IN THE HIGH COURT OF NEW ZEALAND
TAURANGA REGISTRY

CRI 2009-070-1504

THE QUEEN

v

BRENT SIDNEY ANKINS

Hearing: 2 December 2009 (by telephone)

Counsel: S Simmers for Crown
W T Nabney for Mr Ankins

Judgment: 2 December 2009

(ORAL) JUDGMENT OF HEATH J

Solicitors:
Crown Solicitor, PO Box 13063, Tauranga
Counsel:
W T Nabney, PO Box 13007, Tauranga

[1] Mr Ankins was sentenced in the High Court at Tauranga, on 2 July 2009. I imposed a sentence of three years imprisonment on a charge of conspiracy to manufacture Methamphetamine, with concurrent sentences on charges of possession of Methamphetamine and cannabis, respectively, for the purpose of supply.

[2] The summary of facts to which Mr Ankins pleaded guilty recorded that a sum of $870 in cash was found at his premises when a search warrant was executed on 22 April 2008. The Crown omitted, at sentencing, to seek a forfeiture order in respect of that sum, under s 32(3) of the Misuse of Drugs Act 1975.

[3] Ms Simmers, for the Crown, seeks a forfeiture order on the basis that the omission was inadvertent and the summary to which the prisoner pleaded guilty supports the view that the money was received consequent upon commission of an offence against the Misuse of Drugs Act. Mr Nabney submitted there was no jurisdiction for me to amend the sentence once passed.

[4] In *R v Davidson* [1966] NZLR 626 (CA), the question whether there was power for a Judge to amend a sentence was considered. The Court of Appeal in a judgment given by North P, held that no jurisdiction existed once a Judge had signed an entry entitled "Return of Prisoners Tried". In doing so, the Court upheld an earlier decision of F B Adams J in *Police v Hallmond* [1951] NZLR 432 (SC). North P said, at 627-628:

> In our opinion, the Crown Book should not be regarded as the record for the purpose of determining whether the Judge still has jurisdiction to alter the sentence originally pronounced by him. To so limit the authority of the Judge would mean that in every case the record made by the Registrar in the course of the proceedings must be treated as final. On the contrary, we agree with the view expressed by F B Adams J [in *Police v Hallmond*] that the record for this purpose consists of the entry made in the book entitled "Return of Prisoners Tried" which, in accordance with the practice of the Court, has been kept as a book of record for very many years. It would be wholly inconvenient if a Judge had no power to alter a sentence at any time prior to his signing the "Return of Prisoners Tried" book, which is the first occasion when he has the opportunity of considering the wording in the sentence he has pronounced. We agree that, where such an occasion arises, it is important that the prisoner should be present, particularly so if the sentence is increased as is the position in the present case. ....

[5] The document entitled “Return of Prisoners Tried” was signed by me on 15 July 2009, after Mr Ankins had been sentenced. In those circumstances, having regard to the judgment of the Court of Appeal in *Davidson*, there is no jurisdiction for me to amend the sentence imposed and I decline to do so.

[6] I record that, while I put this issue to Ms Simmers, I have not heard argument on whether, independently of sentence, an application could be brought to seek a forfeiture order under s 32(3) after sentence had been imposed. That point may need to be argued on another occasion.

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P R Heath J