

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

**CRI-2009-057-001462  
CRI-2009-057-001471  
CRI-2009-057-001472  
CRI-2009-057-001493**

**THE QUEEN**

v

**LANCE WHAKATAPURIA LAWRENCE  
HANA VANESSA WITERI  
MATTHEW KAHOTEAL ALBERT  
GIRLIE TE KARAWA PURUA**

Appearances: J Jelas for Crown  
D S Wallwork for Prisoner (Lawrence)  
M M Mason for Prisoner (Witeri)  
P L Borich for Prisoner (Albert)  
J J Corby for Prisoner (Purua)

Judgment: 30 October 2009 at 9:00 am

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**SENTENCING NOTES OF COURTNEY J**

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[1] Girlie Purua, Matthew Albert, Hana Witeri and Lance Lawrence, you all appear for sentence on a variety of methamphetamine and cannabis-related charges. These charges arose out of a Counties-Manukau organised crime unit investigation that began in January 2009 and focused on drug dealing by the Black Power gang in Pukekohe. On the termination of the operation a number of people were arrested, including the four of you.

[2] Ms Purua, you have pleaded guilty to one count of supplying the Class A drug methamphetamine, one count of possession of methamphetamine for supply, one of the sale of the Class C controlled drug cannabis and one charge of possession of cannabis.

[3] Mr Albert, you have pleaded guilty to one count of supplying methamphetamine and one of selling cannabis.

[4] Ms Witeri, you have pleaded guilty to one count of supplying methamphetamine and one count of possession of methamphetamine for supply.

[5] Mr Lawrence, you have pleaded guilty to one count of possession of methamphetamine and one of possession of cannabis.

[6] The maximum penalty for these various charges is as follows:

- For supplying methamphetamine life imprisonment.
- For possession of methamphetamine for supply life imprisonment.
- For possession of methamphetamine six months imprisonment.
- For selling cannabis eight years imprisonment.
- For possession of cannabis for supply eight years imprisonment.
- For possession of cannabis three months imprisonment.

[7] The primary object in sentencing in drug-related cases such as this is denouncement and deterrence. During sentencings Judges often observe the cost to the community from drug offending, particularly offending that involves the supply of methamphetamine. Most of the offending on which I am sentencing you today involves supplying drugs for profit. Depressingly, people with previous good records are often drawn into the drug-dealing scene as you have been yourselves. Most of you have very good records. Some of you are first offenders. The purpose of courts when they sentence in cases like this is to send a very clear message to those who are dealing and to those who are tempted to deal, whether it is out of financial pressure, whether it is out of influence by family members or associates, that it is not going to be worth it. The response by the Courts, save in exceptional circumstances, is invariably a strong one to this kind of offending.

[8] When sentencing, however, I am expected to take certain things into account. The relevant things in this case are your individual culpability, the seriousness of the type of offence in comparison with other kinds of offending, the desirability of consistency in sentencing. I am also required to impose the least restrictive outcome that is appropriate in the circumstances, though that presumption against imprisonment is overridden where the charge involves the supply or possession for supply of a Class A controlled drug which methamphetamine is.<sup>1</sup> I also mention in this case, and I will talk about it more as I come to your individual circumstances, that even though the Court has a strong response to this kind of offending, it also recognises those who are prepared to take responsibility for their offending and enter guilty pleas at an early stage. The Court encourages and rewards that behavior.

[9] In relation to methamphetamine offending, I am guided by the Court of Appeal decision in *R v Fatu*<sup>2</sup> which identifies various categories based on the amount of methamphetamine involved. In this case, most of the methamphetamine offending falls into what we refer to as band 2 of *Fatu* being related to the supply of commercial quantities of methamphetamine between 5 and 250 grams. Such offending attracts terms of imprisonment between three and nine years subject to any mitigating factors.

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<sup>1</sup> S 6(4) Misuse of Drugs Act 1975

<sup>2</sup> [2006] 2 NZLR 72 (CA)

[10] In relation to cannabis offences I am guided by the Court of Appeal's decision in *R v Terewi*<sup>3</sup> where the Court of Appeal provided sentencing guidelines for the cultivation of cannabis and those guidelines have subsequently been extended to apply to cases for possession for supply and sale of cannabis.<sup>4</sup> In *Terewi* the Court of Appeal identified three broad categories of cannabis offending. The cannabis offending in this case falls within category 2, being relatively small scale and for commercial purposes, attracting a starting point of two to four years imprisonment.

[11] Having identified these general parameters for sentencing I therefore turn to consider your individual situations. Ms Purua, would you stand please.

### **Girlie Purua**

[12] Ms Purua, you were identified as the primary seller of methamphetamine from your home address in Tuakau, where you lived with your partner and co-defendant, Mr Albert. At the end of the police operation you were found with Mr Albert at your home address with 20 cannabis tinnies (a total of 13.6 grams of cannabis), other cannabis weighing 13.3 grams, \$420 in cash, an empty point bag and a cannabis bong. You admitted dealing in cannabis and methamphetamine from your home and have explained that you were under financial pressure.

