

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

CRI 2008-004-5303

THE QUEEN

v

CARISSA BROADFOOT

Hearing: 29 September 2009

Counsel: J A Kincaid for the Crown
P Kaye for the Prisoner

Sentence: 29 September 2009

SENTENCE OF POTTER J

Solicitors: Crown Solicitor, P O Box 2213, Auckland 1140

Copy to: P Kaye, P O Box 941, Shortland Street, Auckland 1140

[1] Carissa Broadfoot: You are before the Court for sentence on three charges to which you entered guilty pleas not long before trial. They are:

- a) Permitting the premises at 3A Oranga Avenue, Onehunga to be used for the purpose of manufacturing the Class A drug, methamphetamine. That is Count 1 in the indictment. It carries a maximum penalty of ten years imprisonment.
- b) Possessing methamphetamine for the purposes of supply on or about 12 February 2008. That is Count 3 in the indictment. It carries a maximum penalty of life imprisonment. That penalty indicates the seriousness with which Parliament views Class A drug offending and methamphetamine for good reason is a Class A drug. It is a dangerous and pernicious drug.
- c) Conspiring to supply the Class A controlled drug, methamphetamine to another person. That is Count 5 in the indictment. It carries a maximum penalty of fourteen years imprisonment.

Background facts

[2] On 11 February 2008 you were living at 3A Oranga Avenue, Onehunga. Also living at that address was Harley Merrett, your partner and also living with you were your two children aged four and nine. A search warrant executed at 3A Oranga Avenue on 4 March 2008 yielded precursor substances, equipment for the manufacture of methamphetamine and material for the manufacture of methamphetamine. Mr Merrett admitted manufacturing methamphetamine at the premises. He pleaded guilty to a manufacturing charge and has been sentenced to three years ten months' imprisonment. You denied any involvement in the manufacture of methamphetamine, though admitting that the manufacture had taken place. The use of the premises at 3A Oranga Avenue for the manufacture of methamphetamine gives rise to the first of the charges I described above.

[3] On 11 February 2008, a call was received from Brent Greenwood, your former partner and the father of the elder of your two children, who was in Mt Eden Prison. The call was answered by your nine year old son who passed the call to Mr Merrett. Mr Merrett was in the process of manufacturing methamphetamine at the premises. Mr Greenwood also spoke to you and asked you if you could bring some methamphetamine to him in prison. Mr Merrett gave you the methamphetamine.

[4] On 12 February 2008, you were stopped and searched at the Mt Eden Prison on your way to see Mr Greenwood and found were .37 grams of methamphetamine inside your bra. Those facts give rise to the second charge I described above.

[5] On 25 February 2008 Mr Greenwood again telephoned you. He asked you to drop off methamphetamine and cannabis to a Ms McPhee, the partner of another prison inmate, Frederick Henare. They had a conversation later in the day in which they discussed that you would be delivering the drugs and that Ms McPhee would then take those drugs into the prison when she went to visit Mr Henare. Ms McPhee was also subsequently stopped and searched at Mt Eden Prison but a package which appeared to be taped to the front of her underwear had been removed or had disappeared on arrival at the Police Station, where she was taken following arrest for obstruction at the prison when authorities sought to conduct a search. This is the factual background to the third charge of conspiracy to supply methamphetamine.

[6] By your pleas of guilty to the three charges on the basis of the summary of facts you have admitted those facts.

Pre-sentence report

[7] A pre-sentence report has been provided. It records that you are thirty four years old. Your two children are now aged eleven and six and for the past six months have been living with your mother. You previously had a relationship of eight years with Mr Greenwood, the father of your elder son, and more recently you have been in a relationship with Mr Merrett. You admitted using methamphetamine when the charges were laid but you say that your attitude to drugs has changed and

you intend to abstain permanently. Drug and alcohol screening tests revealed you do not have a harmful pattern of alcohol or drug abuse.

[8] You have two minor previous offences which date back to 1994 and which are not of relevance for this sentencing.

[9] You claim that methamphetamine was never manufactured in the kitchen of your property at 3A Oranga Avenue but only in an outside carport. You said that your children were never in danger. That comment underlies perhaps the observation by the report-writer that you showed little insight into your offending. You did not appear to grasp, at least at first, the extent to which drugs and your acceptance of drug use have featured in your relationships with your male partners.

[10] You have apparently been undertaking a diploma in business at Unitec and have been working part-time for a number of years. You expressed considerable remorse for your offending, particularly in relation to your children. You say you are keen to undergo a rehabilitation programme to provide strategies to enable you to lead an offence-free lifestyle in future. The report-writer recommends a sentence of home detention.

