

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

**CRI 2009-070-003601**

**CRI 2009-070-001087**

**THE QUEEN**

v

**DARRYL BARNEY RAWIRI**

Hearing: 14 May 2009

Appearances: D McWilliam for Crown  
A C Balme for Prisoner

Judgment: 14 May 2009

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**SENTENCING REMARKS OF ANDREWS J**

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Solicitors:  
Almao Douch, PO Box 19173, Hamilton 3244  
Counsel:  
A C Balme, PO Box 13079, Tauranga 3001

[1] Mr Rawiri, you appear for sentencing today, having pleaded guilty on two groups of offences.

[2] The first group of offences was disclosed when a search warrant was executed at your home on 30 January 2009. I refer to this as the January offending. You pleaded guilty to one charge of possession of cannabis for supply, one charge of selling cannabis, one charge of possession of methamphetamine, and one charge of possession of a methamphetamine pipe. You pleaded guilty to those charges on 20 February 2009 and were remanded on bail to this Court for sentencing.

[3] The second group of offences was disclosed when a search warrant was executed, at the address to which you had been bailed, on 23 April 2009. You were charged with possession of methamphetamine for supply, selling methamphetamine, possession of cannabis for sale, and selling cannabis. I refer to that as the April offending.

[4] You will be well aware that the maximum penalties to which you are liable range from life imprisonment for possession for supply and selling methamphetamine to six months' imprisonment and/or a fine for possession of methamphetamine.

### **Relevant facts**

#### *January offending*

[5] A search warrant was executed on 30 January. In your bedroom the police found a snaplock bag containing approximately one ounce of cannabis head, another snaplock bag containing approximately one gram of methamphetamine, and two pipes used for smoking methamphetamine. They also found the sum of just over \$3000 (that is, \$3020) in cash in a bag and two sets of digital measuring scales.

[6] The police found a snaplock bag containing approximately one ounce of cannabis head in a handbag belonging to your daughter, and you admitted that that cannabis was yours.

[7] In the downstairs garage the police found a carry bag containing a large plastic bag with cannabis residue, a set of large digital scales, and a “Glad” box with seven unused snaplock bags inside it. In an outside garage, approximately 15 ounces of cannabis head was found in a large rubbish bag hidden under a work bench.

[8] Your car was also searched and inside the boot area the police found two snaplock bags with approximately two ounces of cannabis head.

[9] You admitted owning all the cannabis, the methamphetamine and the glass pipes. You said that you divided the cannabis into smaller ounce bags and sold them for \$20 each.

[10] You pleaded guilty to those charges on 14 February and were remanded on bail to a Papamoa address, pending sentencing.

#### *April offending*

[11] On 23 April 2009 the police executed a search warrant at the Papamoa address. The police found \$14,705 in cash and six grams of methamphetamine in several “point” bags in your bedroom, together with two sets of electronic scales. The police also found 20 grams of cannabis leaf. You admitted that you had been selling cannabis and methamphetamine from this address since the time you moved in, in February. You said that you sold both drugs on a weekly basis, selling tinnies of cannabis for \$20, or on occasion half ounce bags, and methamphetamine in point bags for \$100, or in two point bags and gram bags. You said that the electronic scales in the bedroom were for weighing the drugs.

[12] You said to the police that \$5000 of the cash located belonged to an associate and the rest was proceeds from selling cannabis and methamphetamine.

#### **Pre-sentence report**

[13] You are 49 years old. At the time of the January offending you were living with your daughter. After you were released on bail you went to live with friends,

your wife and ten year old son in Papamoa. The report tells me that you left school in the fourth form and worked in a variety of jobs. However, you suffered a work related back injury 15 years ago, and have not held paid employment since then. You were initially on an ACC benefit, then an unemployment benefit, and then no benefit for the last 18 months. I understand that you learned that there was a warrant for your arrest in respect of the breach of community work in August 2007, and since then you had no wish to turn up to the WINZ office. Instead, you have been relying on family members to support you.

