

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

**CRI 2009-090-006454  
CRI 2009-090-006378  
CRI 2009-090-011212**

**THE QUEEN**

v

**MICHELLE THERESA BREWIS**

Hearing: 15 December 2009

Appearances: N Webby for the Crown  
J Kovacevich for Ms Brewis

Judgment: 15 December 2009

---

**SENTENCE OF WOODHOUSE J**

---

Solicitors:  
Mr N Webby, Meredith Connell, Office of the Crown Solicitor, Auckland  
Mr J Kovacevich, Barrister, Auckland

[1] Ms Brewis, as you will understand, I need to explain the sentence I am going to impose. Obviously I need to explain it to you, but I need to explain it to the community as a whole because you have not just let your daughters down, you offended against the entire community. And you have offended in a serious manner. These are serious criminal offences.

[2] You appear for sentence for five offences under the Misuse of Drugs Act relating to methamphetamine.

[3] The charges arose at the end of a Police surveillance operation resulting in your arrest in June 2009. There are representative charges of supplying methamphetamine, offering to supply methamphetamine, possession of methamphetamine for supply and possession of a precursor substance, iodine, over the period October 2008 to June 2009. The maximum penalty for the first three of those offences is life imprisonment – and you really need to reflect on that. There is a further charge of possession of a methamphetamine pipe on the day of your arrest in June 2009. These offences were committed while you were on bail on charges of possession of methamphetamine and possession of a methamphetamine pipe on 22 October 2008. And you are still to be sentenced on those matters in the District Court.

## **Facts**

[4] The present charges arose following Police interception of approximately 26,000 text messages sent or received by you between 31 October 2008 and 5 June 2009. Your cellphone was used to communicate with criminal associates and to deal in methamphetamine. Your home was searched on 17 June 2009. Police found electronic scales, cellphones, tick books, a methamphetamine pipe, methamphetamine, used and unused snaplock bags, a cutting agent, and handwritten notes on a particular method of methamphetamine manufacture. Those facts alone indicate that you were involved in drug dealing.

[5] A schedule of quantities has been produced based on some of the intercepted text messages – and I emphasise that it is based on some only of the intercepted messages. This schedule records a total of 79.1 grams of methamphetamine as either supplied by you or offered for supply by you over the period October 2008 to January 2009, that is to say approximately 3 months, or slightly less in fact, of the total period from October to June. I note that Mr Kovacevich, on your behalf, has indicated that you dispute supplying a total of 79 grams over that period – that is to say, October to January. Mr Kovacevich says on your behalf that although this total is referred to in the text messages, often an amount referred to was not supplied because it was not available or the transaction did not take place. What is not in dispute is that the total supplied or offered for supply is around 79 grams for that period. What also is not in dispute is that you were involved in commercial methamphetamine dealing.

### **Personal circumstances**

[6] I come to your personal circumstances. You are 38 years of age. You have a number of previous convictions. In 2004 you were sentenced to 2 years 9 months imprisonment for possession of methamphetamine for supply. There was a concurrent sentence of imprisonment for 1 year for possession of cannabis for supply on the same date. In 2002 you were sentenced to imprisonment for 1 year on two charges of manufacturing stimulants. The other convictions, including cultivation of cannabis in 1994, I leave to one side. But I must take into account the offences I have mentioned.

[7] I have read the pre-sentence report. Mr Kovacevich has made a number of submissions on your behalf arising out of matters recorded in the report. And I have also read and take account, so far as I can, of the letter you have written to me.

[8] Your life has been hard in many ways, and in many respects through no fault of yours. I do not intend to refer to the various things recorded in the pre-sentence report. But there is a limit to the extent to which I can take the personal factors into account, and that is made clear by the Court of Appeal.

[9] You have been addicted to drugs over a lengthy period. You have made efforts to free yourself of the addiction, including a period at Odyssey House. But you were then subjected to pressure to get involved in manufacturing or selling methamphetamine. You then got involved and, as Mr Kovacevich has acknowledged, voluntarily continued with it over a lengthy period.

[10] You have expressed deep remorse for the fact of your offending. This, Ms Brewis, can be taken into account in the credit you are entitled to for the guilty pleas. You have now been in custody for some months. You responded constructively by entering a drug treatment programme. I understand there may have been some difficulties in continuing that, but I urge you to take every opportunity you can to rid yourself of the addiction and find ways in yourself not to get involved in this again.

