

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

CRI-2008-092-017198

THE QUEEN

v

JAHMAINE WHITORA PIRIPI TE WANI

Hearing: 30 June 2009

Appearances: Mr B Northwood for Crown
Mr P Winter for Prisoner

Sentence: 30 June 2009

SENTENCING REMARKS OF LANG J

Solicitors:
Crown Solicitor, Auckland
Counsel:
Mr P Winter, Auckland

[1] Mr Te Wani, you appear for sentence having pleaded guilty to a charge of supplying the Class A controlled drug methamphetamine. As I am sure you must know, the maximum sentence for that charge is one of life imprisonment.

Factual background

[2] The charge against you follows a large police operation mounted at the end of 2007 in the South Auckland area. The target of the operation, which was called Operation Leo, was the drug dealing activities of two gangs, including the Killer Beez. It would seem that you have some form of peripheral association of the Killer Beez through one of your relations, whom I sentenced earlier this morning.

[3] The police gathered sufficient information to satisfy a High Court Judge that grounds existed to believe that drug-dealing activity was being carried on by the Killer Beez. That Judge made an order granting the police an interception warrant that enabled them to intercept telephone and other communications between the people that they suspected of being involved in drug dealing.

[4] Between 12 February and 5 May 2008 the police intercepted more than 110,000 telephone communications acting under the authority of the warrant they obtained.

[5] The intercepted communications included communications by you. These led to the inevitable conclusion that you were dealing regularly in small quantities of methamphetamine. This fact is recorded in a summary of facts that you do not dispute. It seems that you would purchase methamphetamine in one to two gram quantities. You would then break that down and on-sell it in point bags. The police say that the regularity with which you dealt in methamphetamine can be gauged from the fact that over an 84 day period they intercepted no fewer than 117 telephone communications that involved you and were related to drug dealing activity.

[6] In all, the police estimate that you sold about 20 grams of methamphetamine to other people. You say that this resulted in you receiving about \$100 a week.

[7] The police ultimately searched your address on 7 May 2008. When they did so, they found all the hallmarks of a small-time drug dealer. These included 1.28 grams of methamphetamine, 145 ziplock plastic bags, a set of electronic scales and \$1060 in cash. You admitted your role in the offending and, as I have said, you described how you would sell point bags on a regular basis to friends and associates. I therefore take you to be a regular dealer in methamphetamine, albeit at street level.

Sentencing Act 2002

[8] In sentencing you, issues of deterrence and denunciation are to the forefront. This means that the sentence that I impose must endeavour to deter you from becoming involved in this type of activity in the future. It must also send a message to others in your position that, if they continue dealing at no matter how low a level, then the likelihood is that they will be going to prison if they are caught.

[9] The only way in which the Court can hope to deal with the flood of methamphetamine cases that is coming before it is to send the message that those who are caught will go to prison. Any other approach would send entirely the wrong message.

[10] The real issue, so far as the sentence to be imposed on you is concerned, is the level at which the sentence must be pitched. I need to impose a sentence that is broadly consistent with those imposed in other cases. Of particular importance here is the fact that you fall to be sentenced as part of a large group of people who were involved in a widespread drug dealing operation. It is therefore very important that I impose a sentence that is consistent with those that have been imposed on other offenders within this realm of drug dealing activity. If sentences are not imposed on a consistent basis, then it leaves room for people to feel that they have been unjustly treated.

[11] The first port of call in the sentencing exercise is to fix the starting point for the sentence to be imposed on you. This means the sentence that would be imposed after a defended trial. It takes into account all of the aggravating facts relating to the offending itself, but does not take account of factors that are personal to you.

Starting point

[12] Both counsel accept that the starting point for your sentence falls to be determined by reference to a decision of the Court of Appeal known as *R v Fatu* [2006] 2 NZLR 72. In that case the Court of Appeal identified several bands of starting point for differing levels for methamphetamine offending.

[13] Counsel agree that your offending falls towards the bottom of the second band that the Court identified. In this band the Court will be dealing with offenders who have supplied or manufactured between five and 250 grams of methamphetamine. The starting point for cases within this band is between three and nine years imprisonment.

