

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

**CRI 2007-019-10303**

**THE QUEEN**

v

**VYELLA SHIRLEY APAAPA**

Charge: Conspiring to supply cannabis

Plea: Guilty

Appearances: Ross Douch for Crown  
Michael McIvor for Prisoner

Sentenced: 21 April 2009  
2 years 3 months imprisonment

---

**SENTENCING NOTES OF HARRISON J**

---

---

**SOLICITORS**

Almao Douch (Hamilton) for Crown  
Michael McIvor (Hamilton) for Prisoner

## **Introduction**

[1] Ms Apaapa, you have pleaded guilty to one charge of conspiring to sell cannabis between 19 September 2007 and 6 December 2007. You know that the maximum term of imprisonment for which you are eligible is seven years. The actual sentence I impose will be determined by the facts themselves. In summary they are as follows.

## **Facts**

[2] During 2007 the police were monitoring the criminal activities of members of what is called the Mongrel Mob gang in Hamilton. They obtained interception warrants enabling them to listen to the communications passing between members of this gang and their associates. Eight individuals in particular were targeted.

[3] The police were satisfied that the structure was hierarchical. It worked on the basis that the leader was Mr Sonny Fatu. He is described as the chief executive officer or the regional president. He was the head or principal protagonist. He was in charge of the distribution of large amounts of controlled drugs including methamphetamine and cannabis.

[4] Below him was a second tier. Its members are described as being at the hub of the offending. It was a group of senior patched members of this so-called gang including Mr Satnam Singh and Tremaine Paul. Others have been identified. In summary they were responsible for sourcing and distributing the controlled drugs to other individuals who operated at the lower or third tier. They were the street level operators. They were recruited to supply or arrange the supply of controlled drugs directly to members of the community.

[5] You were a member of that lowest or third level group. You pledged your allegiance to the gang. You were recruited to operate a tinnie house. As you told me yesterday, for some months you operated as a runner, receiving packages from those above for distribution to buyers below.

[6] You were a heavy cannabis user at the time. You were paid in drugs. The whole operation was overseen by a senior member of the Mongrel Mob. It was a profitable operation. You, I accept, as does the Crown, were at the bottom of the rung.

[7] Your participation was proven in three particular ways. One was by items located from a search of your address and a motor vehicle. Another was by your conduct in dealing with an undercover police officer. Another was by an analysis of coded and guarded intercepted communications. Some of them, I must say, Ms Apaapa, were not too guarded. You made explicit admissions while speaking to Mr Singh and others. You attempted to speak in code. It was plain to me when I heard your evidence yesterday on the application for a change of plea that you were describing arrangements for the sale of cannabis.

[8] So that you do not misunderstand the point, Ms Apaapa, I repeat that you have been charged with and pleaded guilty to the count of conspiracy to supply cannabis. The essence of that charge is your agreement to participate in the drug distribution ring run by Mr Fatu on behalf of this gang. Your criminality, though, is compounded by the evidence of your actual activity in carrying out the agreement. But I emphasise you are not being sentenced for the crime of selling cannabis or possessing cannabis for sale.

### **Starting Point**

[9] Against that background I must fix the starting point for your term of imprisonment. The starting point, Ms Apaapa, is the term of imprisonment appropriate to reflect your wrongdoing before I take into account any aggravating or bad features or any positive or mitigating or good features. There are some, principally your plea of guilty.

[10] I can deal with this issue in short order. Mr Douch submits that an appropriate starting point for your criminality is four years imprisonment. Mr McIvor submits three years. I agree with Mr McIvor. A number of the other offenders have been sentenced already, in particular Mr Singh, who was at a tier

above you; that is, a second level offender: *R v Singh* HC Ham CRI 2009-419-000018 25 February 2009. In his case Cooper J adopted an adjusted starting point of five years and three months imprisonment. Similarly when sentencing Tremaine Paul, Allan J adopted a starting point of five years imprisonment: *R v Paul* HC Ham CRI 2007-019-10127 17 February 2009. They were more culpable or blameworthy than you.

[11] In my judgment your offending attracts a lower starting point. For that reason I am satisfied that three years is proper. That is the period necessary to reflect the seriousness of your offending, to deter you, to punish you, and to denounce your activities.

[12] However, that starting point should be adjusted upwards in my judgment by a minimum of six months. The reason is your recent criminal history. You have, as Mr Douch points out, convictions in 2007 for possessing cannabis for supply. You were sentenced, perhaps leniently, on 30 April 2007 to 160 hours community work. You are not being punished again for that crime. However, your conduct in the past, along with a number of other offences, shows your propensity to commit this type of crime. Taking that factor into account, an increased starting point of three years and six months imprisonment is appropriate.

### **Mitigation**

[13] However, there are positive features. First and foremost there is your plea of guilty. I accept that as a sign of remorse. You heard me say to Mr McIvor that I do not intend to treat adversely your unsuccessful attempt to change your plea. The fact remains that you entered a guilty plea at an early stage in November 2008. That is a positive step. It shows your contrition and your regret. It has also saved the state the cost of a trial.

[14] Otherwise, Ms Apaapa, as you are aware, you do not have any other personal circumstances operating in your favour. You are 40 years of age. You live with dependent children. In my assessment you are a vulnerable, impressionable person. As Mr Douch observed, you present a picture of somebody with a longstanding

association with the Mongrel Mob gang. I detected almost a pride in that relationship when you spoke yesterday. It is time for you to break those shackles.

[15] The probation report is sympathetic. The officer confirms that you are in good physical health and that there is no present evidence of a harmful pattern of drug use. That bears out your assertion that you have made a determined attempt to rid yourself of cannabis addiction. I hope that continues.

[16] You know that a sentence of imprisonment is inevitable. In my judgment home detention or a community based sentence are out of the question. You know also, Ms Apaapa, that the principal victims of your crime are your children and those who depend on you. Mr McIvor has fairly stated today that your offending has placed your family at risk. You must live with the consequences.

[17] In the circumstances, Ms Apaapa, you are sentenced to a term of imprisonment of two years and three months. You will work out that that end sentence reflects a substantial discount or credit for your plea of guilty at an early stage.

[18] The future is in your hands. You are at a turning point in your life. You know that if you offend in this way again you will go to prison for a long time. You know the consequences of separation from your children, from your whanau, and from your wider group of friends. I hope, Ms Apaapa, for your sake that you use your time in prison constructively and make a real effort to rehabilitate yourself. If you do, and break the chains of your relationship with the Mongrel Mob, I wish you well. Please stand down.

---

Rhys Harrison J