

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

**CRI-2009-027-000341**

**THE QUEEN**

v

**WALTER PALMER**

Hearing: 22 October 2009

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

Judgment: 22 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] Walter Palmer, you appear for sentence today having pleaded guilty to two charges under the Misuse of Drugs Act 1975: one charge of possession of the Class A controlled drug, methamphetamine for supply, for which the maximum penalty is life imprisonment; and one charge of possession of the Class C controlled drug, cannabis for supply, for which the maximum penalty is 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 and from your counsel, Mr Blaikie; two full pre-sentence reports; two home detention annexes relating to two possible addresses; two reports from the Ngati Hine Health Trust regarding your successful participation in the 14 week Te Hurihanga alcohol and drug rehabilitation programme; and an affidavit from your wife which I had read carefully and noted its contents and the commitments that are given and the support which you have. In addition, there are further reports dated 20 October 2009 from the Ngati Hine Health Trust, a report of the same day confirming that you tested drug and alcohol free and finally a report from the He Iwi Kotahi Tatou Trust by Mr Ngahau Davis, whanau support worker.

## **Factual background**

[3] On Sunday 1 February 2009, at approximately 9.35am, members of the Northland Police executed a search warrant at your address in Moerewa. When the Police arrived you were sitting at a table in the carport. When you saw the Police, you stood up, turned around and started to run to the rear of the address.

[4] You were seen by the Police to be carrying a small green container and a plastic bag containing what appeared to be "tinnies". Police announced their presence and purpose and you continued to run to the far rear corner of your address and were seen throwing the green container and plastic bag into the long grass and scrub on a neighbouring property.

[5] Police searched this area and found a plastic bag containing 24 cannabis “tinnies”, these usually contain one to one and a half grams of cannabis head material and sell for around \$20. Police also found a green “Smint” container that had previously been seen in your hand. Inside the container were 22 small point bags that contained white granular material believed to be methamphetamine. There was a larger gram self-sealing plastic bag with approximately a quarter of a gram of white granular material, also believed to be methamphetamine. This was later confirmed to be methamphetamine, the total weight of which was 1.85 grams.

[6] A further search of the table in the carport located two one ounce self-sealing plastic bags containing high grade cannabis head material and tinfoil. Police also found \$300 in cash on your person. The total amount of cannabis involved was 67 grams.

[7] You admitted throwing the bag containing the cannabis “tinnies” over the fence, but at that stage you denied any knowledge of the tin containing the methamphetamine.

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

[8] You are 39 years of age and you are of Maori descent. You reside at 27 Massey Street, Moerewa with your wife and four children. You describe your relationship with your family as excellent.

[9] You are the eldest of five children. You state that your parents were very supportive of you as a child and that your extended family have been very supportive of you through your rehabilitation.

[10] You left school at the age of 17 and went to work at Winstone’s in Whangarei. After 12 months, you returned to Moerewa and worked at Affco. You state that you have not worked much since then and prior to this offending you considered yourself to be a househusband.

[11] Your wife described her relationship with you when you were using drugs as strained and stated that she does not endorse your behaviour in anyway. Your father stated that he has seen a vast change in you since you have been in the programme at Te Hurihanga.

[12] You have successfully completed that 14 week residential Te Hurihanga programme. You state that the programme has changed your life. You also state that looking back you now realise how your family suffered because of your selfishness and your out of control drug use. From the materials placed before me, I note that a significant aftercare programme is now available for you, depending on the type of sentence that is imposed today. Mr Korewha from the Ngati Hine Health Trust commented that your participation in the programme was excellent and that he has high hopes for you.

[13] Your address at 27 Massey Street, Moerewa was assessed as being not suitable for home detention. This was because this was where your drug dealing activities were carried out and further the fact that your wife was the victim of domestic violence back in 1994 and 1995.