[14] I have done some research of my own to identify the starting point in other cases involving around 20 grams of methamphetamine. Broadly speaking, they show that a starting point of around four years imprisonment is commonly identified for such offending: See eg *R v McGrath* HC WN CRI 2007-078-793 7 November 2008 Simon France J (approximately 20 grams – starting point four years imprisonment); *R v Wharton* HC BLE CRI 2007-006-001815 9 October 2007 Wild J (22 grams – starting point four and a half years imprisonment); *R v Anderson* HC AK CRI 2006-092-001569 16 October 2007 Winkelmann J (approximately 20 grams – starting point four years); *R v Hemana* HC AK CRI 2007-092-1243 26 February 2008 Stevens J (18.9 grams – starting point of four years imprisonment).

[15] In your case I am assisted by the sentencing notes of Priestley J, who sentenced another offender arrested in the same operation as that in which you were arrested. In that case the Judge took a perhaps charitable view in finding that the offender had been involved in dealing in no less than 30 grams of methamphetamine. This led him to select a starting point of four years three months imprisonment.

[16] You, of course, are to be sentenced on the basis that you dealt with a lesser amount. For that reason I accept that the sentence must be below the four year starting point that would probably otherwise have been appropriate in order to

recognise the approach taken in *R v Flavell*. I therefore propose to select a starting point of three years nine months imprisonment for your offending.

Aggravating factors

[17] You have previous convictions for cannabis related offending. I am not sure whether the Crown presses this strongly, but I am satisfied that no uplift is required to reflect those earlier convictions. You need to know, however, Mr Te Wani, that this is the last time on which the Court is likely to take that approach. If you appear here again on serious drug related charges then you can expect that future sentences will be more serious to reflect your earlier offending.

[18] The purpose of that is not to punish you twice for the same offending. What happens in relation to future offending is that the Court will take the view that the sentence that I am imposing today has not had any effect on you. In other words, that you have not learned your lesson from the sentence that I am imposing today. That will make future offending that much more serious. So this is probably your last opportunity to be sentenced without an uplift for previous convictions.

Mitigating factors

[19] So far as factors in mitigation are concerned, you appear for sentence at the age of 25 years. You cannot claim any credit for being a first offender because of your earlier offending. I am told that you are in a long-standing relationship with young children. That, of course, is a tragedy, Mr Te Wani, because they will now in many ways be punished for what you have done.

[20] Ironically, I suspect that you had the interests of your family in mind when you offended because you clearly offended solely to earn income. This is not one of those situations in which a user of methamphetamine endeavours to finance his or her habit by selling a little methamphetamine on the side. You have engaged in that activity solely for your own commercial benefit.

[21] I am also told that you view this offending as a huge “wakeup” call. I hope that that is the case, Mr Te Wani, because if it is not then the future for you and your family is very bleak indeed.

[22] The factor to which I can give significant recognition is, of course, your guilty plea. Although that was not entered at the earliest stage, I accept that the complexities of this police operation meant that it was impossible for you and your counsel to make a realistic assessment of the case against you until some considerable time after you were first charged. For this reason the Crown accepts that you should be given full credit for your guilty plea, notwithstanding that it came further down the track than would ordinarily be the case to justify such a discount.

[23] I propose to give you a discount of one-third to reflect that fact. This means that the end sentence is one of two years six months imprisonment.

Home detention

[24] That end sentence precludes the possibility of home detention as an alternative form of sentence. I have to say, however, Mr Te Wani, that even if you had been eligible for home detention I would not have granted it. This was reasonably serious offending. It occurred over a lengthy period purely for commercial gain. It was also committed in the context of the fact that you had previous convictions for drug related activity. Finally, it was conducted, to some extent at least, from your home address. All of those factors would have suggested to me that you would not be a candidate for home detention.

Sentence

[25] On the charge to which you have pleaded guilty, you are sentenced to two years six months imprisonment.

[26] I make an order for the forfeiture of the cash that the police found at your address, together with the destruction of the drugs and drug related paraphernalia that were found at that address.

Lang J