

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

**CRI-2012-021-000846  
[2013] NZHC 235**

**THE QUEEN**

v

**DONOVAN TAKETAKE HORI**

Counsel: J I Mooney for Crown  
G Vosseler for Prisoner

Sentence: 19 February 2013

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**NOTES ON SENTENCE OF COLLINS J**

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**Introduction**

[1] Mr Hori, you appear for sentencing on one count of possession of cannabis for sale.<sup>1</sup>

[2] In sentencing you I shall:

- (1) describe your offending;
- (2) explain the starting point for your sentence;
- (3) consider what adjustments can be made to the starting point to reflect your personal circumstances;

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<sup>1</sup> Misuse of Drugs Act 1975, s 6(1)(f) and 6(2)(c).

- (4) consider what discount can be applied in response to your guilty plea;
- (5) consider whether home detention can be imposed; and
- (6) explain your end sentence.

### **Your offending**

[3] On 6 September 2012 the police executed a search warrant at your former home in Hawera. The police located eight snaplock bags in a rubbish bin with fresh cannabis residue, 55 grams of cannabis head in a container, and 17 pre-packaged “tinnies” inside a sports bag. Inside a cooler bag the police also located three ziplock bags, one of which contained 105 grams of cannabis leaf, the second contained 30 grams of a mixture of cannabis leaf and head, and the third contained 85 grams of cannabis leaf. In your garage the police located a glass jar containing 17.08 grams of cannabis seeds. They also located \$389 in cash in your front pocket, and two receipts in a purse showing two deposits on 13 August 2012 for \$209.80 and \$100, and coins totalling \$45.30.

[4] The quantity of cannabis recovered was 55 grams of loose head, 20 grams of head in pre-packaged tinnies, 190 grams of leaf, 30 grams of mixed leaf and head, and 17.08 grams of seeds.

[5] You say that only the cannabis contained in the tinnies was for sale, and that the remainder was for your personal use. Mr Vosseler, your counsel invites me to draw an inference that because only 20 grams was pre-packaged for sale, that was the only material to be sold. Mr Vosseler submits that the charge to which you have pleaded guilty relates only to that amount of cannabis and that you should be sentenced accordingly.

[6] Mr Vosseler estimates the value of the 17 tinnies was \$425. You deny that any of the money located at your address was from the sale of cannabis and that the cash found on you was from a recent community fundraiser.

## Starting point

[7] In setting the starting point for cannabis offending, guidance is provided by the Court of Appeal in *R v Terewi*.<sup>2</sup> Although the sentencing bands prescribed in that case were for cultivation of cannabis, the Court of Appeal have extended its application to possession for sale and selling cannabis.<sup>3</sup> The Court of Appeal approved this approach more recently in *R v Gray*,<sup>4</sup> recognising that cultivation and possession for supply of cannabis are frequently “interrelated”<sup>5</sup> offences, as is the actual sale of cannabis.

[8] The Crown submits that your offending falls within band two of *Terewi*, and that a starting point of two years and three months’ imprisonment is appropriate. In support of that submission, the Crown refer to the following cases:

- (1) In *R v Hokianga*,<sup>6</sup> the defendant faced a charge of possession for sale and sale of cannabis, after a police search of their property revealed approximately 32 tinnies and 28 grams of cannabis. A starting point of two years was adopted, which was reduced to nine months’ home detention to take into account the defendant’s guilty plea, age and health.
- (2) In *R v Wolland*,<sup>7</sup> 48.6 grams of cannabis head was found on the defendant’s kitchen table alongside tin foil squares. It was described as street level dealing with a commercial purpose, warranting a starting point of two years and three months’ imprisonment.

[9] The Crown submits you were engaged in an ongoing commercial operation. However, Mr Vosseler disputes this description of your offending. He says that the police search revealed a one-off recent activity of selling cannabis, which was not ongoing. Mr Vosseler says that although your offending has a commercial element,

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<sup>2</sup> *R v Terewi* [1999] 3 NZLR 62 (CA).

<sup>3</sup> *R v Keefe* CA275/02, 28 November 2002.

<sup>4</sup> *R v Gray* [2008] NZCA 224.

<sup>5</sup> At [12].

<sup>6</sup> *R v Hokianga* [2012] NZHC 2609.

