

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

CRI 2009-012-003573

CRI 2009-012-005800

REGINA

v

**DEMELZA PATRICIA FRANCES FRASER-O'DONNELL
AND
AMANDA LYNNE WAGHORN**

Hearing: 6 October 2009
(Heard at Christchurch)

Counsel: K B Bell for Crown
J D Large for Prisoner Fraser-O'Donnell
J Westgate for Prisoner Waghorn

Judgment: 6 October 2009

SENTENCING REMARKS OF FOGARTY J

[1] Amanda Lynne Waghorn and Demelza Patricia Frances Fraser-O'Donnell, on 3 June last you, Ms Fraser-O'Donnell, were a passenger in a motor vehicle which was stopped and searched and in the vehicle three plastic bags containing high quality cannabis head, a total weight of 964 grams, with a street value in the region of \$12,000, possibly more, was found. Subsequent police enquiries led to you, Ms Waghorn, advising the police that you had arranged for Ms Fraser-O'Donnell to travel to Christchurch to uplift approximately two pounds of cannabis with the

intention to sell the majority of it to make some cash and you said, Ms Waghorn, you were a heavy user yourself.

[2] You were both, on those facts, clearly engaged in dealing in a commercial level of cannabis. You, Ms Waghorn, are the principal offender and you, Ms Fraser-O'Donnell, are an accomplice or party to it. On the principles set out by the Court of Appeal in *R v Teriwi* [1999] 3 NZLR 62 the starting point for such offending is between two and four years imprisonment.

[3] Ms Fraser-O'Donnell you are only 20 years of age. The Crown has clearly accepted that in your case there are distinct rehabilitation prospects. There is a place available in Odyssey House, a residential unit in Auckland, right now and the Crown agree with the proposed sentence for you of six months community detention and two years intensive supervision. You have had some past offending but it is relatively minor. I accept the submissions of your counsel because they are agreed to by the Crown who have obviously considered the position and essentially I see no reason to differ from their analysis. However, I want you to understand that you are being treated exceptionally in the hope that the course in Odyssey House and the subsequent supervision will mean that you will be rehabilitated, that you will be able to get on and live a productive life in the community and not appear in Court again.

[4] You should be under no illusions that you will be given a second chance if you offend again. You will simply have no credibility if you do not now take advantage of this course at Odyssey House.

[5] Accordingly, I sentence you Ms Fraser-O'Donnell to six months community detention with a curfew between 9 pm and 7 am daily, to be followed by two years intensive supervision. Further, you are to report to the Dunedin Corrections Office within 24 hours of today whereby arrangements have been made for you to fly to Auckland where you will report to Odyssey House at 11 am on Thursday.

[6] Ms Waghorn, sentencing for you is more problematic. You are now 30 years old. You have got a considerable history of minor but frequent dishonesty offending. You have already been to prison once in 1996. There is a prospect that

you have learned from this, although I have some doubts. It is a balancing issue as to whether or not I should send you to prison for a period in the order of 16 months, after taking full account of your plea of guilty, or go with home detention and community work. I have decided to go with the latter, principally because the Crown is not significantly opposing that. But, I am going to make some remarks directed to the probation officer to make sure that you are under very close watch while on home detention. So if there is any breach of the conditions of home detention your sentence can be reviewed and you may well then go straight to jail.

[Discussion between Court and counsel]

[7] You have heard Ms Waghorn my discussions with counsel. What I am concerned about in your case is that you suffer the penalty of six months home detention but when that expires you also be continuing to do community work and be reporting to the probation officer and thus under a degree of supervision. I think that is in your own interests. You have simply got to try to beat this. You are 30 years old now. It is about time you left this life of criminal offending behind and got on with an adult life which does not involve offending.

[8] So what I am going to do is sentence you to six months home detention, to 300 hours of community work but with the strong recommendation to the Corrections Department that that community work although it should start near the end of your six months home detention be structured so that it continues beyond the period of home detention. The standard conditions will apply to home detention but also special conditions. I want those to apply for 12 months and in the context where I expect the probation officer to require that you report regularly. This is in addition to your community work so that the probation officer can follow your efforts to obtain employment and generally to live a constructive life in the community. The special condition is that you are to attend an appropriate programme for counselling and treatment as recommended by the Corrections Department and complete this to the satisfaction of the probation officer. That will also mean, as you have heard, that you will attend such programmes in the course of this period of time as may be recommended.

[9] In respect of the home detention the following special conditions apply:

- You are to travel today directly to 44 Harewood Street, Harewood, Dunedin, and to remain at that address to be met by the probation officer.
- You are to reside at that address in accordance with the requirements of home detention.
- You are not to consume or be in the possession of alcohol or illicit drugs for the duration of the home detention sentence.
- You are to attend an assessment for substance abuse and attend and complete an appropriate programme for treatment and/or counselling if and as recommended by the assessment, to the satisfaction of your probation officer and programme provider. Details of the appropriate programme are to be determined by your probation officer.

As I have said before in [8], that condition will also continue as a special condition for 12 months after the completion of home detention.

- You are also to undertake budgeting advice to the satisfaction of the probation officer.

Solicitors:
Raymond Donnelly & Co, Christchurch, for Crown
J D Large, Dunedin
J Westgate, Dunedin