Principles and purposes of sentencing

[11] The principles and purposes of sentencing as set out in the Sentencing Act 2002 have been helpfully traversed in the Crown's submissions. The sentence to be imposed must hold you accountable for the harm done and promote in you responsibility and acknowledgement of that harm. It must denounce and deter your offending and like offending. These aspects are of particular importance, that is the aspects of denunciation and deterrence, in relation to Class A drug offending. The sentence must as far as possible seek to assist in your rehabilitation and reintegration into the community and provide the least restrictive outcome that is appropriate in the circumstances.

Aggravating factors

[12] I agree with the aggravating factors identified by the Crown:

- Exposing your children to the risks associated with the manufacture of methamphetamine.
- Intending to supply methamphetamine to a prison inmate. I note this is a seriously aggravating factor as has been confirmed in previous decisions of this Court. I refer in particular to *R v Haumaha* HC AK CRI 2007-092-1143 1 April 2008, Wylie J at [26]; *R v Wright* HC AK CRI 2008-092-002364 30 September 2008, John Hansen J at [8]. In neither of those cases was there commerciality involved in the offending although the amounts involved were significantly more than in this case – 3.8 grams of methamphetamine in the case of Ms Haumaha and 12.6 grams in the case of Mr Wright. The Court stated in each case, that the attempt to smuggle this pernicious and dangerous Class A drug into the prison was a significant and serious aggravating factor.
- Planning and premeditation. A considerable amount of planning and premeditation was involved in the attempt to smuggle methamphetamine into the prison. Your claim to the probation officer that you had no idea that taking drugs into Mt Eden Prison would be viewed as seriously as it was, and that you just thought you would be banned from visiting the prison, is naive to say the least. Your acceptance and conditioning to drug use seem conveniently to have masked for you the salient facts that you were dealing here with a Class A drug methamphetamine which you conspired with others to smuggle into prison.
- You were on bail when you entered into the conspiracy to smuggle drugs into prison in relation to the same sort of offending, the earlier incident just two weeks before.

Mitigating factors

[13] There are no mitigating features of this offending as Mr Kaye conceded, but in relation to you personally there are the following mitigating factors:

- Your guilty plea, though it was not entered at the earliest opportunity but rather shortly before trial.
- Remorse which is evidenced in the pre-sentence report and emphasised by your counsel in submissions today and confirmed in the letter that you have written to the Court.
- Your previous good character. I have already noted that your previous convictions are historic and not relevant for this sentencing. However, while you have no previous convictions it is a matter of concern that your involvement with drugs and with those who will use and manufacture the very dangerous drug methamphetamine, and your preparedness to have your young children exposed to this environment, are matters that reflect poorly in any assessment of your character.

Sentencing

[14] I take as the lead charge possession of methamphetamine for supply. There was found in your possession at the prison .37 grams of methamphetamine. In terms of the guideline judgment in *R v Fatu* [2006] 2 NZLR 72 the offending comes at the bottom end of band 1 which attracts a starting point in the range of two to four years. Other comparable cases involving quantities of the drug methamphetamine at this low level indicate a starting point in a range between eighteen months and three years' imprisonment in cases where there is a lack of commerciality involved in the offending. I accept that is the situation here.

[15] In the case of *R v Tregilgus* HC WHA CRI 2005-088-2166 12 October 2006, Miller J .337 grams of methamphetamine and 67.4 grams of cannabis were involved. They were found pursuant to a search warrant following approaches on three

occasions to the prisoner by an undercover police officer trying to buy methamphetamine. A starting point of two years was adopted on the lead charge of possession for supply of methamphetamine. The end sentence was fifteen months' imprisonment, taking into account aggravating and mitigating factors.

[16] While the authority of *Tregilgus* provides some guide, in this case there is the seriously aggravating factor that the intended and attempted supply was into a prison. There is an added aggravating factor that the offending was committed while on bail. To reflect these factors I consider a revised starting point of two years six months imprisonment is required.

[17] That starting point must be increased to reflect the other two charges of permitting premises and conspiring to supply methamphetamine. The precise amount of methamphetamine involved in the conspiracy charge is not known but the Crown accepts that it would have been small. However, your role in the conspiracy was actually delivering the drugs to the courier who would attempt to take them into the prison.

[18] I increase the revised starting point by a further six months to reflect these two additional charges, giving an amended starting point of three years' imprisonment. To give credit for your guilty plea, your remorse and your absence of previous convictions, I allow a discount of one-third to reach an end sentence of two years' imprisonment which would be imposed on the lead charge of possession of methamphetamine for supply.

Home detention

[19] The end sentence being no more than two years' imprisonment requires me to consider as an alternative to imprisonment, a sentence of home detention. This is recommended in the pre-sentence report, and advanced by your counsel, Mr Kaye.

