IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

CRI-2009-419-00060

SHANNON RICHELLE CHURCH
Appellant

v

NEW ZEALAND POLICE
Respondent

Hearing: 30 October 2009

Appearances: K Tustin for Appellant
P Cornege for Crown

Judgment: 30 October 2009

ORAL JUDGMENT OF VENNING J

Solicitors: Crown Solicitor, Hamilton
Copy to: K Tustin, Hamilton

[1] On 31 July 2009 Judge Tomkins sentenced the appellant to imprisonment for three years six months on two charges of theft, one of burglary, two of receiving, one of conspiracy to supply methamphetamine, four charges of obtaining by deception, one of possession of utensils, one of a threat, one of using an altered document with intent to deceive, and one of providing a false statement.

[2] The Judge structured his sentencing by adopting the submissions of counsel to split the offending into three categories. He placed the burglary, theft and receiving offences in one category, the conspiracy to supply methamphetamine (and possession of utensils) in the second category and the fraud offending in a third category. The Judge adopted a start point of 16 months' imprisonment for the burglary, theft and receiving offences and 20 months for the methamphetamine offending, and 12 months for the fraud, a total start point of four years. He then provided a discount for the guilty plea of six months and imposed a sentence of three and a half years' imprisonment overall, made up of 12 months for the theft, burglary and receiving charges; 18 months for the methamphetamine offending and 12 months for the obtaining by deception, the fraud.

[3] In support of the appeal Ms Tustin acknowledged from the outset that there could be no issue taken with the Judge's start point of 48 months for the offending overall but submitted that the end sentence was manifestly excessive because the Judge had failed to allow sufficient discount for three factors:

[1] the guilty pleas;

[2] the fact the appellant had been on 24 hour curfew during the course of her bail; and

[3] there was an element of disparity between the sentence imposed on the appellant and a co-offender, particularly in relation to the charge of conspiracy to supply methamphetamine.

[4] For the Crown counsel Mr Cornege accepted that it could be said the discount applied by the Judge was low but submitted that nevertheless the end point was within range to the Judge for the totality of his offending.

[5] Ms Tustin also advised the Court she was instructed to seek consideration of the imposition of home detention if the sentence was reduced to a level that would allow that. She also provided a letter from the appellant, setting out the appellant's concerns for the care of her son. The appellant's concerns in relation to the care of her son are matters that have arisen after sentencing and as a consequence of her sentence. They are not matters this Court can take into account on an appeal against sentence imposed in the District Court. Regrettably offending of the nature that the appellant involved herself in impacts on family members in a variety of ways in almost every case. That is a consequence the appellant has to accept responsibility for.

[6] I agree with the general submission made by counsel for the Crown that while the appellant's focus is on the discount applied in this case, the ultimate issue for this Court is whether the overall end sentence of three years six months can be described as manifestly excessive. How the sentence is actually made up is not as important as that end result.

[7] However, having observed that, I note that the start point of four years was accepted by both counsel. For my part, having regard to the offending and the relatively minor nature of the most serious offence, that of conspiracy in relation to the methamphetamine, I would find it difficult to support a start point above that adopted by the Judge, notwithstanding that some of the offending occurred whilst the appellant was on bail.

[8] In this case I accept that Ms Tustin was correct to focus on whether a discount of 12½ percent from the start point for mitigating factors was sufficient. In

my judgment the principal issues are whether there was a proper allowance for the guilty pleas entered by the appellant and the disparity with the sentence imposed on her co-offender particularly the discount for his guilty plea in relation to the conspiracy to supply methamphetamine count.

[9] I am not persuaded that there is anything in the point advanced by Ms Tustin about the 24 hour curfew. The appellant was only on a 24 hour curfew for approximately three or four weeks of her remand. For the balance of the time she was on less restrictive bail conditions. It is also quite apparent from the record of the offending that during her bail she did offend on a number of occasions. In these circumstances I am not prepared to give any discount for the time she spent on a 24 hour curfew.

[10] There is an issue in this case, however, about the disparity with the sentence imposed on her co-offender Mr Gray. Although the Judge imposed an 18 months sentence of imprisonment on the appellant, allowing a discount of two months for the guilty plea, the Judge adopted the same start point of 20 months for Mr Gray but imposed an end sentence of 15 months allowing a discount of 25 percent. On my reading of the summary of facts I am unable to see that there is properly a distinction between the two of them in relation to their culpability in relation to the offending. Some allowance must be made for that.

[11] The other issue is the overall allowance for the guilty pleas entered by the appellant. Counsel referred to the recent Court of Appeal decision of *R v Hessell* [2009] NZCA 450. That decision was not available to the sentencing Judge. The Court of Appeal made it clear that it is to apply to sentences imposed after the delivery of that decision. Nevertheless, in a number of respects the decision of *Hessell* summarised and collated approaches of this and the District Court to the appropriate allowances given for guilty pleas. It provides a helpful test for the discount provided in this case.

[12] In the present case the appellant committed a variety of offences over a lengthy period of time. To some of those offences she pleaded guilty at a very early stage while to others she pleaded guilty at a later stage. But even in relation to the

more serious offending, as Ms Tustin has pointed out, she pleaded guilty prior to depositions.

[13] In my judgment an appropriate discount for the guilty pleas in this case would be in the range of 25 percent. That would leave an end sentence in this case of three years' imprisonment. In my judgment that adequately reflects the seriousness of the offending in this case. Taking into account the extensive number of offences committed by the appellant, the fact that some were committed on bail and that there is no prospect of any reparation being paid, but also balancing the guilty pleas, the acknowledgement of responsibility which they reflect and also to ensure that she was treated in principle the same as her co-offender Mr Gray, the three years is the appropriate result. The difference between three years six months and three years supports a finding that the sentence of three years six months was manifestly excessive.

[14] The appeal against sentence is allowed. The sentence of three years six months is quashed. It is replaced with an overall sentence of three years' imprisonment. That is constructed as follows. A sentence of 15 months' imprisonment for the methamphetamine offending; a sentence of 10 months for the theft, burglary and receiving charges, and a sentence of 11 months for the fraud charges.

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Venning J