

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

CRI 2007-004-18646

THE QUEEN

v

PAUL LAWRENCE CAMPEN

Hearing: 16 June 2009

Appearances: W Cathcart and A Pollett for the Crown
S Bonnar for the accused

Judgment: 16 June 2009

**(ORAL) JUDGMENT OF STEVENS J
(Bail)**

Solicitors/Counsel:
Crown Solicitor, PO Box 2213, Shortland Street, Auckland 1140
S Bonnar, PO Box 2674, Shortland Street, Auckland 1140

Introduction

[1] At the start of his trial on 3 June 2009, Mr Campen pleaded guilty to counts 2 and 4 in the indictment. Count 2 related to conspiracy to supply the Class B controlled drug MDMA, commonly known as ecstasy to other people. Count 4 related to on or about 22 August 2007 having in his possession for the purpose of supply 550 MDMA tablets.

[2] The facts relating to these two charges arise from an electronic surveillance operation code-named Operation Texas. Mr Campen obtained his supplies of MDMA from Mr Haarhaus who had in turn obtained supplies from another party, or parties, including a Mr Catalogna. I note that Mr Catalogna was sentenced in this Court today on one charge of supplying an amount of between 1,000 and 2,000 MDMA tablets to Mr Haarhaus on 8 August 2007. He also pleaded guilty and was sentenced on having possession of 285 MDMA tablets for the purpose of supply.

[3] It is clear from the facts which I have been apprised of during the course of this trial, that Mr Campen received his supplies from Mr Haarhaus. Indeed, Mr Campen gave evidence not only about the finding of the 550 MDMA tablets in his possession on 22 August 2007, but also about other supplies of MDMA which he obtained from Mr Haarhaus. I note in this regard that Mr Campen pleaded guilty not only to possession for supply of the amount found on 22 August 2007, but also to conspiracy to supply MDMA involving Mr Haarhaus.

Trial on counts 1 and 3

[4] Following the trial on the remaining counts in the indictment, Mr Campen was acquitted of counts 1 and 3 and has been discharged on those counts. He now must be sentenced in respect of the counts to which he pleaded guilty. That will not occur for some time pending the obtaining of relevant probation and other reports.

[5] I have directed that a pre-sentence report be obtained from the Department of Corrections together with a complete home detention annex should that be appropriate.

Application for bail

[6] The question now is whether I should grant bail following application on Mr Campen's behalf by his counsel Mr Bonnar.

[7] There is no dispute that the provisions of s 13 of the Bail Act 2000 (the Act) apply.

[8] When considering an application for bail following guilty pleas, the onus is on the defendant to show cause why bail should be granted: see s 13(2) of the Act.

[9] The relevant factors are set out in s 13(3) of the Act as follows:

13 Exercise of discretion when considering bail pending sentencing

...

(3) When considering the interests of justice under subsection (1), the court may, instead of the considerations in section 8, take into account the following considerations:

- (a) whether the defendant is likely to receive a sentence of imprisonment:
- (b) the likely length of time that will pass before the defendant is sentenced:
- (c) the personal circumstances of the defendant and the defendant's immediate family:
- (d) any other consideration that the court considers relevant.

[10] I heard submissions from Mr Bonnar in respect of these factors and I will deal with each in turn.

Relevant factors

[11] So far as whether a sentence of imprisonment is likely, I am satisfied that a sentence of imprisonment is likely. I am not, of course, going to pre-judge that issue at this stage, I must await receipt of the pre-sentence reports and other relevant information. But I have throughout the course of the trial had the benefit of hearing

a considerable amount of the evidence in relation to the charges to which Mr Campen has pleaded guilty.

[12] Mr Bonnar has submitted that a sentence of imprisonment is not inevitable. He referred to the fact that, given the timing of the charges in August 2007, the transitional provisions relating to home detention apply: see *R v Hill* [2008] 2 NZLR 381.

[13] As to the personal circumstances of Mr Campen, Mr Bonnar submitted that he was suffering from addiction issues. In this regard, he had made preliminary inquiries of the Higher Ground Drug Rehabilitation Trust. I have been provided with two letters, one dated 26 May 2009 and 9 June 2009. These indicate that Mr Campen is scheduled for admission to Higher Ground on Monday, 15 June 2009. More recently, his admission date has been confirmed to Wednesday, 17 June 2009.

[14] During the course of the argument, I questioned Mr Bonnar as to why the admission to Higher Ground had not occurred earlier. Mr Bonnar indicated that preliminary inquiries had been made earlier but that Mr Campen had not until now been able to bring himself to a point where he accepted that he had an addiction and that it needed to be addressed by rehabilitative treatment.

[15] In relation to bail, Mr Bonnar submitted that there is nothing to be lost and much to be gained by allowing Mr Campen to commence the residential course which is 18 weeks in length at the Higher Ground Drug Rehabilitation Trust.

[16] Mr Bonnar also referred me to a number of authorities which he submitted indicated that as a possibility a sentence of home detention might be available.

[17] Mr Bonnar did not address any of the other factors in s 13(3) of the Act. In terms of the time that will pass before sentence, in the normal course this could occur within the next six to eight weeks at the outside. No other considerations were presented for the Court as being relevant apart from those already mentioned.

Crown opposition

[18] Bail was opposed by the Crown. Ms Pollett submitted that a likely sentence of imprisonment would follow and that this was “inevitable”. She submitted that home detention was simply not in the range for this level and scope of offending.

[19] Ms Pollett referred me to the sentence which was imposed today by Ronald Young J in the case of Mr Catalogna on the charges referred to above. There, a start point of five and a half years’ imprisonment was set. It is true that a significant discount of 50% was applied in the case of Mr Catalogna and I will of course need, in due course, to consider the detailed reasons why such a significant discount was applied.

[20] Ms Pollett also referred to another case of *R v Paton* HC WHA CRI 2006-088-1197 24 June 2008, Baragwanath J cited by Mr Bonnar. She submitted that there were exceptional circumstances in that particular case. In conclusion, she submitted that the requirements for home detention were simply not met here. In particular, Ms Pollett noted that Ronald Young J had indicated in the case of Mr Catalogna that had he considered home detention as a possibility it would not have been appropriate in the circumstances of this case.

Discussion

[21] I am satisfied that the offending to which Mr Campen has pleaded guilty is serious offending in respect of Class B controlled drugs. The amounts relevant to the conspiracy will need to be explored in detail at the sentencing hearing, but even on the information available from this trial, the amounts of MDMA are significant. So far as the amounts of MDMA found in possession of Mr Campen on 22 August 2007 are concerned, these were again a significant commercial supply for which the sum of \$14,000 in cash had been paid to Mr Haarhaus.

[22] I am satisfied that it is likely that Mr Campen will receive a sentence of imprisonment. Certainly, on the information available to me at this stage, home detention is unlikely to be within the range of an appropriate sentence. However, as

I have said I cannot pre-judge sentencing. What I have to determine is the question of bail.

[23] On the question of exercising my discretion under s 13 of bail pending sentence, Mr Campen has the onus to show cause why bail should be granted. I have carefully considered the question of whether he has demonstrated, on the balance of probabilities, that it would be in the interests of justice in the particular case to grant bail. In that regard, I have had regard to the factors in s 13(3)(a) and (c) of the Act as advanced so carefully and comprehensively on his behalf by Mr Bonnar.

[24] However, I am not persuaded that Mr Campen has discharged the onus upon him in s 13(2) of the Act. I am not satisfied that it would be in the interests of justice for bail to be granted at this stage. Accordingly, the remand will be in custody.

[25] The sentencing will be on Tuesday, 21 July 2009 at 9am.

Stevens J