

**ORDER PROHIBITING PUBLICATION OF NAME OR IDENTIFYING
PARTICULARS OF PRISONER**

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

CRI 2008-092-00029

THE QUEEN

v

R

Charges: Supply a Class A controlled drug (7);
Possession Class A controlled drug for supply

Plea: Guilty

Appearances: Anna Pollett for Crown
Clare Bennett for Prisoner

Sentenced: 8 July 2009
12 months home detention; 200 hours community work

SENTENCING NOTES OF HARRISON J

SOLICITORS

Meredith Connell (Auckland) for Crown
Clare H Bennett (Manukau) for Prisoner

Introduction

[1] You appear for sentence today having pleaded guilty to eight charges of possessing methamphetamine for supply. As I have said to you before, in the normal course of events imprisonment for a lengthy term would be inevitable for you. But your offending presents special difficulties given your age, your character and your prospects for reform.

[2] You first appeared for sentence on 27 April 2009. On that occasion I emphasised that you had committed serious crimes but noted that you are a person of great ability and potential and, critically, that you had whanau support. I requested the Department of Corrections to prepare a home detention appendix. That is now available. The Department has identified the address of your uncle in Kaitaia as appropriate. I shall refer to that issue later. But for now I note the importance of a suitable address well away from Otara and the wider Auckland region.

[3] In fixing your sentence I must start with an assessment of the facts. Against that I must identify the appropriate starting point for a term of imprisonment. Then I will review your own personal circumstances and whether an alternative sentence is available.

Facts

[4] In 2006 the police commenced a wide investigation into the criminal activities of members of the Killer Beez and Tribesmen organised criminal groups. In particular they focused on the patched Killer Beez member and former Tribesmen president, Mr Josh Masters.

[5] The police obtained interception warrants in this Court continually between February and April 2008. Many private telephone and personal communications were intercepted between Mr Masters and others. At that stage you were not known to the police and you were not the target of any interceptions. However, while monitoring the communications between the primary targets, the police established that you also were dealing in methamphetamine. Some 92 communications were

intercepted between you and some of the others. In seven of those intercepted communications the police established that you were dealing in drugs at between 0.1 and 1.5 grams a time.

[6] The police executed a search warrant at your address on 5 May 2008. They found about 60 grams of methamphetamine in two separate locations in the house. About 61.9 grams was in 43 small snaplock deal bags inside a camera case. Another 2.4 grams were in eight small snaplock bags inside a belt bag. Also found was \$4,400 in cash.

[7] You know that the street value of one gram of methamphetamine is \$1,000. On this basis, the police value the drugs found in your house at over \$65,000.

[8] You admitted the offending when interviewed by police officers on the day the warrant was executed.

[9] I should add that to my knowledge a large number of individuals were arrested as a result of the police operation. Ms Pollett confirms that at least 60 people have been charged. You are the only youth among them. At the time of the offending you were 14 years and 11 months.

Starting Point

[10] Against these facts I must set the starting point for your sentence. The starting point is the term of imprisonment which is appropriate to reflect the circumstances of your offending before I take into account any personal features, whether good or bad.

[11] I do not need to emphasise to you the seriousness of your crimes. You know that methamphetamine is a dreadfully harmful drug. You know that it destroys families, friendships and individuals. You know the damage it causes. You know that anybody who makes money out of dealing in methamphetamine is going to be dealt with harshly by the courts. And you know the reason. It is to deter those who deal, it is to denounce them and to make them accountable for their crimes. Those

who make money from selling methamphetamine know and expect the consequences.

[12] It is common ground that you fall somewhere in what is known as band 2 for sentencing purposes; that is, where a starting point in the range of three to nine years is appropriate if the quantity of the drugs involved is between five and 250 grams. I do not need to go into other cases in any detail. I agree with Ms Pollett. A starting point of six years imprisonment is appropriate. That figure is necessary to deter you and others, to denounce your offending, and to make you accountable to society.

Mitigation

[13] Against the starting point you are entitled to a very substantial credit for a number of factors. In this case they are your guilty pleas, your age at the time of the offending, your previous good character, your remorse and your prospects for rehabilitation.

[14] First, there is your guilty plea. While it was not entered at the first available opportunity – it followed a pre-trial application – I am prepared to give it a full measure of discount of 33%. It not only saves the State the cost of a trial but it also reflects your own acknowledgement of wrongdoing and remorse.

[15] Second, and most importantly, there is your age and all it represents. You were 14 years and 11 months when you committed these offences. You were of excellent character. You had not offended before. The report prepared by Mr John Tooman, the probation officer, is glowing. Among other things, he reports a comment by the deputy principal of your former school who had known you for four years. She described you as ‘a really cool kid with a whole heap of potential, what a waste’. I hope you think about those words many, many times.

[16] I am in no doubt what led to your offending. You have lived in a settled environment with your family in Otara all your life. Unfortunately, and these things happen, your parents separated and your mother went to live in Christchurch in 2006. You, your brother and your father moved into your maternal grandmother’s

house. You were more affected by the break-up of your parents than you disclosed. You left school and nothing replaced it. You started to associate with members of the Killer Beez gang. You participated in various activities with them. Within a short time they were using you as a low level drug dealer. I am in no doubt that they identified your vulnerability and your intelligence. They used you for their own ends in a cynical and destructive way.