[11] Mr Kovacevich has also referred to the fact that your 17 year old daughter recently gave birth. Apparently there is no father available to give assistance to your daughter and the fact that you are not available is something of real regret to you. I do understand that, Ms Brewis. But as I have said, the weight I can attach to personal circumstances of that nature is limited.

### **Sentence**

[12] In considerable measure the sentence to be imposed on you has to be assessed in accordance with a decision of the Court of Appeal in *Fatu*<sup>1</sup>. I will do this by reference to the offence of supplying methamphetamine between October 2008 and June 2009, taking that as the lead offence. However, the offences of possession of methamphetamine for supply and offering to supply over the same period are broadly the same. In substance they cover the same offending.

[13] The Crown submits that your offending comes within what is called band 2 in the Court of Appeal case. That would mean, in general, a sentence of somewhere between 3 years to 9 years imprisonment before considering any personal factors which might justify an increase or a decrease. Mr Kovacevich agrees that the

---

<sup>1</sup> *R v Fatu* [2006] 2 NZLR 72

offending comes within band 2. The real question is where it falls within that range of 3 to 9 years. The Crown submits that, when adding all of the offending, the starting point should be around 8 years imprisonment. Mr Kovacevich submits that the starting point should be 4 years imprisonment.

[14] In fixing the starting point the quantity of methamphetamine is relevant, whether this was actual supply or possession for supply or offering to supply. The quantity over that shorter period of the total offending suggests commercial drug dealing on a significant scale. There are the other indications of commercial drug dealing that I have referred to and there is the fact, Ms Brewis, that this was over an extended period from October to June of the following year. All of this points to your offending being somewhere in the middle of band 2. Also relevant to your culpability – and to an extent to your credit – is the pressure put on you to get involved. I can take that into account in a very limited way. That may have been the initial impetus – and I will give you the benefit of the doubt – but you then continued to be involved in a voluntary way.

[15] Taking these matters into account, and other relevant considerations, I consider that the starting point, with an appropriate adjustment for all of the offending – which really is, as I have already said, essentially the same offending in a different form – should be 5 years imprisonment.

### **Personal factors – aggravation and mitigation**

[16] I then need to increase or decrease the starting point to allow for relevant personal factors. The fact that you committed the main offences while you were on bail for the October 2008 offences would require some increase. And the previous convictions I have referred to would also require some increase. I consider that these matters justify an increase of 6 months, which takes it to 5 ½ years.

[17] Against this are personal circumstances weighing in your favour, some of which I have mentioned, with others more fully set out in the pre-sentence report. Apart from the fact that you pleaded guilty to these charges, factors relating to you personally – as I have said twice already I think – cannot result in any significant

reduction of the sentence that would otherwise be imposed. However, giving you as much benefit as I can in relation to personal circumstances, I intend to allow 3 months, reducing the sentence at that point to 5 years 3 months imprisonment.

[18] The final matter, Ms Brewis, is your guilty pleas. In that respect the Crown accepts Mr Kovacevich's submission that you are entitled to the maximum credit, which is one-third, and that is inclusive of credit for your remorse because the best way of demonstrating remorse – and I accept that there is remorse – is by the guilty pleas.

[19] The result of that credit of one-third is that the end sentence on the lead charge, or in fact charges, is 3 years 6 months imprisonment.

### **Sentence**

[20] Would you please stand.

[21] For the offences of supply of methamphetamine and possession of methamphetamine for supply between October 2008 and June 2009 you are sentenced to imprisonment for 3 years 6 months.

[22] For offering to supply methamphetamine you are sentenced to imprisonment for 3 years.

[23] For possession of the precursor substance, you are sentenced to imprisonment for 6 months.

[24] For possession of the pipe, having been convicted you are discharged.

[25] There is an order for destruction of the pipe.

[26] In respect of the offences which remain to be dealt with in the District Court, you are remanded for sentence on those matters to an appropriate date, and that will need to be fixed by the District Court.

[27] In addition there is a charge before this Court of breach of community work and on that charge I convict you and discharge you. I also cancel whatever remaining period there may be on that sentence.

[28] That is all I have to say Ms Brewis, except that I really do urge you, as best as you can, to take a grip on your own life because at the end of it all you are the one who has to do that.

[29] Thank you, stand down.

---

Peter Woodhouse J