

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

CRI-2008-092-17198

THE QUEEN

v

MAX ANTHONY JOSEPH WILSON

Hearing: 30 June 2009

Appearances: Mr B Northwood for Crown
Mr D Reece for Prisoner

Sentence: 30 June 2009

SENTENCING REMARKS OF LANG J

Solicitors:
Crown Solicitor, Auckland
Counsel:
Mr D Reece, Auckland

[1] Mr Wilson, you appear for sentence at the age of 19 years having pleaded guilty to one charge of supplying methamphetamine and one charge of manufacturing methamphetamine. As you must know, both of those charges carry maximum sentences of life imprisonment.

[2] You pleaded at a relatively early stage and fall to be sentenced on that basis. I propose to give you full credit for your pleas of guilty because both counsel acknowledge that this has been a complex prosecution and one that took some time to fully resolve.

Factual background

[3] The charges against you arise out of a police operation that the police carried out from late 2007. As you know, it was called Operation Leo and it targeted the drug dealing activities of two gangs in the Counties-Manukau region. One of these was the Killer Beez gang to which you have belonged, it seems, for some considerable time.

[4] The police believed that these gangs were involved in drug dealing activities. For that reason they obtained an interception warrant from this Court authorising them to intercept telephone and other audio conversations by people suspected of dealing in drugs. Between 12 February and 5 May 2008 the police intercepted more than 110,000 telephone communications as a result of the warrants.

[5] The summary of facts, to which you take no exception, records that a large number of telephone conversations in which you were involved were intercepted. It seems that you were dealing regularly with people, both inside and outside the Killer Beez gang, in drug related activities. You obtained methamphetamine from a number of people including, sadly, your father. You then on supplied that methamphetamine to other people, some of whom were themselves dealing in methamphetamine.

[6] The summary of facts records that thousands of text messages and telephone communications can be attributed to you in the course of your drug dealing activity during the police investigation.

[7] It also records that more than 500 hundred individual instances of drug dealing were identified. These included situations in which you offered or agreed to supply methamphetamine to other people. More than 150 actual supply transactions were identified. Generally these were in small amounts but, overall, and you do not dispute this, the summary records that you have sold about 230 grams of methamphetamine to other people.

[8] The charge of manufacturing methamphetamine arises from a covert search that the police carried out of an address at Papakura on or about 31 March 2008. When the police searched those premises, they found a methamphetamine manufacturing operation taking place. The summary records, and you accept, that you supplied a total of two kilograms of caustic soda to that operation. This apparently came in the form of two separate supplies. On one of these occasions you were trailed by the police to the address and you were seen taking the caustic soda into the address.

[9] This manufacturing operation was obviously of a significant scale. The police estimate that more than 300 grams of methamphetamine were likely to have been produced by the operation. The supply by you of two kilograms of caustic soda would have contributed in no small part to the success of the operation. Having said that, I accept that you were not the person who was actually making the methamphetamine. Your role was to supply one of the key ingredients that was going to be used in the operation.

[10] The summary also records what the police found when they searched your father's address on 5 May 2008. As I have said, your father was supplying you with methamphetamine. When the police searched his address they found more than nine grams of methamphetamine, 79 zip lock plastic bags, three sets of electronic scales and \$8,840 in cash.

[11] When the police searched the home address of a young person to whom you had been supplying methamphetamine, they found 51.8 grams of methamphetamine.

[12] You, of course, Mr Wilson, are not to be sentenced on the basis of the two incidents that I have just referred to. Nevertheless, they provide a snapshot of the kind of activity that was going on here. These were very significant quantities of methamphetamine. I therefore regard you as a high level dealer, dealing regularly in reasonably significant quantities of methamphetamine.

[13] So far as the charge of manufacturing is concerned, as I have said, I accept that you did no more than contribute one of the key ingredients to the operation.