[17] For your part, you were happy to be a member of this association. You were particularly happy to receive large amounts of money. You were allocated \$200 'every now and then'. You used the money to buy clothes, food, go to the movies and indulge in other pastimes.

[18] I might pause there to note that unlike other cases your parents have remained committed to your future. Your father has appeared with you in Court, on the pre-trial application, on the first call of this sentence and today. He has every faith in you. Your mother travelled from Christchurch especially for the earlier sentencing hearing. I want your parents to know that these factors work positively in your favour.

[19] Youth is not in itself a significant mitigating or discounting factor when it comes to sentencing. But a different picture emerges when it is coupled with other factors such as your excellent character, your positive prospects for rehabilitation and my satisfaction that you were drawn into committing serious crimes, not out of any inherently criminal or antisocial characteristics, but because you were vulnerable and naïve. Unlike many other young persons who appear for sentence on serious offences, you are not a hardened criminal. In similar circumstances the Court of Appeal has recognised that very substantial discounts against a starting point, well over 50%, can be justified: *R v K* (2003) 20 CRNZ 62.

[20] This is a most unusual case for many reasons. You heard Ms Pollett this morning. To the Crown's knowledge you are the first young person ever to be charged in New Zealand with serious drug dealing offences. The Crown is concerned that any leniency I show you should not diminish the importance of a sentence giving a message of general deterrence to other young people who are

charged with these types of offences. I agree with her. Furthermore, as Ms Pollett points out, you were recruited into this activity by a Mr Wilson. He is an adult offender who has pleaded guilty to serious methamphetamine offences. He has yet to be sentenced.

[21] What I want to record in the plainest terms is that I regard your situation as unique. The sentence I impose is not intended to be a precedent for sentences imposed upon any other offenders who have been charged as a result of this operation. In particular, I would be most concerned if an attempt was made to set up this sentence as a foundation for arguing disparity with other cases. It must be seen for what it is: a sentence designed to meet your special circumstances.

[22] You know that I have given this case anxious thought. I must weigh up society's right to a deterrent sentence, as Ms Pollett says, against society's interests in your rehabilitation and your reintegration. The result must be the least restrictive in the circumstances of the case. Again I repeat that imprisonment would normally be the only option. But here I am satisfied that there is an appropriate alternative.

[23] You are an intelligent, motivated and remorseful boy. You want to be a motor mechanic. Critically you have whanau support. Without your uncle, who has travelled down from Kaitaia today, there would not be a suitable home detention address for you. I want to acknowledge what he has done and what he and his family will do to aid your rehabilitation.

[24] In my assessment these factors taken together justify a further two year reduction in the starting point for your sentence; in other words, if a term of imprisonment was going to be imposed it would be one of two years. But, for the reasons I have just noted, the needs of society and your own needs can be accommodated by a sentence of home detention. In my judgment such a sentence will deter and denounce you but will also assist in your reintegration.

[25] Accordingly I sentence you to a term of home detention for 12 months on the conditions set out in the probation report, as follows:

- (1) Travel directly to the Home Detention address with his uncle and await the arrival of the probation officer and a representative from the monitoring company. Given the logistics, electronic monitoring would most conveniently commence on the morning of Wednesday, 9 July 2009.
- (2) To remain at the Home Detention address for the duration of your Home Detention sentence, or an alternative address approved by the probation officer.
- (3) To abstain from the consumption of alcohol and illicit drugs and not be in the possession of the same while subject to the sentence of Home Detention.
- (4) To undertake alcohol and drug counselling with Northland Health A&D Services as directed by the probation officer.
- (5) To undertake education/training/employment programme as directed by the probation officer.
- (6) Not to own/possess any cell phone without the written consent of the probation officer.

[26] The conditions are subject to these amendments. In para (1) the commencement day is Thursday, 9 July; in para (5) the direction to undertake education, training and employment programmes as directed by the probation officer is supplemented by my recommendation that you attend a 12 week course for mechanics at North Tec, a local polytechnic, as proposed by your uncle. In addition I impose special conditions following your release for a term of six months on the terms recommended, namely:

- (1) To abstain from the consumption of alcohol and illicit drugs.
- (2) To undertake any education/training/employment programme as directed by the probation officer.

- (3) Not to own/possess any cell phone without the written consent of the probation officer.
- (4) To attend any other counselling programme as directed by the probation officer.

[27] Furthermore, you are sentenced to a term of 200 hours community work.

[28] Also, I request the probation service to forward to this Court for my attention a report on or after 9 December 2009 and again on or after 9 July 2010 advising of the progress made towards completion of your sentence; in other words, I will take an interest myself, as Ms Pollett suggests, in monitoring your progress through home detention and community work.

[29] You are a very fortunate young man. I acknowledge again the support of your whanau and also, of course, Ms Bennett's submissions on your behalf. In particular, though, I want to repeat my admiration for your uncle's offer. Home detention is not an easy option. You must understand that. You will be confined to the house for a year except to attend such courses as are directed or to carry out community work. But you have been given an opportunity, thanks to all of those who are committed to your future. I want you to know that I have every confidence in you that you will respond accordingly. If you do, I wish you well. Good luck. Please stand down.

Rhys Harrison J