

**IN THE HIGH COURT OF NEW ZEALAND
PALMERSTON NORTH REGISTRY**

CRI-2008-054-1871

THE QUEEN

v

CRAIG DOUGLAS MURPHY

Hearing: 20 November 2009

Appearances: E J McCaughan for the Crown
S N Hewson for Mr Murphy

Sentence: 20 November 2009

SENTENCING NOTES OF CLIFFORD J

[1] Mr Murphy, you appear for sentence having been found guilty after a jury trial before me in the High Court at Palmerston North on:

- a) three counts of offering to supply the Class A drug methamphetamine;
and
- b) one count of possession of a pipe for the purpose of smoking methamphetamine.

[2] Each of the three counts of offering to supply methamphetamine attracts a maximum penalty of life imprisonment. The charge of possession of a pipe attracts the maximum penalty of one year imprisonment or a \$500 fine.

[3] The charges against you follow a covert surveillance operation conducted by the Police into methamphetamine in the Manawatu and Horowhenua areas known as Operation Pandora.

[4] At your trial, you acknowledged your guilt on two of the offering to supply charges, and on the charge of possessing a pipe for the purpose of smoking methamphetamine. Those two offer to supply charges involved small amounts of methamphetamine, point amounts or thereabouts, which you offered to supply to Mr Kiriona, the principal target of Operation Pandora. The Police accept that that methamphetamine was for Mr Kiriona's personal use.

[5] The third charge of offering to supply involved a considerably larger amount of methamphetamine, namely three ounces or approximately 85 grams.

[6] At your trial you denied that the relevant text and telephone messages reflected an offer to supply that amount of methamphetamine. Rather, you said they reflected an offer to supply to Mr Kiriona three pounds of cannabis. By their verdict, the jury rejected that explanation.

[7] On the basis that this was an offer to supply methamphetamine in a commercial quantity, the reasonable inference – and the one I propose to adopt for sentencing – is that you were in contact with an acquaintance or acquaintances from previous times when you had personally using methamphetamine to a much greater extent than you say is now the case. I conclude that if Mr Kiriona had been able to procure the agreed cash purchase price, the transaction would have proceeded.

[8] Your evidence at trial, as regards the cannabis supply explanation, was that you were to act as a middle man. Similarly, I accept that your role in relation to the methamphetamine would appear to have been that of a middle man. Based on that evidence, the extent to which you would personally gain (or were to gain) from your offending is not clear. Your pre-sentence report records, however, your acknowledgement that you had been using and selling methamphetamine. You acknowledged there was a financial element to your offending; you stated that you

wanted to give your son a few extra things. There was, therefore, clearly some element of personal gain for you.

[9] Bearing in mind the extensive surveillance undertaken by the Police during Operation Pandora, this would, however, appear to have been the only occasion upon which you participated in the supply of methamphetamine over this period in commercial quantities.

The sentencing process

[10] In sentencing you today, I first set what is called the starting point for your sentence. That is a sentence that reflects the seriousness of what you did. I then have to adjust that starting point to take account of factors personal to you that might call for a higher or lower sentence than that first identified.

[11] In terms of the Sentencing Act 2002, the factors I consider I need to bear in mind are particularly the need to denounce your offending, to hold you accountable for what you did, to deter you and, importantly, others from committing similar drug offending. At the same time, the law says that I am to impose the least restrictive sentencing outcome that is appropriate in the circumstances.

[12] I take as the lead charge the charge of offering to supply Mr Kiriona with three ounces of methamphetamine. I will sentence you on a concurrent basis as regards your other offending. That means I will take account of the other offending when I set the sentence for the offer to supply three ounces.

Pre-sentence reports

[13] I have before me two pre-sentencing reports.

[14] The first relates to offending in July this year involving possession of pipes for the purpose of smoking methamphetamine, to which you pleaded guilty. The second is a full pre-sentence report prepared in connection with the offending for which you are to be sentenced this morning. Both reports record your

acknowledgement that you have a long-term methamphetamine addiction developed approximately ten years ago.

[15] You have previously been sentenced for possessing methamphetamine for supply, in 2004, when you received a four year sentence. As Mr Hewson has submitted this morning, the sentencing notes from that time reflect a conclusion by the Judge that the commercial activities you were involved in may have been more extensive than I consider to be the case here.

