapa signed a request to enter a plea of guilty in the District Court to one charge of conspiring to supply cannabis. She appeared on 6 March 2009 for sentence. Judge Tompkins declined jurisdiction and remanded her to this Court for sentence at 10 am on 3 April 2009.

[2] Ms Apaapa appeared before Asher J on 3 April. He noted that about 10 minutes before sentencing was due to begin Ms Apaapa gave notice to her then counsel, Ms Maria Young, that she wished to apply to vacate her plea of guilty. She did not explain the reason for her decision. Asher J granted Ms Young leave to withdraw and adjourned the proceeding.

[3] Ms Apaapa then instructed Mr Michael McIvor to represent her. He filed a formal application for leave on 9 April upon the grounds that Ms Apaapa was mistaken in her plea; that it was in the interests of justice to allow her to change her plea; and that she had a clear defence to the charge. Ms Apaapa swore an affidavit in support and Mr McIvor filed a synopsis of submissions.

[4] Ms Apaapa's application to change her plea was heard at 2.15 pm today. The Crown, represented by Mr Ross Douch, opposed. Mr McIvor acknowledges that Ms Apaapa carried the burden of satisfying this Court that she should be granted leave to change her plea. He accepts that withdrawal of a plea of guilty would rarely be permitted where an accused is represented by experienced counsel and makes a considered decision to plead. He adds the rider, of course, that any legal advice given must be adequate on the key elements of the charge and available defence.

[5] Ms Apaapa waived her right of privilege relating to advice given by Ms Young prior to her entry of a plea of guilty. Both Ms Apaapa and Ms Young gave evidence this afternoon. Ms Apaapa admitted that she had been acting as a 'runner' for the distribution of cannabis in the Hamilton area for members of the Mongrel Mob gang up to August 2007. While these charges relate to a period from September 2007 to December 2007, Mr McIvor appreciated the incriminating nature of Ms Apaapa's admission. He has given her advice over the afternoon tea adjournment. On Ms Apaapa's instructions and in her presence Mr McIvor advises that Ms Apaapa wishes to withdraw her application for leave to change her plea.

[6] In my judgment that course was appropriate. Ms Apaapa's application was bound to fail. Having heard her under cross-examination I am satisfied that Ms Apaapa was not mistaken in her plea and that she received full advice from Ms Young before deciding to admit the charge. Furthermore, I am satisfied that the Crown case against Ms Apaapa is overwhelming. In particular I refer to the evidence available from intercepted telephone and text communications and from an undercover police officer. They establish that Ms Apaapa was an active participant in a well organised arrangement orchestrated by members of the Mongrel Mob to distribute cannabis in the wider Hamilton area throughout 2007.

[7] It appears that Ms Apaapa's application for leave to change her plea was generated by two events. One was her realisation that she faced a term of imprisonment; the other was her belief that she could not be a party to a conspiracy to supply because there is no evidence she sold cannabis to anybody. Both are misconceived. In particular I am satisfied that Ms Young fully advised Ms Apaapa about the likely consequence of a sentence of imprisonment if she pleaded guilty to the charge of conspiracy to supply cannabis.

[8] Accordingly, for these brief reasons, Ms Apaapa's application to change her plea is dismissed and she will be sentenced in this Court at 9.30 am tomorrow, 21 April 2009. Her bail will continue overnight but she is to report to the registry no later than 9 am tomorrow.

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Rhys Harrison J