

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

**CRI 2009-077-806**

**THE QUEEN**

v

**RYAN MARCEL TAYLOR**

Hearing: 13 November 2009

Appearances: L Owen for Crown  
G Boot for Taylor

Judgment: 13 November 2009

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**SENTENCING REMARKS OF ALLAN J**

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*Solicitors:  
Crown Solicitor Rotorua  
G Boot, Tauranga*

[1] Mr Taylor, you appear for sentence today having pleaded guilty to one charge of possession of cannabis plant for supply, for which the maximum penalty is eight years imprisonment, one charge of cultivating cannabis, for which the maximum penalty is seven years imprisonment, and one charge of possession of equipment for the cultivation of cannabis, for which the maximum penalty is five years imprisonment.

[2] On 24 August 2009, you pleaded guilty to those charges in the Tokoroa District Court and were committed to this Court for sentence, pursuant to s 28G of the District Courts Act 1947.

### **Factual background**

[3] On Saturday 6 May 2009 the police executed a search warrant at a property you rented in Arapuni. There they located a substantial cannabis growing operation inside the house. A scene examination disclosed four distinct areas in the house used for the growing of cannabis, and a fifth which had been prepared but was not yet being utilised.

[4] A brief summary of the operation will be sufficient. The first area contained a large purpose made growing tent with a reflective interior and ceiling and a zip up front. The tent contained 19 cannabis plants measuring approximately 1.6m in height. All plants were labelled and were sitting in watering trays. There was significant artificial lighting accompanied by two large light reflectors. In this room the police located a digital electronic timer, a fan and a ducting system.

[5] The second area was in the entrance room at the front of the house where the police located 21 cannabis plants measuring approximately 1.8m in height. These had been trimmed or pruned, leaving only the heavily budded top half. Again there was substantial artificial lighting accompanied by light reflectors and an electronic timer. Here the police also located fluorescent lighting at the base of the plants, and

a watering system. Again there was a fan and a ducting system connected to an extraction fan.

[6] The third and fourth areas were somewhat similar. Both were upstairs. The first comprised a large purpose built growing box, incorporating reflective film and powerful artificial light. There were 18 cannabis plants in this box and the lighting was controlled by an electronic timer. The second of the two upstairs areas also consisted of a purpose built growing box, this one containing 45 cannabis plants measuring about 24 to 30cm. Again, there was substantial fluorescent lighting and an extraction fan system.

[7] An as yet unused fifth area had been set up beneath the stairwell. This area was covered in reflective film and a light reflector had been installed.

[8] The police also found a number of items related to cannabis cultivation. They included reflectors, ballasts, seed growing containers, fertilizer and an extensive range of growth related products, including hormone boosters and root stimulant. The police identified a three faced drying rack set up on the first floor. It was covered in drying cannabis head. They also found several separate quantities of cannabis stored in various locations around the house.

[9] By the end of the search the police had located a total of 103 cannabis plants, some 100 grams of cannabis head, and several hundred cannabis seeds which were located throughout the house, mostly labelled and stored in separate jars and containers. Overall, your growing operations involved the growth of both seeds and cannabis clones.

[10] While the police were searching the property, you arrived there and were spoken to by them. Ultimately you were arrested. You commented to the police that growing cannabis was what you do, and complained about the cost of setting up the operation afresh. The police conducted a yield test and as a result consider that the plants in your possession were capable of producing 200 ounces of cannabis head, worth between \$50-60,000, with the potential to grow and earn significantly more.

The police estimate the value of the equipment involved in the operation to be about \$5,000.

[11] You are 29 years of age, unemployed and presently living with your mother. You have two brothers and two stepbrothers with whom you have a good relationship, but there have been past problems with your stepfather. Your schooling was problematic. It seems that from about the age of 12 years you have been involved with cannabis, and that led to a somewhat truncated education. Moreover, there were learning difficulties at school. I understand you are dyslexic. You have had a number of jobs over the years. It seems you felt let down in one or two cases by your employer, and that you consider yourself to have been somewhat underpaid for the work you have done. You have no family commitments, and in particular no partner.

