

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

**CRI-2009-027-002551**

**THE QUEEN**

v

**SAMUEL LOUIS KNUTSON**

Hearing: 16 October 2009

Counsel: M B Smith for the Crown  
D J Blaikie for the prisoner

Judgment: 16 October 2009

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**SENTENCING REMARKS OF STEVENS J**

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Solicitors/Counsel:  
Crown Solicitor, PO Box 146, Whangarei 0140  
D J Blaikie, PO Box 382, Kaikohe 0440

## **Introduction**

[1] Samuel Louis Knutson, you appear for sentence today having pleaded guilty to the following charges under the Misuse of Drugs Act 1975: one count of offering to supply the Class A controlled drug LSD, for which the maximum penalty is life imprisonment; 59 counts of offering to supply the Class C controlled drug cannabis, for which the maximum penalty is eight years' imprisonment; and one count of possession of the Class C controlled drug cannabis for supply, for which the maximum penalty is again eight years' imprisonment.

[2] For the purposes of your sentencing, I have been assisted by the following materials: written and oral submissions from the Crown; detailed written submissions from your counsel Mr Blaikie as amplified in his comprehensive oral submissions today; a pre-sentence report and a reference from Mr Adams speaking to your previous good character.

## **Factual background**

[3] Between 1 October 2008 and 5 April 2009, Kaikohe Police mounted an operation targeting known drug dealers in the mid-Northland region. You were one of the targets of this operation.

[4] Between those two dates, telephone records including text messages and call data from your cellphone were captured by the police through a search warrant as part of the operation. An analysis of a large number of text messages showed that you had been involved in a considerable number of drug transactions throughout this period.

[5] You and your associates communicated mostly by way of text messages. For this purpose, you had developed and used coded language demonstrating a clear desire to conceal your activities from the police. From these text conversations, it was clear that you were purchasing large quantities of cannabis on a regular basis,

ranging from several ounces up to a pound of cannabis at a time. You purchased these quantities, it would seem, weekly. You would then make arrangements to on-sell the cannabis in smaller amounts to your customers for profit.

[6] The text messages also refer to the possibility of sourcing other controlled drugs and offering them for sale. During the period of the operation, there is reference to you seeking to source up to ten tablets of LSD and offering to sell these to associates. However, the police accept that there was no indication that you actually sold LSD in those numbers, or that the transaction to which you pleaded guilty of offering to supply LSD was in fact completed.

[7] On termination of the operation, a search of your home address in Kaeo was conducted on 5 April 2009. Your cellphone was located. Police also located 44 grams of cannabis plant material that you had purchased and broken down into three smaller lots. These smaller lots were ready for sale and were in individual zip-lock bags and demonstrate the nature of your dealing activities.

[8] When spoken to by police, you admitted that you sent the text messages, but denied that you purchased the Class A and Class C controlled drugs offered for sale in the text messages, and denied on-selling any Class A drugs you offered in the text messages. You also said that only half of the offers to sell actually went through. But you did acknowledge that you were acting as a “middleman”.

### **Personal circumstances and pre-sentence report**

[9] You are 26 years of age. You currently live with your partner in the Kaeo area. You have been in a relationship with your partner for approximately ten years and have no dependents. You were born in Kaeo and are the youngest son of three. You describe your childhood as relatively normal. You have a good relationship with your partner, your parents and siblings.

[10] You attended Whangarei Boys High School until the age of 14 years. You then commenced study from home through correspondence. You left mainstream education after various incidents at school. You are currently employed as a full

time labourer for Mountain Landing Properties in the Ponerua Peninsula. You have maintained this employment for the past seven and a half years, and that is to your credit. An income assessment showed that after paying your weekly expenses, you have no disposable income left. You report that you owe approximately \$30,000 to numerous debtors and have no assets. According to your counsel, these debts seem to have been incurred through your interest in motor vehicles.

[11] In relation to the current offending, you state that you generally agree with the statement of facts. But you went on to endeavour to minimise your involvement in these matters by saying that it was never more than a couple of ounces at a time, and that you had never gone out to source cannabis or LSD to on-sell and that some of the bags were for your own personal use. You have expressed remorse for your offending, but were unable to identify any ways in which you could make amends for your offending.

[12] It seems that you had an addiction to cannabis. After your arrest, according to your counsel, you gave up the personal use of cannabis and claim to be drug free, although I have no evidence other than the submission from the bar to that effect. You have not participated in any drug rehabilitation programmes. The Probation Officer assessed the key factors relating to your offending as being your drug use and thoughts and feelings relating to controlled drugs during the commission of the offending. You state you will never use cannabis again.

[13] You have no previous convictions, and that too is to your credit.

### **Crown submissions**

[14] The Crown referred to various aggravating factors including the extent of any loss, damage or harm to the community resulting from the offending. The Crown also referred to the premeditation involved. The Crown submitted that the main mitigating factor was your guilty pleas, about which I will say more shortly.

