

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

CRI 2009-027-2543

THE QUEEN

v

BEN PANIA PURUA

Hearing: 15 December 2009

Counsel: A L Hyndman for the Crown
D J Blaikie for the Prisoner

Judgment: 15 December 2009

SENTENCE OF POTTER J

Solicitors: Crown Solicitor, P O Box 146 Whangarei 0140

Copy to: D J Blaikie, P O Box 382, Kaikohe 0440

[1] Mr Purua: You are before the Court for sentence on two charges of possession of cannabis for sale (maximum penalty eight years' imprisonment), four charges of selling cannabis (maximum penalty eight years' imprisonment), one charge of cultivating cannabis (maximum penalty two years' imprisonment or a fine up to \$2,000) and one charge of possession of methamphetamine (maximum penalty six months imprisonment or a fine up to \$1,000).

Background facts

[2] The Police conducted a covert operation in the Northland Police district between July and September 2009. During that period you sold a total of seven cannabis tinnies on four occasions to undercover officers. You were also found to be in possession of cannabis for sale on two occasions. When Police executed a search warrant at your address on 24 September 2009 you were seen to throw a Primo drink bottle from the rear door of the address into the neighbour's yard. It was recovered and found to contain five cannabis tinnies. There was another rolled cannabis tinnie found within the address and an amount of cannabis plant material which was in the process of being placed into tin foil. There was another cannabis tinnie in a vehicle at the address. On the rear porch were a number of cannabis plant seedlings and one larger mature cannabis plant. You were searched and found to be in possession of a small amount of methamphetamine. The amount is not specified.

[3] These background facts are set out in summaries of facts on the basis of which you entered guilty pleas to this offending at the second call of the matter. The Crown accepts this was the first reasonable opportunity for guilty pleas to be entered.

Aggravating factors

[4] An aggravating factor of the offending is that the offending relating to cannabis sales is commercial and repetitive in nature, though, as Mr Blaikie has stressed in submissions, at a low level. It is clear you were prepared to sell cannabis to anyone who came to your door and had the money. On one occasion when an

undercover officer called you were out of stock, but acquired it, and provided it to him later the same day when he returned.

[5] Your prior convictions are a seriously aggravating factor personal to you. You have fifty nine previous convictions dating from 1981 to 2004. You were also dealt with by the Youth Court on four occasions which was some time ago because you are now aged 42 years. Your previous convictions include cannabis related offending between 1989 (though mainly from 1999), and 2001. In 2002 you were sentenced to three years nine months' imprisonment for conspiring to deal with cannabis and other cannabis related offending. Clearly that sentence and two other sentences of imprisonment and community based sentences imposed upon you have not been a sufficient deterrent. However, I acknowledge that you have not been convicted of any offences in the last five years.

Mitigating factors

[6] You entered guilty pleas at the earliest opportunity and in accordance with the Court of Appeal judgment in *R v Hessel* [2009] NZCA 450 you are entitled to a discount of one-third for those guilty pleas, as the Crown acknowledges. You are said to be remorseful and that you would like to overcome the addiction you have for drugs. Unfortunately as the probation report records, that is the same response you offered in July 2001 and March 2002 when you were previously convicted for drug offending. Your pattern of offending does not support that your remorse is genuine beyond perhaps regret that you have been apprehended for further drug offending.

Pre-sentence report

[7] The pre-sentence report recommends imprisonment with release conditions. It notes your poor compliance with previous community based sentences and the nature and totality of your current offending. You are assessed as being of medium risk of re-offending with a low to moderate motivation to change. You are assessed as having a harmful pattern of drug use, though no harmful pattern of alcohol use.

Sentencing

[8] The tariff case of *R v Terewi* [1999] 3 NZLR 62 applies. Your offending falls in category 2, small scale commercial offending. The starting point for sentencing is therefore between two to four years' imprisonment.

[9] Yours is low level offending but the frequency clearly indicates active commercial dealing. I take a starting point of two years' imprisonment for the charge of possession of cannabis for sale which I take as the lead offence. To reflect that there are two such charges and six other charges summarily laid to which you have pleaded guilty, I increase the starting point by three months. I further increase the starting point by six months to take account of the aggravating factor of your lengthy record of previous offending described by Judge McDonald when he declined you bail on 24 September 2009 as an "appalling list of convictions against the Misuse of Drugs Act". Unfortunately, Mr Purua, your record speaks for itself.

[10] From the revised starting point of two years nine months I allow a discount of eleven months to reflect your early guilty pleas. That produces an end sentence of one year ten months' imprisonment.

[11] A home detention report has been prepared. I have considered it carefully. I have also listened carefully to the submissions made on your behalf by Mr Blaikie. Given your history of poor compliance with previous community based sentences and your offending record in general, I do not think that home detention is an appropriate sentence. You have had the full gambit of sentences imposed upon you. None has proved effective, including a quite significant sentence of imprisonment to which I have previously referred. I consider it inappropriate now to consider a sentence of home detention. I note the proposed address is the home of your mother and father-in-law which is a three bedroom house occupied by three adults and five children aged 13, 9, 7, 4 and 2 who are apparently the grandchildren of your mother and father-in-law. Mr Blaikie has advised that two of those children will shortly leave the address. But that aside, the restrictive conditions of home detention would place significant demands on the persons at the proposed home detention address. I accept they have indicated a willingness to respect those conditions, but I simply do

not consider that home detention is an appropriate sentence in all the circumstances of this case. You must therefore serve your sentence in prison where I understand you have been since 24 September 2009.

[12] Pursuant to s 93(2) of the Sentencing Act 2002 I impose the following conditions to apply upon your release from prison. These conditions will expire on the sentence expiry date:

- a) To reside at an address approved by a Probation Officer and not to move without the prior written approval of Probation Officer.
- b) To attend and complete a medium intensity Programme (MIRP) to the satisfaction of the programme provider and Probation Officer.
- c) Upon completion of MIRP, to attend a monthly maintenance programme and abide by the rules of the programme to the satisfaction of the programme provider and Probation Officer.
- d) To be assessed and if found suitable to attend and complete a drug treatment programme or counselling to the satisfaction of the programme provider/counsellor and Probation Officer.
- e) To be assessed and if found suitable to attend and complete any other treatment programme or counselling to the satisfaction of the programme provider/counsellor and Probation Officer.

[13] Those conditions, Mr Purua, are directed to assisting you to overcome your problem with drug abuse. You may be able to complete some appropriate programmes while you are in prison and the release conditions are designed to ensure a period of supervision following your release. The Court can impose conditions to try to ensure that you are provided with appropriate assistance to prevent future offending. But ultimately it is in your hands. You have to take control of your own destiny and you have got to have the strength and discipline to

take advantage of the assistance the programmes and courses may be able to offer you, otherwise they will have little effect and that has been your past experience.

Result

[14] The sentences imposed which are to be served concurrently are:

- a) On each of the two convictions for possession of cannabis for sale, one year ten months' imprisonment;
- b) On each of the four convictions of selling cannabis, eighteen months' imprisonment;
- c) On the conviction for cultivating cannabis, eighteen months' imprisonment;
- d) On the conviction for the possession of methamphetamine, three months' imprisonment.

[15] Please stand Mr Purua.

[16] The end sentence is one year ten months' imprisonment with the release conditions which I have read out to you.

[17] Stand down.