[13] In relation to the methamphetamine the Crown submits, based on evidence drawn from other aspects of the police operation, that you sold 1.2 grams of methamphetamine a week over a ten-and-a-half week period, equating to 12.6 grams in total. The Crown further says that you sold 28 grams of cannabis every three weeks.

[14] I just pause and talk about your personal circumstances. You are 28 years old now. Although you have had work, and quite substantial work in the past I think from the information I have got, you are currently unemployed but understandably so because you have got three young children, one of whom is very young. You

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<sup>3</sup> [1999] 3 NZLR 62

<sup>4</sup> *R v Andrews* [2000] 2 NZLR 205

have been in a relationship with your partner Mr Albert for four years and your three children are aged between two months and three years. You have got no previous convictions which is usually not the case when people are seen in this Court. You have led a good life so far and clearly have had parental support but have sadly fallen under the influence of others. You have had relationship difficulties. You have had financial problems and I accept your counsel's submission that you were naive in getting into this dealing. But you will remember what I said about the need to send a message to people who feel that they might be pressured or influenced or they might be tempted to get into dealing as a way to make money or to solve other problems and so I have to treat that very seriously. But I am very conscious of your good record, that you have no previous convictions and the probation report assesses you as being at low risk of re-offending.

[15] In relation to the methamphetamine offending, I have been referred to a number of recent cases that have similar factual situations<sup>5</sup> and I use them to help me decide on what an appropriate sentence is. Having regard to those cases I consider that an appropriate starting point is three-and-a-half years imprisonment. To that, however, I would need to add a further period to reflect the totality of the other offending, including the cannabis offending and therefore take a starting point of four years from which I make a substantial reduction of 30% to reflect both your guilty plea and your previous good record. I note that the counsel addressed me specifically on the guilty plea and a guilty plea under the current guidelines from the Court of Appeal would be 33% if given at the first reasonable opportunity, whereas a guilty plea at a later stage attracts a reduction of 20%. Your counsel has explained to me that there were reasons that you delayed pleading guilty, including the birth of your child. However, while I have sympathy with that situation I am not going to depart and, indeed, cannot depart from the clear indication that the Court of Appeal has given. Parties are to be encouraged to plead guilty early to what they know they have done and sort out problems with summaries of facts and anything else later.

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<sup>5</sup> *R v Wright* HC AK CRI-2008-092-002364 John Hansen J 30 September 2008; *R v Dunn* HC AK CRI-20078-404-000076 Andrews J 21 August 2008; *R v Mavea* HC AK CRI-2007-090-000992 Venning J 13 December 2007

[16] So proceeding on the assumption, however, that you are entitled to a reduction of an overall 30% the final result is that you will be serving terms of imprisonment concurrently as follows:

- Two years nine months on the charge of supplying methamphetamine.
- Two years on the charge of possession of methamphetamine for supply.
- Eighteen months on the charge of supplying cannabis.
- Eighteen months on the charge of possession of cannabis for supply.

[17] I also make an order remitting your outstanding fines. You can step down now thank you.

**Matthew Albert**

[18] Mr Albert, you are now 27 years old. Although you stayed through school to the seventh form you do not hold any formal qualifications. You have had work in the past though you are currently unemployed. You and Ms Purua have been in a *de facto* relationship and were living together at the time of the offending. You have three children together.

[19] You were found with Ms Purua at your home address when the police operation was terminated and I have already referred to the fact that 20 cannabis tinnies were found together with other cannabis, an empty point bag and a cannabis bong. You admitted selling methamphetamine from your home and that you owned the cannabis. You have said you sold about five tinnies a week over a three-month period and in the week preceding your arrest had sold two point bags of methamphetamine to friends. So your offending is at a slightly lower scale than that of your partner.

[20] You have expressed remorse about your offending and the Probation Service assesses you somewhat confusingly, but I think the overall assessment should be

regarded as being at low risk of re-offending. However, there is a risk there because you have a current drug problem and use drugs.

[21] Your counsel has suggested that I regard the cannabis offending as the more serious offending, given your explanation about how the methamphetamine sales came about. They were sales to friends. Although I am prepared to accept that, the result in terms of an appropriate level of sentence is actually very similar. The cannabis falls within category 2 of *Terewi*, attracting a starting point of between two and four years while the methamphetamine offending falls at the bottom end of band 1 of *Fatu* which also attracts a starting point of between two and four years. If I take the cannabis offending as the lead offence, and having regard to other cases that are similar, an appropriate starting point would be two-and-a-half years in prison.<sup>6</sup> However, that starting point must be increased to reflect the methamphetamine offending and I think that an appropriate term of imprisonment would be three years subject to discount for mitigating factors.