[15] The Crown submitted that the lead offences taken in totality should be the 59 charges of offering to supply cannabis, which involved approximately six and a half

pounds of cannabis over a five month period. The Crown submitted that this was a serious ongoing commercial operation. The Crown submitted that, given the quantity of cannabis involved in this case, it should be a starting point of between three to four years' imprisonment relying on category two in the case of *R v Terewi* [1999] 3 NZLR 62.

[16] The Crown submitted that the offering to supply LSD offence warranted a starting point, if taken on its own, of around two years' imprisonment. But, the Crown accepted that a concurrent sentence is appropriate. But there would need to be an uplift of around 12 months' imprisonment to reflect the totality of offending.

### **Defence submissions**

[17] Mr Blaikie emphasised the Crown's concession that it was not possible to say that each and every offer to supply cannabis resulted in an actual transaction. He also reminded the Court of the concession in relation to the LSD charge, that the Crown accepted that there was no evidence of a completed transaction.

[18] Mr Blaikie had taken the chart of the offending and ascribed approximate values to the transactions, noting that if approximately half of the offers resulted in transactions that would equate to approximately 30 transactions and an actual gain in the region of \$4,000.

[19] He submitted that the offending is not as large scale as the Crown contended as it was confined to a relatively limited group of close friends and associates. He submitted that it was around six transactions per month, over a five month period, and involved a total consideration of approximately \$12,000.

[20] Mr Blaikie accepted that the cannabis offending fell within category two of *Terewi* and submitted that a starting point, bearing in mind the various factors to which he had referred, should be no more than two and a half years' imprisonment. He accepted that there needed to be an uplift for the LSD offending, but submitted that should be no more than six months' imprisonment.

[21] Mr Blaikie emphasised, in terms of mitigating factors, your relatively young age, your previous good character and your remorse. He also relied on the fact of your guilty pleas and referred me to the case in the Court of Appeal of *R v Hessel* [2009] NZCA 450. In relation to such guilty pleas, Mr Blaikie submitted that you should receive the full 33% discount as the guilty pleas were entered prior to the depositions and had been indicated to the police for a period prior to that. He contended that the delay in entering the pleas were caused by the number of charges, the need for disclosure and the time he required to examine the documentation involved in disclosure.

[22] Mr Blaikie submitted that a sentence of home detention would be appropriate in this case.

### **Relevant purposes and principles of sentencing**

[23] The Sentencing Act 2002 (the Act) requires that I keep in mind a number of purposes and principles when deciding on an appropriate sentence. In your case, I have specific regard to the following purposes of sentencing as set out in s 7 of the Act: the need to hold you accountable for the harm done to the community; the need to promote in you a sense of responsibility for, and an acknowledgement of, that harm; the need to denounce your conduct; the need to deter you and others like you from committing the same or similar offences; and the need to assist in your rehabilitation and reintegration.

[24] In sentencing you, I am also required to take into account the principles of sentencing as set out in s 8 of the Act. They include the need to take into account the gravity of the offending, including the degree of culpability. Then there is the need to take into account the seriousness of this type of offending in comparison to other types of offences. There is the need to consider the general desirability for consistency with appropriate sentencing levels with similar offending, the need to impose the least restrictive outcome that is appropriate in the circumstances, and to the extent that I am able to do in the context of drug related offending, the need to take into account the particular circumstances of you as the offender in order to ensure that the sentence imposed is not disproportionately severe.

## **Features of the offending**

[25] The Court of Appeal in *R v Taueki* [2005] 3 NZLR 372 sets out the orthodox approach to sentencing. Accordingly, I will first set a starting point based on the features of the offending, and then adjust that starting point according to any mitigating and aggravating features relating to you, the offender.

[26] Section 9(1) of the Act refers to the factors that are considered to be aggravating. In your case, I consider that the aggravating features are the extent of the loss, damage and harm to society from the offending and the premeditation involved. However, I do note that both of these aggravating features are, in a sense, inherent in this type of offending. As a result, I do not propose to uplift the starting point for those factors.

[27] In terms of mitigating factors, in your case I do not consider that there are any mitigating features of the offending itself.

## **Offender**

[28] In terms of the requirements of s 9 of the Act, there are no aggravating factors relating to you.

[29] In terms of mitigating factors, there is your previous good character and the fact that you have no convictions. There is some remorse, but I do not consider that you are entitled to any significant discount for that on the basis of the remarks and comments to the Probation Officer. I am not satisfied that there has been demonstrated true remorse such that I should allow an additional discount.

[30] But importantly in this case, there are your guilty pleas.

[31] With respect to the guilty pleas, I refer briefly to the chronology. Your initial appearance in Court was on 5 April 2009. Subsequently there were three pre-deposition appearances in the District Court. On 1 August 2009, the Police forwarded to your counsel an amended summary of facts – the letter referred to

earlier discussions. There was an email from your counsel to the Police on 4 September 2009 in which there is notification of your intention to plead guilty to the charges to which you eventually pleaded. Depositions were scheduled for 17 September 2009 but did not proceed. The pleas of guilty to the charges for which you are being sentenced today were entered on 24 September 2009.