[16] You were apparently “clean” during your period of imprisonment. You attended the Salvation Army Residential Bridge Programme on your release in 2006, and you stayed clean for approximately five months thereafter. You then returned to drug use, with perhaps the inevitable consequence that you have ended up here today.

[17] Both report writers note that you appear remorseful for your offending and the effects that it has on you and those close to you. You express a strong desire to address your drug abuse and are particularly interested in attending the Department of Correction’s Drug Treatment Unit run in prison.

[18] You are assessed as being at a high risk of re-offending on your release from any sentence of imprisonment, and the report writer recommends, much as Mr Hewson has submitted to me this morning, a community-based rehabilitation and relapse prevention programme on release including directions as to where you are to live.

[19] Your son is now living with his mother, your former partner, in Hastings. You hope to reside with them upon release. The Probation Service has contacted your former partner. She has advised the Probation Service that she would consider that arrangement, providing you gave up drugs. I would say, Mr Murphy, that if that arrangement was available to you, and that was a location that would keep you away from your former acquaintances here in Palmerston North, and your former partner, notwithstanding what you have been up to over the last few years, is prepared to

have you back, then that is something you should very seriously consider. That may be the best chance for you.

[20] It would appear that your family also supported you when you were released from prison in 2006. The probation report writer notes, however, that your sister, when faced with your most recent offending, wondered, with some insight, “just how many chances you can give someone”.

Sentencing discussion

[21] Methamphetamine supply offending, involving between five and 250 grams of methamphetamine, generally calls for a starting point of between three and nine years’ imprisonment [*R v Fatu* [2006] 2 NZLR 72 (CA)].

[22] Such offending, involving supply or possession for supply and amounts of methamphetamine similar to the amount involved here of 85 grams, often attracts starting point sentences in the range of five to six and a half or seven years. The Crown rightly emphasises the seriousness of this sort of offending and its pernicious impact on the community.

[23] As well as having regard to the amount of methamphetamine involved, I need also to consider the significance of your role in this offending, and the extent to which the commercial nature of this offending – as suggested by the relatively significant amount of methamphetamine involved – is confirmed by other indications of commerciality. I also need to consider the significance of the fact that this is a charge of offering to supply, and that no supply actually took place.

[24] As I have noted above, my assessment is that if Mr Kiriona had been able to come up with the necessary funds, it is likely that this supply would have occurred. As the Crown acknowledges, however, some small discount from a sentence that might have been imposed for actual supply or possession for supply is appropriate because this is an offer charge.

[25] Whilst the amount of methamphetamine involved clearly suggests reasonably significant commercial dealing, you would generally appear to have acted as a middle man in this transaction. Your role would appear to have been to facilitate subsequent commercial dealings by Mr Kiriona and his accomplice Mr Malcolm. This in itself is serious offending which contributes to the distribution of methamphetamine in society. Moreover, whilst being a middle man, you have acknowledged an element of personal gain involved.

[26] At the same time, and considered more generally, there is no evidence against you of other indicators of commercial supply on an ongoing basis, such as the presence of electronic scales, surveillance, tick lists and/or significant quantities of cash. Mr Hewson suggests, indeed, that this offending represents a one-off “relapse” by you. I acknowledge that submission. As I have said, it tends to be supported by the fact that, notwithstanding the extensive surveillance undertaken by the Police during Operation Pandora, this was the only incident of offending of this nature (i.e. involving commercial quantities) that was discovered as regards yourself.

[27] As I have indicated, however, I do not accept Mr Hewson’s submission in writing to me that this offending falls at the very low end of the three to nine year period. The amount of methamphetamine involved is, as I have said, relatively significant. Furthermore, there is your own acknowledgement of an element of personal gain, and the commerciality of the transaction given the amount involved and the likelihood that Mr Kiriona and Mr Malcolm would have distributed the product.

[28] Taking all these factors into consideration, and considering similar cases such as *R v Wilkie* HC WN CRI-2006-063-775 26 May 2006 and *R v Byford and Ngataki* HC PMN CRI-2006-054-557 29 June 2007, I conclude that an appropriate starting point on the charge of offering to supply is five years’ imprisonment.