[22] You indicated your guilty plea shortly before the deposition hearing and that justifies a discount of 20%, and further, you appear today as with your partner as a first offender and are entitled to credit for that. So I apply an overall discount to your charges of 30%. Before I identify the appropriate terms I deal with your counsel's submission that you should be eligible for a term of home detention and theoretically you would be eligible. But I am not prepared to impose that term. The possibility of home detention was canvassed by the Probation Service which did not regard it as an appropriate course, even though you are regarded as genuinely motivated to address your offending and willing to comply with restrictions imposed by the Court. As against that, I have to take into account the fact that you are using drugs, you were dealing drugs from your home, you are proposing to go back into that same home. Even though it has been viewed as appropriate for home detention, I consider that the overall risk of your re-offending in that same situation is too great a barrier to home detention. The result is therefore that I impose the following concurrent sentences:

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<sup>6</sup> *R v Mann* HC WHG CRI-2006-088-001489 Potter J 15 June 2006; *R v Roberts & Tautari* CRI-2008-088-004129, CRI-2008-088-004130 16 July 2009 Allan J

- A term of two years for selling cannabis.
- A term of one year nine months for selling methamphetamine.

[23] You may step down thank you.

### **Hana Witeri**

[24] Ms Witeri, you are now aged 27. You have a ten-year-old child to a previous relationship but your current partner is serving a lengthy prison sentence at the moment and although you had started using cannabis at about 17 you became introduced to methamphetamine through your partner and then have later gone on to deal with methamphetamine as a means of supporting yourself and financing your drug habit.

[25] Your counsel has explained to me the difficulties you faced in that regard. During the course of this operation you sold methamphetamine on two occasions to an undercover police agent and at the end of the operation you were found with numerous snaplock bags at the address, three of which contained methamphetamine. You have admitted promptly being a user and a dealer of methamphetamine. There is a dispute between you and the Crown about the amount of methamphetamine that you were selling and the amount that you were consuming. The police assert that you had over 40 grams for sale, that you were supplying, but you maintain that you supplied only 32 grams and the rest of the methamphetamine that you had was for your own use. That is something that I cannot resolve today and I am therefore going to proceed on the basis that your assertion is right and that you had 32 grams that you were supplying and whatever was being done with the rest of it the Crown is not in a position to prove that it was for supply. I note that you have two previous drug-related convictions though they are pretty minor.

[26] Your offending falls squarely within band 2 of *Fatu* and on comparable cases a starting point of five years would be appropriate.<sup>7</sup> That starting point must,

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<sup>7</sup> *R v Goldsbury* HC TGA CRI-2006-470-007328 13 July 2006 John Hansen J; *R v Sheppard* HC AK CRI-2004-044-008504 24 June 2005 Venning J; *R v Fonotia* [2007] 3 NZLR 338 (CA)



however, be increased to reflect the overall offending and I therefore take a starting point of five-and-a-half years, from which you are entitled to a 20% discount for your guilty plea, which was made shortly before the depositions hearing. I have heard from your counsel that you gave a very early indication to the police of your intention to plead guilty but awaited an agreed summary of facts before you did so. However, I, as you heard me say in respect of the other defendants here today, am following the Court of Appeal's guideline in a case called *R v Hessel*<sup>8</sup> and the thrust of that is pleading guilty is what actually counts and sorting out other things later can be done. However, you are entitled to that 20% discount for having made a guilty plea at a relatively early stage.

[27] As a result, the final sentence imposed for your offending will be concurrent sentences of:

- Three years nine months for the supply charge.
- Possession of methamphetamine for supply, three years six months.

[28] I have noted it all to be served concurrently. You can sit down thank you.

### **Lance Lawrence**

[29] Mr Lawrence, the charges you face are significantly less serious than those of your co-defendants. The police found a vehicle at your home address containing cash, a snaplock bag and a small unquantified amount of cannabis in the snaplock bag together with two point bags of methamphetamine. You claim to have found the methamphetamine in a carpark – the Crown does not seem to take any issue with that explanation though frankly it sounds rather unlikely to me – and to have won the cash at the casino. You admitted that the cannabis was for your own use. There is no suggestion from the Crown that you had any involvement in any commercial dealing with drugs.

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<sup>8</sup> [2009] NZCA 450

[30] You are 28 years old. You have a young daughter from a previous relationship and although you seem to have had problems in that relationship, things seem to be relatively calm at the moment. It sounds as if the breakdown of that relationship might have been what led you into drug use which you recognise now as being a very foolish thing and the Probation Service records that you are showing genuine remorse for your offending. You have already taken some steps to address your drug problem and are assessed as being at low risk of re-offending. I note you do have previous convictions, but none are drug-related and I put them to one side for the purposes of today's sentencing. You pleaded guilty shortly before the deposition hearing.

[31] Taking all of those circumstances into account I consider – and there is no resistance from the Crown – that a non-custodial sentence is appropriate and I accept your counsel's submission that a sentence of community work is the best course. I note that you are now living at home with your parents and have previously completed terms of community work with no difficulty. I therefore impose a term of 200 hours community work and I also require you to complete a course of drug counselling as directed by your Probation Officer.

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P Courtney J