[12] Your cannabis habit is of real concern. You have been a long term cannabis user with a habit that entails the smoking of 10-20 joints daily. You say that you began growing cannabis by reason of the problems associated with purchasing supplies, often from sellers who were associated with gangs.

[13] There is a claim in the pre-sentence report that you were encouraged to set up and continue a cannabis cultivation operation by your associates and by some family members. You have indicated that some of the cannabis was for your own use but you accept you supplied friends and family. However, you say you have not made much money out of your activities and take issue with the police estimate of the value of the yield.

[14] It is somewhat disappointing to read in the pre-sentence report of your explanation that you feel that cannabis use is commonplace because everyone else uses it. I can assure you that they do not. You also expressed the view that alcohol and methamphetamine pose greater societal problems than does cannabis. That suggests an element of self-justification, and indeed of entitlement. Very substantial penalties are prescribed for offending of this type. They reflect the stark reality that cannabis is indeed the cause of much human misery, and of a great deal of other criminal offending.

[15] On a slightly brighter note, there seems to be an emerging glimmer of understanding on your part. You have attended alcohol and drug counselling of your own volition and enjoy the positive support of your mother. There are several family members here in Court to support you. That provides an indication that all is not lost for you. You are obviously a man of considerable ability with a great deal to look forward to and who will need the support currently available.

[16] There is an earlier conviction for cannabis cultivation, but it was nine years ago and I discount it for present purposes.

### **Purposes and principles of sentencing**

[17] I am required to take into account the provisions of ss 7 and 8 of the Sentencing Act, and in particular, I note there must be an element of accountability in any penalty imposed, which must also reflect a requirement to denounce and deter. Having said that, the Court is bound to assist in your rehabilitation and re-integration into the community as best it can, and to impose the least restrictive outcome that is appropriate in all the circumstances.

### **Tariff case**

[18] Sentencing for the cultivation of cannabis is governed by the guideline decision of the Court of Appeal in *R v Terewi* [1999] 3 NZLR 62, which applies by extension to cannabis sales as well as cultivation. *Terewi* sets out three broad categories of cannabis offending. Category 2, which calls for a starting point of between two and four years imprisonment, involves small scale cultivation of cannabis plants for a commercial purpose for profit. Category 3 covers the most serious offending, involving large scale commercial growing, usually with a considerable degree of sophistication and organisation. A higher starting point is required for a category 3 case.

## **Counsel's submissions**

[19] The Crown submits that your offending falls towards the higher end of band 2 of *Terewi*, and that a starting point in the region of four years imprisonment is appropriate in order to reflect the totality of this offending. Counsel for the Crown notes that your operations involved both cloning and traditional soil based methods, that you were in possession of several hundred cannabis seeds, graded into different categories. Mr Boot has explained that the great care and attention you have given to the seeds and various types of cannabis plant derives from an intellectual fascination with growing plants like these, which extends to tomatoes. But the fact you have a genuine interest in growing cannabis for its own sake cannot be regarded as something which diminishes your overall culpability.

[20] The Crown points out that more than 100 plants were located, along with 100gm of dried cannabis head material, and that there had been a significant financial investment on your part in setting up this operation. Counsel for the Crown suggested that maximum annual revenues of between \$200,000 and \$240,000 could be derived from a crop of this size. As to that I accept you did not derive anything like those figures, and that calculations like that are routinely proffered by the Crown to the Court as an indication of the ceiling that might be thought to represent the highest revenue available from the operation you were conducting.

[21] On your behalf Mr Boot says that a lower starting point of three years imprisonment would be appropriate. He identifies among a number of mitigating factors your own drug problems, your willingness to accept support from your positive home environment, and the steps, albeit limited, taken to address your offending. Mr Boot accepts that the case falls within band 2 of *Terewi* but does not agree that it falls at the upper end of that band. He argues that once a proper allowance is made for mitigating factors, an appropriate end sentence would bring into play the possibility of a sentence of home detention.