### **Previous convictions**

[14] They do not make good reading. The time is coming where the Court is going to have very little patience with you because of your record. There are convictions for manufacturing cannabis oil, selling cannabis, possession of cannabis, failing to comply with prohibition by an enforcement officer, common assault, possession of cannabis oil, possession of utensils, male assaults female and breath alcohol over 400 milligrams. The most recent offences occurred in August 2001 when you were sentenced to a suspended term of imprisonment.

[15] The Crown Solicitor asked the Registrar to place before me the sentencing notes of Judge Michael Lance QC on the most recent offences. The notes are very instructive. At that time you were charged with two counts of manufacturing cannabis oil and selling cannabis to persons over the age of 18. You sought help from Odyssey House and received a favourable report. Indeed, the Judge referred to

there being excellent reports from two health institutions. The Judge assessed you as having very good prospects of rehabilitation. On the strength of those reports, he took a risk and gave you a suspended sentence of imprisonment. Interestingly, he noted how difficult these residential programmes can be and was plainly cognisant of the prospect that you would need support in the future. Sadly, you “fell off the log” and ended up back involved in drug use, drug addiction and alcohol abuse and all that that has entailed.

### **Crown submissions**

[16] The Crown submitted that there were various aggravating features of the offending, including the extent of loss, damage and harm to society from this offending, premeditation, your previous convictions and the fact that you took steps to avoid apprehension at the time of arrest.

[17] The Crown referred to the leading case of *R v Fatu* [2006] 2 NZLR 72 (CA) and submitted, on the basis of the amount of methamphetamine, that an appropriate starting point is between two and a half to three years’ imprisonment.

[18] On the cannabis offending, the Crown submitted that it fell within band two of *R v Terewi* [1999] 3 NZLR 62 and warranted a starting point on its own of two and a half to three years’ imprisonment.

[19] The Crown accepted that concurrent sentences are appropriate, but submitted that an uplift on the lead offence, which is the methamphetamine offending, is appropriate after arriving at a starting point. In other words, that I should fix a starting point to reflect the totality of the offending.

[20] The Crown also asked for forfeiture and destruction of all drugs and equipment found.

### **Defence submissions**

[21] Mr Blaikie accepted that your methamphetamine offending is within band one of *Fatu* and he sought a slightly lower starting point than that suggested by the Crown. Similarly, in relation to the cannabis offending he was suggesting a lower starting point had the matter been dealt with on its own.

[22] Overall, Mr Blaikie submitted that a starting point of between three and three and a half years' imprisonment as being appropriate.

[23] Mr Blaikie stressed the mitigating factors including your guilty pleas, remorse and substantial efforts at rehabilitation and the fact that you had been on strict bail conditions ever since your initial arrest. He also noted that you had been in prison for a period of approximately three weeks prior to being granted bail.

[24] Mr Blaikie submitted that an appropriate final sentence is two years, or less, and that this would bring you within the range for home detention. Mr Blaikie submitted that home detention at your Moerewa address was appropriate because that would see you return to the community where there is much support for you. Finally, he submitted that the purpose for which I am imposing sentence today could be met by a slightly less restrictive sentence than two years' imprisonment.

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

[25] The Sentencing Act 2002 (the Act) requires that I keep a number of purposes and principles in mind 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 a similar offence; and the need to assist in your rehabilitation and reintegration.

[26] In sentencing you, I also take into account the principles of sentencing according to s 8 of the Act, including: the need to take into account the gravity of your offending, including the degree of your culpability; the need to take into account the seriousness of this type of offence in comparison with other types of offences; the need to consider the general desirability of consistency with appropriate sentencing levels and with similar offending; the need to take into account particular circumstances of the offender that would mean an ordinarily appropriate sentence would be disproportionately severe; and the need to impose the least restrictive outcome that is appropriate in your circumstances.

### **Features of the offending**

[27] 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 the starting point according to any mitigating and aggravating features relating to you, the offender.