### **Imprisonment factor**

[32] Section 16 of the Act establishes a general presumption against imprisonment, but in certain cases this presumption is overridden by s 6(4) of the Misuse of Drugs Act, and that is the case because of the LSD offending.

### **Relevant case law and sentencing approaches**

#### *Cannabis offending*

[33] Both the Crown and your counsel accept that the lead offending in this case is the offering to supply cannabis charges, rather than the LSD charge. This is because of the large number (59) of those charges of offering to supply cannabis.

[34] In *Terewi* the Court of Appeal set out sentencing guidelines for the cultivation of cannabis. These guidelines have subsequently been extended to apply in possession for supply and sale of cannabis cases: see *R v Andrews* [2000] 2 NZLR 205. There is no dispute that your case falls within category two of *Terewi*, for which the starting point is between two and four years' imprisonment. The particular point on that scale depends on the nature of the transactions involved, their frequency and the degree of commerciality involved. Notably, *Terewi* stated at [13]:

As with any drug offending for the purpose of profit making, the personal circumstances of the offender whose activities fall within categories 2 and 3 are usually not to be given much significance in the sentencing process. The fundamental requirement is that the sentence imposed should act as a deterrent to other persons minded to engage in similar activity.



[35] I have considered a number of cases with some similarities to your offending: *R v Edwards* [2009] NZCA 269; *R v Watson* CA36/01 24 May 2001 and *R v Bhana* HC WHA CRI 2008-027-3050 22 July 2009 referred to by your counsel.

#### *LSD offending*

[36] There is no guideline judgment, but I have considered *R v Stanaway* [1997] 3 NZLR 129 and *R v Urlich* [1981] 1 NZLR 310.

[37] I have also considered *R v Brown* [1978] 2 NZLR 174, *R v I'U* HC AK CRI 2007-004-009815 4 March 2008, *R v Thomsen* HC AK CRI 2006-404-11658 2 March 2007 and *R v Paul* HC AK CRI 2006-057-001 20 June 2006.

### **Analysis**

#### *Offering to supply cannabis*

[38] You accept that your role in the offending was akin to a “middleman”. Your offending was sustained and spanned a period of five months and involved six and a half pounds of cannabis. Also, there was a further quantity of cannabis found at your property on termination of the operation.

[39] Your role in the offending was vital in that you were the one that sourced the supply and made these drugs available to a group of your associates. I agree with the Crown submission that this was a commercial operation. Your offending has some similarities to *Edwards*, but perhaps the closest case is that of *Watson* which involved 30 grams and where a starting point of three and a half years was adopted on the basis of the totality of the offending.

[40] In your case, because of all of the circumstances, I propose to adopt from the category two of *Terewi* a starting point of three years' imprisonment. I do not increase this starting point to reflect the aggravating features of the offending, for the reasons already indicated. However, I do propose to uplift the starting point by 12 months' imprisonment to reflect the totality of the offending, namely, the possession

of cannabis for supply and the offering to supply LSD. That makes a combined starting point on a totality basis of four years' imprisonment.

[41] You are entitled to a discount for your relatively young age, your previous good character and to a limited degree for the remorse you have shown. But my scope in this regard is limited because the authorities confirm that personal circumstances of the offender will carry relatively little weight. However, I do acknowledge that you have no previous convictions and I therefore allow, for these factors, a discount of six months' imprisonment. So that will bring it down to three years and six months' imprisonment or 42 months.

[42] In relation to your guilty pleas, they were entered prior to the depositions in the circumstances to which I have already referred. I have carefully considered the observations of the Court of Appeal in *Hessell*, particularly [29] – [33]. They set out the way in which the Court should exercise its discretion in relation to the timing of the entry of the pleas. It is clear that in your case the pleas were not entered at the first reasonable opportunity. But I am prepared to make a generous allowance and I propose to allow a discount of 12 months, which is a little under 30% for your guilty pleas, bearing in mind all of the factors surrounding the timing of them outlined at [31] above.

[43] This brings a final sentence of two years and six months' imprisonment for the offering to supply charges. For the possession of cannabis for supply, relating to the 44 grams of cannabis, I impose a concurrent sentence of one year and six months' imprisonment. On the offering to supply LSD, I impose a concurrent sentence of one year and six months' imprisonment.

### **Home detention**

[44] I have read the report and, apart from some doubt as to possible monitoring difficulties, there is an address that qualifies for home detention. However, a sentence of two years and six months' imprisonment is well outside the sentence of short duration. Therefore, as a matter of jurisdiction, home detention is not available as a sentencing option. Even if this had not been the case, the considerations of

deterrence and denunciation would mandate a sentence of imprisonment in your case.

[45] So all of these sentences are to be served concurrently, which means that the final sentence of the Court is one of two years and six months' imprisonment.

[46] You may stand down.

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Stevens J