[14] You admitted to the probation officer that you are a regular user of cannabis. It appears that you replaced what had been problem drinking with problem cannabis use. You told the probation officer that you used methamphetamine minimally. I am not sure if that is still the position.

[15] The probation officer considered that you displayed insight into your offending and noted that you are willing to undergo a drug programme.

[16] You have previous convictions for cannabis and methamphetamine-related offending. Those convictions span from 2005 back to 1997. You have received community based sentences on those occasions.

[17] The pre-sentence report notes that you were in breach of a community work sentence at the time of the January offending.

### **Sentencing process**

[18] I am first going to talk to you about the general law relating to sentencing. I will be talking about the principles and purposes of sentencing that are set out in the law that I have to apply. Then I have to decide what sentence is appropriate, taking those principles into account.

[19] You have heard the lawyers today talking about a starting point. That is the first step in the sentencing process. That is, to establish a starting point. The starting point is what would be the sentence imposed for conviction on the most serious of

the charges of which you have been convicted, if that conviction had come after a trial in Court. In your case, the charges of possession of methamphetamine for supply and supplying methamphetamine are the most serious offences. We refer to them as the lead offences.

[20] The second step is to take that starting point and adjust it to arrive at the appropriate sentence for you and your offending. I consider your offending and whether there is anything about it that makes it more or less serious, that would lead me to impose a sentence that is greater or less than that starting point.

[21] Then I consider matters that relate to you, yourself, because they may also lead me to adjust your sentence either up or down.

[22] I have to take account of what the law has set out as the purposes of sentencing. I have to hold you accountable; that is, to make you responsible for your offending. I have to consider deterring others and protecting the community. I also have to denounce your offending. That means to tell you, in very plain terms, that your offending is not acceptable in New Zealand society. At the same time, the purpose of sentencing is to help you with rehabilitation back into the community.

[23] There is also a need to protect the community from methamphetamine. It is a sad fact that every day we see, in the courts, the social cost to families and to the community that follows from the use of methamphetamine. It is destructive and it is devastating.

[24] There are also some general principles in sentencing that must be considered. I consider the gravity of your offending and your responsibility for it, the seriousness of your offending in comparison with other types of offences, and the general desirability of keeping consistency in sentencing levels.

[25] Under the Sentencing Act, I am directed to impose the least restrictive outcome that is appropriate in the circumstances of the offending. It is desirable to keep offenders in the community as far as that is practicable with regards to safety in

the community. However, the Court can impose a sentence of imprisonment in order to achieve the purposes of sentencing that are relevant.

[26] As no doubt you have been told, for the offences to which you have pleaded guilty, the Misuse of Drugs Act provides that there is a presumption that a sentence of imprisonment will be imposed. Mr Balme has advised me today that you have a positive attitude to the term of imprisonment that you know will be imposed on you today.

### **Starting point**

[27] As I said earlier, I set that by reference to the lead offences as to possession of methamphetamine for supply and selling methamphetamine.

[28] In cases like this I am guided by the Court of Appeal decision in the sentencing of *R v Fatu*<sup>1</sup>. In that case the Court of Appeal set four levels or bands for sentencing for the supply of methamphetamine. Those bands depend on the quantity of methamphetamine involved. The lowest band is when there is less than 5 grams of methamphetamine; the highest is 500 grams or more.

[29] Because of the quantity of methamphetamine found, and the amount of cash found, the second band will apply in your case. It covers a very wide range, of between 5 and 250 grams. For that the Court of Appeal has said that the appropriate starting point is imprisonment for between three and nine years. The question is, of course, where your offending fits within that band, and then what adjustments have to be made to take account of other offending.