### **Offending**

[28] Section 9 of the Act sets out the factors that are considered aggravating. In your case, I consider that the aggravating features of the offending are the damage to society caused by your offending and the harm that results from that. I appreciate that those aggravating features are in a sense inherent in the type of offending. That said, you should be under no illusions that dealing in methamphetamine is a very serious offence for which the maximum penalty, as I have indicated, is life imprisonment. As you have heard in the discussions, methamphetamine is a nefarious drug and highly damaging to those who use it and to society in general.

[29] In terms of the offending, I do not consider there are any mitigating features, particularly as two types of drugs, Class A and Class C, were involved.

## **Offender**

[30] In terms of s 9 of the Act, the aggravating factors relating to you are your previous convictions and, as I have said, sadly the list is getting too long.

[31] I have already referred to the mitigating factors, namely, your genuine remorse; your rehabilitation efforts; the restrictive bail conditions and finally your guilty pleas.

## **Imprisonment factor**

[32] Section 16 of the Act establishes a general presumption against imprisonment. But in your case, that is overridden because of the fact that it was offending involving a Class A controlled drug: see s 6(4) of the Misuse of Drugs Act.

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

### *Methamphetamine offending*

[33] The lead charge is possession of methamphetamine for supply. The tariff case is *Fatu* and your case clearly falls within band one which relates to low level supply (less than five grams) and sets a range of two years' to four years' imprisonment.

[34] In terms of cases similar to your own, I have considered the following: *R v Hughes* CA444/06 19 March 2007; *R v Lum* HC AK CRI-2008-092-006691 14 October 2008; *R v Bowles* HC WN CRI-2006-085-2226 19 December 2007; and *R v Letoa* HC AK CRI-2007-092-9096 6 December 2007.

### *Cannabis offending*



[35] In terms of the cannabis offending, the case of *Terewi* was one where the Court of Appeal established sentencing guidelines for cannabis cultivation. But those guidelines were subsequently extended to apply to possession for supply and sale of cannabis cases: see *R v Andrews* [2000] 2 NZLR 205.

[36] In *Terewi*, the Court of Appeal set three broad categories of cannabis offending at [4]. In summary:

- (1) Category 1: involves growing a small number of cannabis plants for personal use without any actual or intended sale to another party. It is generally appropriate to impose a fine or non-custodial sentence. The offender may be subject to periodic detention or a short prison term where there has been supply to others on a non-commercial basis.
- (2) Category 2: involves small-scale cultivation of cannabis plants for a commercial purpose, that is, for profit. Starting point of 2 to 4 years' imprisonment is generally appropriate, but a lower starting point may be taken if sales are infrequent and of a limited extent.
- (3) Category 3: the most serious offending involving large-scale commercial growing "usually with a considerable degree of sophistication and organisation". The starting point for this category is to be 4 years or more.

[37] Notably, *Terewi* also 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.

## **Analysis**

[38] Your offending is serious and ought not to be downplayed. However, balanced against this are your commendable efforts at rehabilitation. As the amount of methamphetamine involved was 1.85 grams, clearly band one is appropriate. I propose to adopt a starting point of two years and nine months' imprisonment. I do not apply an increase for the aggravating features of the offending as they are inherent in the charges. However, I must increase that starting point to reflect the totality of the offending which includes possession of cannabis for supply. Therefore, I apply an uplift of nine months' imprisonment.

[39] I also apply an increase to the starting point to reflect your previous convictions. Although your last drug conviction was in 2001, there has been a history of drug offending escalating in seriousness, so I consider that a three month uplift is appropriate. I therefore reach a final figure of three years and nine months' imprisonment.

[40] You are entitled to a discount for your genuine remorse, rehabilitative efforts that involved beating a personal addiction and your restrictive bail conditions: see *R v Aram* [2007] NZCA 328. I do commend you for the efforts you have made to turn your life around, the remorse you have expressed and I was particularly impressed by the statement that you made in Court today when you addressed your family and whanau. I am going to allow a generous discount for that, nine months, so that would make a sentence of three years' imprisonment.