## Discussion

[22] Although sentencing in this area is not usually assisted by reference to other cases, in the light of competing submissions by counsel, I propose to refer to three Court of Appeal authorities by way of general comparison. In *R v Butler* CA221/04 4 October 2004, the appellant had pleaded guilty to and was convicted of one charge of cultivation of cannabis. When executing a search warrant at the appellant's home, the police found a sophisticated cannabis operation. Two wardrobes had been set up with a heat lamp and an extractor fan. In the shed there were rooms set up with fans, lighting equipment, a hydrozone controller, ozone generator and other equipment. A total of 106 plants were located, of which 76 were seedlings and 30 were larger plants. The police also found 13 cannabis tinnies, scales, some dry cannabis material, and tinfoil cut into tinnie sized lots. The police estimate the potential value of the cannabis located at about \$150,000.

[23] The Court of Appeal considered that the case must necessarily be placed towards the top end of category 2 of *Terewi*. That conclusion was necessary by reason of the sophisticated indoor operation which ensured much more favourable growing conditions than those that exist outside, together with the number of plants under cultivation. The Court therefore upheld the sentencing Judge's starting point of between 3½ and four years imprisonment, and the ultimate sentence of two years nine months imprisonment.

[24] In *R v Broughton* CA18/05 9 June 2005, the appellant had been sentenced to three years six months imprisonment for cultivating cannabis, possession of cannabis for supply and possession of equipment for cultivation of cannabis. The police found 50 cannabis plants growing under lights, 24 seedlings, and 250g of dried leaf. The Judge considered the offending to be at the top end of category 2 of *Terewi* and adopted a starting point of four years on the cultivation charge, allowing a six month credit for a guilty plea and other mitigating factors. The Court of Appeal considered the sentence to have been within range and dismissed the appeal.

[25] In *R v Collings* [2008] NZCA 30 the appellant had been convicted following a trial on two counts of cultivation of cannabis, two counts of possession of cannabis

for supply and one of possession of equipment for cultivating cannabis. A police search revealed 252g of cannabis within the house, and 1.96 kg in a vehicle. At the rear of the house was a water tank containing two cannabis plants, and a shed used to cultivate cannabis indoors. Leading from the house was a track to a swamp where 42 cannabis plants were found. Again, that offending was placed at the high end of category 2 of *Terewi*. A sentence of three years six months imprisonment was upheld on appeal.

[26] As in the cases I have mentioned I consider this case to fall towards the upper end of category 2 in *Terewi*. This operation was on any view sophisticated and plainly commercial in character. The installations and equipment found throughout the house must necessarily have entailed major capital expenditure, which could be justified only in the expectation of a considerable on-going financial return.

[27] I accept that to a degree what you did enabled you to support your own cannabis habit, but all the indications are that this operation was designed to make money.

[28] In my view, an operation on this scale requires a starting point of three years six months imprisonment. I allow a deduction for your guilty plea of one-third, 14 months. That produces a finite sentence of two years four months imprisonment.

[29] I am satisfied that a sentence fixed at that level is in line with the Court of Appeal authorities to which I have referred, and also to a number of comparable High Court decisions.

[30] A sentence at that level renders you ineligible for consideration for home detention, but it is appropriate to say that I would not have imposed a sentence of home detention in any event. The leading authority on the proper approach to home detention is the decision of the Court of Appeal in *R v Hill* [2008] 2 NZLR 381. There the Court emphasised that a sentence of home detention in lieu of imprisonment, will usually be imposed where there are strong rehabilitative prospects evidenced by practical and realistic steps already taken by the offender. In your case, although you have perhaps taken the first tentative step or two, much



remains to be done. You have the support of a strong family network, and that is extremely encouraging, but your response to the police when you were first apprehended, and some of the comments made to the probation officer, suggest that you have yet to develop a proper appreciation of the enormous social and financial problems which this country faces as a direct result of cannabis use. Activities such as yours serve only to worsen such problems.

### **Sentence**

[31] On the charges of cultivating cannabis and of possession for supply of cannabis plant, you are sentenced to two years four months imprisonment. On the charge of possession of equipment you are sentenced to 18 months imprisonment; all sentences are to be served concurrently. The effective sentence is therefore two years four months imprisonment.

[32] I draw the attention of the authorities to the desirability of Mr Taylor's participation in rehabilitative drug programmes.

**C J Allan J**