[29] As I have said, I propose to sentence you for your other offending on a concurrent basis. To take account of that other offending, I consider that a further increase to your starting point sentence of three months is called for.

[30] Therefore, the starting point sentence to reflect the criminality of your offending in totality is five years and three months' imprisonment.

Personal aggravating and mitigating factors

[31] I now need to consider aggravating and mitigating factors personal to you.

[32] There are two clear aggravating factors. The first here is your previous offending. In July 2004, you were found guilty of possessing approximately ten grams for purposes of supply. Your criminal record also indicates a number of lesser possession and use offences which I do not regard as being of particular significance. Secondly, you committed this offending whilst on parole for that July 2004 offending.

[33] To take account of those factors, I consider that an uplift of six months is called for. In terms of relevant authority, I consider that the uplift of 12 months submitted for by the Crown is too great.

[34] I turn now to mitigating factors personal to you.

[35] As regards your personal circumstances to which Mr Hewson has paid particular attention, I have already acknowledged that you have had a long-term methamphetamine addiction. I have no doubt that this played a considerable role in your offending. At the same time, you have recently been looking after a young son and, although doubted by the Crown, have continued to emphasise your remorse, your insight into your offending and your recognition of the need to address your addiction.

[36] I accept that your recognition of the need to address your addiction is sincere. I also accept that you are committed to your son's wellbeing. At the same time, and as regards your expressions of remorse, it is more than a little difficult to reconcile those expressions with the circumstances of this offending. I acknowledge that it was a "one-off", but it is not clear to me that, as submitted by Mr Hewson, you were placed under particular pressure by Mr Kiriona. My sense from the trial was that Mr

Kiriona was an acquaintance of yours and, to a certain extent, a friend and perhaps, unwisely or otherwise, you would appear to have been influenced by those matters when you engaged in this offending in terms of the offer of methamphetamine.

[37] In my judgment, and in the future, true remorse will require you to stay away from acquaintances and situations that expose you to methamphetamine and its use, because your personal addiction combined with those exposures seems inevitably to have been what has brought you here today. Moreover, and as the Court has said on many occasions, personal factors such as those are of limited mitigating significance. I have tried to take account of them in terms of the uplift I have given in terms of your earlier offending. I do not think I can give them further significance today.

[38] Accordingly, I impose a final sentence of five years nine months' imprisonment on you on the lead charge of offering to supply.

Minimum period

[39] The Crown seeks a minimum period of imprisonment. I will simply say that I do not think in this instance a minimum period of imprisonment is required. I consider that the sentence I have imposed upon you, and the way that sentence recognises the earlier offending and the nature of this offending, is sufficient to punish and deter you.

[40] Therefore, I sentence you to a term of five years and nine months' imprisonment on the lead charge of offering to supply three ounces of methamphetamine to Mr Kiriona. I sentence you to concurrent terms of imprisonment of three months on each of the two other charges of offering to supply methamphetamine to Mr Kiriona. I convict and discharge you on the offence of possessing a pipe for the purposes of smoking methamphetamine. As requested by the Probation Service, your current sentences of community service and supervision are, in my – if necessary – inherent jurisdiction, quashed. You are sentenced to a concurrent sentence of three months' imprisonment on the 2009 charge of possessing utensils in place of those sentences. In terms of the summary charge of possessing four pipes for the purpose of the commissioning of an offence against the Misuse of

Drugs Act, namely for the purpose of consuming methamphetamine, I also sentence you to a concurrent sentence of one months' imprisonment.

[41] The overall effect, Mr Murphy, is that you are sentenced to a term of imprisonment of five years and nine months.

[42] I have said a couple of times in this sentencing, but I will say it again: I think you realise that it is your addiction combined with exposure to your former acquaintances that has brought you here today. I accept, from my observation of you during the trial, that you do appreciate the harm your addiction causes you and I think you also appreciate the folly of re-engaging with those acquaintances in the offer of the relatively significant amount of methamphetamine that you made to Mr Kiriona. If you get a chance on your release from prison to move in with your former partner and your son, I suggest you take it. It does seem to me that that may be the environment that will best enable you to stay away from the influences that you have had on you in the past, and which may also help you deal with your addiction, which I understand is a difficult problem.

[43] Thank you, Mr Murphy, you may stand down.

“Clifford J”

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