[30] In their written submissions, counsel have referred me to sentences imposed in cases where the circumstances were similar to yours. Mr McWilliam referred me to the starting points adopted in the cases of *R v Ward*<sup>2</sup>; *R v Place*<sup>3</sup>; *R v Hill*<sup>4</sup> and *R v Letoa*<sup>5</sup>. I am not going to go through those in any detail. The starting point

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<sup>1</sup> *R v Fatu* [2006] 2 NZLR 72 (CA)

<sup>2</sup> *R v Ward* HC HAM CRI 2007-019-2516 15 September 2007, Randerson J

<sup>3</sup> *R v Place* HC ROT CRI 2007-069-470 15 March 2007, Asher J

<sup>4</sup> *R v Hill* [2008] NZCA 41

<sup>5</sup> *R v Letoa* HC AK CRI 2007-092-9096 7 December 2007, Andrews J

adopted in those cases, where the amounts of methamphetamine and cash involved were comparable with your case, were three or three and a half years imprisonment.

[31] Mr McWilliam submitted that the appropriate starting point would be between three and four years imprisonment. Mr Balme submitted that the starting point should be three years imprisonment.

[32] I have concluded that the appropriate starting point for the two charges of possession of methamphetamine for supply and selling methamphetamine is three years imprisonment.

[33] However, I also have to take into account that in sentencing you today I will be sentencing you on all of the matters on which you were convicted in February, and all of the matters on which you were convicted in April. While you will be receiving concurrent (that is, to be carried out at the same time) sentences, I have to take into account the totality of your offending.

[34] Mr McWilliam submitted that there should be an uplift of twelve months to take into account the totality of your offending before taking into account any matters that relate to you personally. Mr Balme acknowledged that an uplift of twelve months is appropriate.

[35] Accordingly, to reflect the totality of your offending, I adopt an adjusted starting point of four years imprisonment.

### **Personal factors**

[36] I now turn to matters that relate to you personally. I have referred to your previous convictions. I note that the Crown does not submit that the starting point should be increased because of those convictions. I have accepted that submission. What is, however, significant, as Mr McWilliam submitted, is that when you committed the April offences you were on bail awaiting sentence on the January offences. Mr Balme acknowledged that an uplift to take that matter into account is

appropriate. And it is appropriate because you had been given the chance of being on bail awaiting sentencing and yet you offended.

[37] I have concluded that a further uplift of twelve months is required, which brings me to five years imprisonment.

[38] You are, however, entitled to a reduction in respect of your guilty plea. Mr Balme has advised me that you pleaded guilty to the April offending within a few days of the first call of those matters in Court, and that is clear from the Court record. It is also clear that you pleaded guilty to the January offending within a very short time of the first call of those offences. Mr McWilliam makes a good point when he says that in the circumstances it may be that there was little option but to enter pleas of guilty, but the fact remains that you did and you are entitled to a discount for those early guilty pleas. I accept Mr Balme's submission that that shows that you fully accept responsibility for your offending.

[39] The appropriate discount for an early guilty plea is one-third.

[40] In the end result, on the two lead methamphetamine charges, the sentence will be reduced by 20 months from the starting point.

### **Sentence**

[41] On each of the charges of possession of methamphetamine for supply and selling methamphetamine, you are sentenced to three years and four months imprisonment.

[42] I turn to the remainder of the charges.

[43] First, in respect of the January offending, on the charge of possession of cannabis for sale you are sentenced to two years imprisonment.

[44] On the charge of selling cannabis you are sentenced to two years imprisonment.



[45] On the charge of possession of methamphetamine you are sentenced to three months' imprisonment.

[46] On the charge of possession of a pipe you are sentenced to one month's imprisonment.

[47] On the charge of breach of community work you are convicted and discharged.

[48] As to the balance of the April offending, on the charge of possession of cannabis for supply you are sentenced to two years imprisonment.

[49] On the charge of selling cannabis you are sentenced to two years imprisonment.

[50] All of those sentences are to be served concurrently. Your effective sentence is, therefore, three years and four months' imprisonment.

[51] Further, I make an order under s 32 of the Misuse of Drugs Act 1975 for the forfeiture of the cash found in the course of the two Police searches.

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Andrews J