Sentencing Act 2002

[14] As you must now know, in any case involving the supply and manufacture of methamphetamine, issues of deterrence and denunciation are to the forefront. This is a drug that is now endemic in our society. It causes grief and pain to people across the board. It destroys families and livelihoods. The only way in which the courts can play any role in trying to bring this scourge under control is by imposing sentences that deter others from becoming involved. As a result, the reality is that people who come before the courts on charges of dealing in and manufacturing methamphetamine can virtually inevitably expect sentences of imprisonment. When the dealing or manufacture is in significant quantities, those sentences are likely to be substantial.

[15] Having said that, it is important a sentencing court imposes a sentence that is broadly consistent with sentences imposed in other cases. That is necessary because people need to see that they are being dealt with fairly and in the same way that other people are being dealt with.

[16] For that reason, too, the Court must endeavour to impose the least restrictive outcome that is possible in the circumstances. In a situation such as yours, this really means imposing a sentence that is as low as I can having regard to all the circumstances.

Starting point

[17] It is necessary, first, to select a starting point for the sentence to be imposed on you. The starting point is the sentence that would be imposed after a defended trial and which reflects all of the aggravating and other features of the offending itself. It does not, however, take into account mitigating or aggravating factors that are personal to you.

[18] Both counsel agree that the starting point for your offending falls to be determined in accordance with a decision of the Court of Appeal in a case called *R v Fatu* [2006] 2 NZLR 72. In that case the Court of Appeal identified bands of offending for the supply and manufacture of methamphetamine. Band 2 identified in that case relates to offending where between 5 and 250 grams of methamphetamine is involved. That offending will attract a starting point of between three and nine years imprisonment.

[19] Given the fact that your offending involved around 230 grams of methamphetamine, you are clearly at the top end of that range. I have examined other sentences imposed in cases where more than 200 grams of methamphetamine have been involved and they tend to have a starting point of around eight to nine years imprisonment which you would expect in light of *Fatu*: see eg *R v Liu* HC CHCH CRI 2005-009-013766 11 September 2006 Fogarty J (280 grams – starting point ten years imprisonment); *R v Chou* HC AK CRI 2007-004-8340 21 October 2008 Asher J (280 grams – eight years imprisonment); *R v Gray* HC AK CRI 2006-004-3200 25 September 2007 Allan J (297 grams – nine years imprisonment).

[20] I consider that a starting point of at least eight and a half years would be justified in relation to your dealing offending alone. Some recognition must also be given to the fact that you were prepared to supply a significant quantity of a key ingredient to the manufacturing operation. In the end, I consider that an overall starting point of nine years imprisonment reflects the totality of your offending having regard to both the supply and manufacture charges. That, therefore, is the starting point that I take.

Aggravating factors

[21] You have a number of previous convictions but for present purposes the Crown accepts, as do I, that they have no relevance and that the starting point should not be increased to reflect those.

Mitigating factors

[22] The remaining aspect of the exercise is to assess the extent to which the starting point should be reduced to reflect mitigating factors that are personal to you.

[23] The first of these is, of course, the fact that you have pleaded guilty to very significant charges and you have co-operated with the police. I propose to give you full credit for that, although pleas did not come at the earliest opportunity. As I have said, I accept that the complexities of this case meant that it was virtually impossible for you and your counsel to consider the issue of plea until such time as a coherent summary had been prepared. This, in turn, could not occur until such time as the police had had time to digest all of the voluminous material that was in their possession as a result of the operation.

[24] You appear, as I have said, at the age of 19 years. Age is generally a factor that the courts will take into account. But it has to be said that when one gets into offending as serious as this, age, as indeed other personal circumstances, can really count for little. Mr Wilson, you were prepared to become involved in offending in such a serious way that you acted as an adult and I really have to sentence you as an adult.

[25] The striking feature about your personal circumstances is the extent to which you are steeped in the Killer Beez gang culture. Your counsel tells me this morning that you have been in the gang environment since you were born. I have no doubt that, if that is correct, that it provides a cogent reason why you are where you are today. Involvement with gangs such as the Killer Beez inevitably means that you will become involved in offending. Drug offending, it would appear, is particularly

prolific within that environment and you were clearly to the forefront in that type of activity.

