

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

CRI 2008-088-4129

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THE QUEEN

v

ALAN JAMES ROBERTS AND MAUREEN FRANCES TAUTARI

Hearing: 16 July 2009

Appearances: Mr Coleman for Crown
N Leader for Roberts
D Sayes for Tautari

Judgment: 16 July 2009

SENTENCING REMARKS OF ALLAN J

*Solicitors:
Crown Solicitor Whangarei
N Leader, Whangarei
D Sayes, Whangarei*

[1] Mr Roberts, you appear for sentence this morning, having pleaded guilty to two charges of selling cannabis, two charges of possession of cannabis for supply, and one charge of possession of a pipe. Mr Coleman has pointed out there is a jurisdictional defect in this last charge, which is a nullity and it is accordingly dismissed. For the remaining offences the maximum penalty is eight years imprisonment.

[2] Ms Tautari, you appear for sentence having pleaded guilty to three charges of selling cannabis, and one of possession of cannabis for supply. In each case the maximum penalty is eight years imprisonment.

Facts

[3] During the course of a police operation in July 2008, under cover police officers purchased controlled drugs from a number of persons. You are, or have been, partners, having had three children together. At a time when you were together in a house in Whangarei you each supplied cannabis to an under cover police officer. On two separate days you, Ms Tautari, sold four cannabis tinnies to an under cover officer for a total of \$80 cash. On the second occasion the under cover officer noticed that the cannabis tinnies were taken from a bag containing about 10-14 tinnies. At the time of execution of the police search warrant you had six cannabis tinnies in your possession for the purpose of supply.

[4] Mr Roberts, you sold two cannabis tinnies to the under cover officer for a total of \$40 cash. Further, and importantly, you reoffended while on bail awaiting sentence for the earlier offences. In February of this year the police executed a further search warrant at your address. The search revealed some 18 tinnies ready for sale. You accepted that they were yours.

[5] You have each given an indication to the police of the totality of your cannabis selling operation over the period preceding your apprehension. There is some doubt about actual quantities, and I do not propose to discuss precise figures.

The picture that emerges is of a sustained, although low, level retail operation, under which sales were made regularly, and from which you derived something of the order of several hundred dollars per week, which you used to supplement the family finances. From what I am told, it seems that Mr Roberts may have been the leader in what occurred, but Ms Tautari was certainly a party to what went on, and it is not possible to distinguish between you in terms of your separate roles.

[6] Mr Roberts, you are 34 years old and of Maori descent. Your whanau is based in Kaeo, but you have lived in the Whangarei District for significant periods. Formerly, you were in a relationship with Ms Tautari, and had three children with her. You each confirm that you have not been living together at least full time since about 2004, but when most of these offences were committed, you were certainly living in the same household.

[7] In the past few years, Mr Roberts, you have been working as a kumara harvesting contractor; that is seasonal work, and there are financial pressures. It appears that the offending has arisen in part from financial need, although I note that you are a regular user of cannabis yourself and that you indicated to the probation officer that you saw little need to give it up. You say it motivates you and enables you to concentrate on matters requiring your attention. There is little indication in the probation report that you are a promising candidate for programmes directed at those who wish to give up a drug based lifestyle.

[8] In respect of the February offending, you simply say you took a gamble, again for financial reasons. Of course that offending occurred while you were on bail for the other offences, and suggests that you have a long way to go yet before there could be any confidence about your future.

[9] You have 16 previous convictions; six of them, between 2002 and 2008, are cannabis related. They include convictions for both cultivating and selling cannabis.

[10] Ms Tautari, you are also 34 years old, and of Maori descent. You have six children and they are necessarily your primary focus. You have been living in accommodation rented from Housing New Zealand but have now made

arrangements, already implemented I understand it, to return to Kaikohe to live with your mother.

[11] Your probation report suggests that there are grounds for optimism. You have expressed regret about what has occurred and naturally enough you are concerned about your immediate future and about the care of the children. Prior to this offending, you were a regular user of cannabis, but the Court is told you have not consumed anything illicit since your apprehension. The pre-sentence report writer believes you are motivated to refrain from drug use in the future and your risk of further offending is assessed as low to medium.

[12] You have six previous convictions, including one for cultivating cannabis as far back as 1995. I do not regard that somewhat elderly conviction as of any relevance today.

Sentencing principles

[13] I am required to take into account the provisions of ss 7 and 8 of the Sentencing Act, and in particular, there must be an element of accountability in any penalty imposed, which must also reflect a requirement to denounce and deter. Having said that, the Court is bound to assist in your rehabilitation and re-integration into the community as best it can, and to impose the least restrictive outcome that is appropriate in all the circumstances.

Discussion

[14] Counsel are agreed that the starting point is the decision of the Court of Appeal in *R v Terewi* [1999] 3 NZLR 62, which applies to cannabis sales as well as cultivation. Counsel agree that this case falls at the lower end of category 2 which covers the small scale cultivation of cannabis plants for a commercial purpose, and by extension, low level commercial dealings in cannabis. The prescribed starting point is two to four years imprisonment, but lower if sales are infrequent or of limited extent.

[15] There is an element of uncertainty about the extent of your overall offending. I have discussed that a little earlier. I am however satisfied that although this was plainly not an operation being conducted on a very large scale, there was consistent and sustained dealing in tinnies over a considerable period. In short, it was an established business.

[16] For each of you a starting point of two years six months is appropriate. However, in your case Mr Roberts, there must be an uplift. I first add a further three months in order to reflect the fact you have a number of previous cannabis related offences. There is no immediate sign that you have learned much from your previous offending. There will also be a further uplift of six months imprisonment in respect of the February offending, which took place when you were on bail awaiting sentence. A separate and distinct sentencing component needs to be imposed for that.

[17] So, the total is three years three months imprisonment, from which I deduct one year in order to reflect your guilty plea. That makes an effective sentence of two years three months imprisonment.

[18] Ms Tautari, your position is somewhat different. There is room for guarded optimism about your future. From the starting point of two years six months imprisonment I deduct 10 months, which is one-third, in order to reflect your guilty plea, and your remorse. That leaves a sentence of 20 months imprisonment, which for the purposes of the home detention regime, is a short term sentence. You are therefore eligible for home detention, which I intend to impose instead of a sentence of imprisonment.

[19] Your mother's residence in Kaikohe is regarded as suitable, although it is somewhat small and there will be difficulties. Nevertheless, a community based sentence will at least enable you to maintain your care of your family. I consider home detention to be appropriate on the principal ground that your prospects of rehabilitation appear to be relatively good. That is a factor that is often determinative: *R v Hill* [2008] 2 NZLR 381. I add that home detention is a one-off

opportunity for you Ms Tautari. If this sort of offending recurs it will have to be imprisonment.

Sentence

[20] Mr Roberts, on each of the charges you face, you are sentenced to two years three months imprisonment, those terms to run concurrently.

[21] Ms Tautari, on each of the charges you face you are sentenced to 10 months home detention on the following conditions:

- a) Immediately upon your release today you are to travel directly from the Court to 30 Orrs Road, Kaikohe, there to await the arrival of a probation officer and installation staff;
- b) You are to reside at 30 Orrs Road, Kaikohe for the duration of the sentence;
- c) You are not to consume alcohol or possess illicit drugs;
- d) You are to attend and complete to the satisfaction of the programme provider and your probation officer any drug related or other counselling or programme as is deemed appropriate by your probation officer.

C J Allan J