

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

**CRI-2009-092-012107**

**THE QUEEN**

v

**FLETCHER RU (AKA METI)**

Appearances: J M Jelasfor Crown  
I Jayanandan for Prisoner

Judgment: 20 October 2009 at 9:00 am

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**SENTENCING NOTES OF COURTNEY J**

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Counsel: *S Tait, P O Box 76538, Manukau*  
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[1] Mr Ru, as you know you appear for sentence today on two charges, one for possession of cannabis for supply and one for supplying cannabis to which you have pleaded guilty. The maximum penalty for both offences is eight years imprisonment.

[2] The charges follow the execution of a search warrant at your address in Otago on 24 July 2009 and there you were found to be carrying two ice-cream containers in which there were 23 tinnies weighing approximately 38 grams in total. In the kitchen was a bag containing \$1,000 in cash mainly in \$20 notes and you admitted that the cash related to the sale of cannabis, the sale having been undertaken over the preceding five days or so.

[3] My object in sentencing today is primarily to deter you and other people from committing these kinds of offences. Denunciation of this kind of conduct and deterrence are significant factors in sentencing on any drug-related offending, especially where there is a commercial element.

[4] I have to take account of the sentencing principles that are laid down in the Sentencing Act 2002 and of particular relevance in this case is the degree of culpability – that is high in this case – the seriousness of the offence and the need for consistency between the sentence I impose in this case and sentences that other Judges impose in other cases.

[5] There is no real difference between your lawyer's view of things and the Crown's lawyer's view of the circumstances of the offending. You have admitted that the tinnies belonged to you. You told the police the cash was from selling. You were selling drugs because you were unemployed and needed the cash. I note that you are 41 years old, you have a partner and children and unfortunately no qualifications and have been unemployed for some years.

[6] So against that background I turn to find an appropriate sentence in this case. I am assisted in doing so by the Court of Appeal's decision in *Terewi*<sup>1</sup> which, although related to the cultivation of cannabis, is now accepted as applying by analogy to cases of possession for supply.<sup>2</sup> In that case the Court of Appeal identified three categories of offending in relation to cannabis and category 2 related

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<sup>1</sup> (1999) 16 CRNZ 429 (CA)

<sup>2</sup> See *R v Gray* [2008] NZCA 224

to small scale cultivation of cannabis for commercial purposes. That category attracts attracts a starting point of between two and four years imprisonment, although a starting point lower than that can sometimes be applied. But your lawyer and the Crown lawyer are both in agreement that the circumstances of this case fall within the lower range of category 2.

[7] In addition, I have had the benefit of some cases that are similar to compare<sup>3</sup> and I satisfied that in these cases the level of commerciality, like the present one, is relatively low. There is, of course, no doubt that you were selling the cannabis to make money but there is no evidence that it was a particularly sophisticated operation and the amount of cannabis was not particularly great either.

[8] I consider that an appropriate starting point on each of these charges would be two years for the offending but I need to increase that starting point to take into account two things. First is your past offending. You have a number of previous convictions and for today's purposes it is relevant that three of those previous convictions have been for the possession of cannabis for supply. Indeed, you were last sentenced on one of these charges in January 2008 and that brings me to the second factor I have to take into account which is the fact that you were actually serving a sentence of community work at the time that this offending occurred. Now normally I would place quite heavy emphasis on that point but I take into account what your lawyer has told me today about the fact that you have completed your community detention sentence very, very well and were undertaking this sentence of community work well until you had a motorcycle accident and that happened earlier this year. After that happened your lawyer applied to cancel the community work sentence because you were unable to complete it and it was during the time before that application was heard that this offending occurred.

[9] So the circumstances are somewhat unusual and because of that I am actually not going to put as much emphasis on that factor as I would otherwise do. So what I think is that the appropriate starting point is two years and three months. And from that you are entitled to a significant discount for your early guilty plea. In line with

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<sup>3</sup> *R v Hori* HC ROT CRI-2009-087-000 Andrews J 24 July 2009; *R v Roberts & Tautari* HC WHG CRI-2008-088-0029 Allan J 16 July 2009; *R v Franklin* HC WHG CRI-2008-088-0073 Allan J 13 July 2009; *R v Awa* HC AK CRI-2007-035-000021 Asher J 17 February 2009; *R v Packer* HC ROT CRI-2008-063-000444 Stevens J 5 September 2008

the Court of Appeal's recent decision in *Hesselt*<sup>4</sup> a reduction of 33% for an early guilty plea is generally to be applied. That reduction takes into account your expression of remorse which I accept. The result is a final term of imprisonment of 18 months. I wish you luck in the future Mr Ru. Stand down.

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P Courtney J

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<sup>4</sup> CA 170/2009 2 October 2009