[26] So that provides an explanation, Mr Wilson, but it does not provide any form of excuse. Indeed, involvement in a gang in drug dealing activity is generally seen as an aggravating factor rather than a mitigating factor.

[27] Your counsel tells me that you have reached a watershed and that, together with your family, you have made a decision that you will break your links with the gang. Well, I applaud that, Mr Wilson, and I hope that you can carry it through. It won't be easy, as you know, because the prison environment in which you are going to spend the next few years will be a tempting place within which to maintain your gang contacts.

[28] But you need to know, if you have not already worked it out for yourself, that if you maintain your links with the gang when you get out, the inevitable consequence will be that you will be sitting in this Courtroom again in the not too distant future. And I can tell you that on future occasions when you appear, the sentence that is passed upon you this morning will operate as a flag or signal to the sentencing Judge. The sentencing Judge on the next occasion will know that you have not learned your lesson from the sentence that I am imposing on you this morning. It is likely, therefore, that your future sentences will be increased as a result of the fact that you have previous convictions for serious drug offending. So the only way out for you, Mr Wilson, is to make good on your resolution and to break free from this gang regardless of how difficult that might be.

[29] In the end, there is only one other matter in respect of which I can give you some credit and that relates to the fact that you have now spent 12 months on a 24-hour electronically monitored curfew. The courts have now recognised that this factor may be taken into account because your liberty has been significantly restricted over the last 12 months but you will not be able to receive any credit for that on your sentence: See eg *R v Nepe* CA 680/07, 5 May 2008 at [33].

[30] So for that reason the courts have recognised that, in appropriate cases, credit may be given for the fact that the offender has been subject to a very restrictive bail regime. That is always a matter of the court's discretion because some regimes will be less restrictive than others. In some cases it will be appropriate to give full credit for the time spent on remand. In other cases it will not be appropriate to give any credit at all because the bail regime will not have been particularly restrictive.

[31] In your case I consider that the regime has been reasonably restrictive because of the fact that you have been required to remain at your home address on a 24-hour basis. On the other hand, you have at least been with your family and you have had that benefit which you simply would not have had in custody on remand. For that reason I am prepared to give you a discount of nine months to reflect that factor.

Sentence

[32] On the charge of supplying methamphetamine, you are sentenced to five years three months imprisonment.

[33] On the charge of manufacturing methamphetamine, you are sentenced to two years imprisonment.

[34] Those sentences are to be served concurrently which means that you are to serve an effective sentence of five years three months imprisonment.

Minimum term

[35] Can I just say, Mr Wilson, that in this type of situation it is open to the Court to impose a minimum term of imprisonment. That is the minimum term that you would have to serve before the Parole Board is entitled to consider any application for you by parole. There are now numerous instances where a sentencing court has imposed a minimum term of imprisonment in situations like this. It does so to reflect the fact that this is serious offending, that issues of deterrence arise and that the offender needs to be held accountable for his or her actions. In some cases, the

eligibility for parole after serving one third of a sentence, is simply not sufficient to recognise these factors.

[36] The Crown does not seek that sentence in your case, Mr Wilson, and I accept that that is appropriate. I accept that it is appropriate firstly, because of your age. Secondly, because of your acknowledgement of wrongdoing. Thirdly, because you appear to have some insight into your offending and fourthly, because you have pleaded guilty. All of those factors suggest to me that a minimum term of imprisonment is not required. But that will not necessarily be the case so far as others are concerned who are involved in offending such as this. A minimum term may often be necessary when offending reaches this level.

[37] You can rest assured also, Mr Wilson, that if you fall to be sentenced again on similar charges, it is highly likely that you will receive a minimum term of imprisonment.

Outstanding fines

[38] Quite clearly, you are not in a position to pay fines that I am told are outstanding and you will not be in a position to do so in the near future. For that reason, if it is within my power to do so, I make an order that those fines be remitted. If it is not, you will need to make appropriate application to the District Court.

Lang J