[41] You are then entitled to a discount for your guilty pleas. While probably not entered at the first available opportunity, I am prepared to accept that you should have a discount of one-third. So I will again generously apply the principles in *R v Hessel* [2009] NZCA 450. This will result in a discount of 12 months' imprisonment.

[42] That means that subject to the issue of home detention this would make a final sentence of two years' imprisonment.

### **Home detention**

[43] The final question is whether instead of two years' imprisonment I can impose a sentence of home detention. In the first full pre-sentence report your home address was found not to be suitable for the reasons already discussed. This was not an unreasonable conclusion for the Department of Corrections to have reached on the basis of the information then available at the time. But since then, through your counsel, additional material has been made available as I have described earlier.

[44] The jurisdictional requirements for home detention are contained in s 15A of the Act. The first requirement is that it must be a short term sentence of

imprisonment, and a two year sentence of imprisonment meets that condition. Then I have to be satisfied that the purpose or purposes for which sentence is being imposed cannot be achieved by any less restrictive sentence.

[45] This for me has been the most difficult part of your case. I have given anxious consideration to it because I have to decide, given that the Judge took a risk in 2001 and you let him down, whether I should take a similar risk again. It is open to a Judge to differ from the recommendation in the probation report: see *R v Le Compte* HC CHCH CRI 2007-009-12599 2 October 2008. Such a variation can apply in appropriate circumstances and I have been greatly assisted by the presence today of Mr Tetai from Probation Services who has seen all of the additional material that I have received in support of allowing you home detention at your Moerewa address.

[46] By the narrowest of margins, Mr Palmer, I am going to allow you to serve a sentence of home detention, but it will be stiff and it will have a number of conditions.

[47] Before I tell you what those conditions are, I refer for the record to the powers of the Department in s 80F of the Act. This is where an application may be made to cancel the sentence of home detention if you fail to comply with any of the conditions of home detention, and in other situations. So in a sense this is the final chance. Any breach is likely to see you in jail. Similarly, any future offending of this type is likely to see you in jail for a very long time, away from all your whanau, family and friends.

[48] In terms of the Court sentence on both charges, both concurrent, I impose a sentence of 12 months' home detention with the following conditions:

- a) You are to report to a Probation Officer at the Kaikohe Probation Service directly after receiving this order from the Court;
- b) When instructed to do so by a Probation Officer, you are to travel directly to the proposed home detention address at 27 Massey Street,

Moerewa. You may not make any unnecessary stops and are to remain at the address all the time awaiting the arrival of the Supervising Probation Officer and the security officer for the purposes of electronic monitoring;

- c) You are to reside at 27 Massey Street, Moerewa and are not to move from that address without prior written approval of the Probation Officer;
- d) You are not to consume or possess alcohol, or illicit drugs, for the duration of your home detention and any post-period;
- e) You are to undertake the Te Hurihanga aftercare programme and abide by the rules of the programme to the satisfaction of the programme provider and the Probation Officer;
- f) You are to complete and participate in any other counselling, including family support and guidance and/or treatment designed to reduce the risk of re-offending;

[49] Post-detention conditions:

- a) You are to complete any incomplete programmes commenced whilst on home detention;
- b) You are to complete and participate in any such counselling or treatment designed to reduce the risk of re-offending, which may include revisiting previously attended programmes as directed by the Probation Officer;
- c) You are to further abstain from consumption of alcohol and/or illicit drugs until you are no longer subject to post-detention conditions;

- d) You are to continue to reside at 27 Massey Street, Moerewa and not to move from that address without prior written approval of the Probation Officer; and
- e) You are to, both during the post-detention and during home detention, undertake any necessary testing, including blood tests if necessary, for drugs and alcohol.

[50] Pursuant to s 32 of the Misuse of Drugs Act, I make an order for the forfeiture of all drugs and equipment found during the course of the offending.

[51] You may stand down.

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Stevens J