[20] The Crown submits that a sentence of home detention would not properly address the relevant sentencing purposes of accountability, denunciation and deterrence, particularly as the Class A controlled drug methamphetamine is involved.

[21] Further, s 6(4) of the Misuse of Drugs Act 1975 provides that where persons are convicted of supplying a Class A controlled drug, or of dealing in such a drug, the Court is required to impose a sentence of imprisonment unless, having regard to the person's particular circumstances, the Court is of the opinion that he or she should not be so sentenced.

[22] The Crown notes that in the case of *Haumaha*, to which I have previously referred, where the prisoner was sentenced to home detention on one charge of conspiracy to supply methamphetamine, 3.8 grams of the drug being involved, the sentence of home detention imposed took account of Ms Haumaha's particular circumstances, including that she was at the time of sentencing five months pregnant with twins.

[23] By contrast, a co-offender, Mr Wright, pleaded guilty to three charges of supplying methamphetamine, a total of 12.6 grams being supplied to three individuals on different occasions. It was acknowledged that the drugs were destined for a prisoner at Mt Eden Prison (Ms Haumaha being one of the couriers). Mr Wright was sentenced to two and a half years' imprisonment on each charge to be served concurrently. The Judge declined to sentence Mr Wright to home detention, noting that he was involved in three attempts to get the drug into prison while Ms Haumaha was involved only once, that the amount of the drug involved was significant and that the purposes of accountability, denunciation and deterrence outweighed the factors pointing in favour of home detention.

[24] The circumstances of Mr Wright's offending are clearly more serious than those in issue here. The circumstances of Ms Haumaha were particular to her and clearly weighed heavily with the sentencing Judge in determining that a term of imprisonment should not be imposed.

[25] A home detention appendix has been provided for you, Ms Broadfoot. There is a suitable proposed address at 25 Queensway, Three Kings where your mother lives. She has lived there for almost thirty years and is the only other adult occupant at the address, although as noted, your two children have been living with her over recent months.

[26] The report records that your mother is supportive of you, but at the same time has a realistic view of the requirements and responsibilities involved in somebody who is subject to an electronically monitored sentence, living in the house. You are assessed as a suitable candidate for the imposition of an electronically monitored sentence.

[27] As I have already said, the pre-sentence report and the submissions from your counsel indicate that you are motivated to change your ways, and that you have gained insight into the gravity of your offending and your involvement with the Class A drug methamphetamine and for that matter any drugs. You have two young children who need to have the care and attention of a mother concerned with and involved in their welfare. You are willing to undertake counselling to assist you in providing parameters to structure your future lifestyle and you have acknowledged your guilt by your guilty pleas to this serious offending.

[28] At your age of thirty four, I see this as a “make or break” point in your life. After careful consideration I have determined that a sentence of imprisonment should not be imposed but that you should be sentenced to twelve months’ home detention, the maximum period of home detention that can be imposed. That sentence is imposed and is to be served concurrently, on all three charges. It is in my view, Ms Broadfoot, a lenient sentence and you should regard yourself perhaps as fortunate.

[29] There will be special conditions imposed in relation to the sentence of home detention. They are:

- a) You are to travel directly from Court to 25 Queensway, Three Kings, Auckland and there await the probation officer and the installation of electronic monitoring equipment;
- b) You are to remain at 25 Queensway, Three Kings, Auckland at all times unless an absence from that address has been authorised in advance by the probation officer;

- c) You are not to purchase, possess or consume alcohol or illicit drugs for the duration of the sentence of home detention;
- d) If directed by the probation officer, you are to undertake and complete a Short Motivational Programme and any rehabilitation course administered by the Department of Corrections or any other reputable organisation and to abide by the rules of the programme to the satisfaction of the programme provider and the probation officer.

[30] You must of course at all times comply with all the conditions of your sentence of home detention which include the standard conditions detailed in s 80C of the Sentencing Act in addition to the special conditions I have imposed.

[31] I have noted, Ms Broadfoot, that while you were on bail you breached the conditions of your bail on two occasions. There will be no room for you to breach the conditions of your home detention. If you do, you are likely to find yourself promptly in prison. You will need to take a much more mature and realistic approach to your future lifestyle to ensure that your life and the lives of your two young sons are not in future contaminated by involvement with drugs, let alone Class A drugs. This is, as I have said, a “make it” or “break it” opportunity. The responsibility is entirely yours.

[32] Would you please stand.

[33] The sentence imposed on you, Ms Broadfoot, is twelve months’ home detention.

Applications under s 347

[34] I now turn to the discharges under s 347. I gather this is a joint application by the Crown and the defence. There will be discharges on Counts 2 and 6, the Crown offering no evidence.

[35] You may stand down.