<sup>7</sup> *R v Wolland* HC Auckland CRI-2010-092-13356, 19 February 2011.

and should be assessed within band two of *Terewi*, the starting point should be at the bottom of that band as there was no evidence of actual sales and the quantity you accept you were going to sell is very low. Mr Vosseler submits that a starting point of two years should be adopted to reflect the limited commerciality of your venture.

[10] In the following cases a starting point of 18 months to two years was adopted for offending with a clear commercial element:

- (1) In *R v Cecil*,<sup>8</sup> the defendant was in possession of 47 tinnies and 19 tin foil packages, with a combined total weight of 61 grams valued at approximately \$1,200. He was not selling from his home and instead planned to approach people at bus stops. The dealing was classed as small scale with no evidence it being well organised or ongoing and resulted in a starting point of 18 months' imprisonment, reduced to six months home detention to account for the defendant's guilty plea and youth.
- (2) In *R v Abraham*,<sup>9</sup> the defendant was in possession of 27 tinnies, with a total weight of 20.5 grams, and \$1,440 cash when police executed a search warrant at her home. The defendant had 11 previous convictions relating to cannabis, three of which were within five years of the sentencing date. A starting point of two years' imprisonment was adopted, then uplifted by six months to reflect her prior convictions, before finally settling on a sentence of ten months' home detention.
- (3) In *R v Bosson*,<sup>10</sup> the defendant sold one or two tinnies of cannabis to undercover police officers on different occasions, and also faced a representative charge of selling cannabis to unknown persons from her home address. It was estimated that her operation involved sales of approximately one ounce per week, or 16-18 tinnies, grossing between \$400-\$450 per week. It was described as a small-scale

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<sup>8</sup> *R v Cecil* HC Auckland CRI-2008-092-16315, 31 March 2009.

<sup>9</sup> *R v Abraham* HC Auckland CRI-2008-092-15060, 27 February 2009.

<sup>10</sup> *R v Bosson* [2012] NZHC 1956.

commercial dealing, warranting a starting point at the lowest end of band two, of 21 months' imprisonment.

- (4) In *R v Pakau*,<sup>11</sup> the defendant sold a total of 20 cigarettes on four occasions to undercover police officers and later admitted selling for the past eight months. A starting point of two years' imprisonment was adopted but substituted for six months' home detention and 150 hours' community service.
- (5) In *R v Hohepa*,<sup>12</sup> the defendant was sentenced to six months' home detention and 150 hours' community work, for three charges of selling cannabis to undercover police officers. The offending was described as low level cannabis dealing for profit justifying a starting point of two years' imprisonment.

[11] I consider that a starting point of two years' imprisonment is appropriate. I reach that conclusion after:

- (1) estimating the commerciality of your operation;
- (2) taking into account your explanation for the cannabis found in your home; and
- (3) assessing the value of your enterprise.

[12] I proceed on the assumption that all of the cannabis, apart from the pre-packaged tinnies, was for your personal use. The 17 tinnies for sale had an estimated gross value of \$425. The additional cannabis located at your home is consistent with personal use. The Court of Appeal stated in *R v Andrews* that cannabis offending with any commercial element warrants a starting point of two years, except in exceptional circumstances.<sup>13</sup> Although the quantities involved are small and there is

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<sup>11</sup> *R v Pakau* HC New Plymouth CRI-2008-043-3109, 15 December 2009.

<sup>12</sup> *R v Hohepa* HC New Plymouth CRI-2008-021-1155, 15 December 2008.

<sup>13</sup> *R v Andrews* [2000] 2 NZLR 205 (CA) at [9].

no estimate of frequency of sale, the purpose of your venture was certainly commercial, placing your offending at the lower end of band two of *Terewi*.

### **Adjustments for personal circumstances**

[13] You have a number of previous convictions dating as far back as 1984, for which you have received sentences of imprisonment, community based sentences, and fines. Your last offence was in 1999 for exceeding allowable paua catch and taking undersized paua. As none of the prior convictions are drug related I do not consider an uplift in your sentence is justified.

[14] Mr Vosseler cites a number of mitigating factors in your favour:

- (1) The first is the positive steps you have taken to seek help for your cannabis addiction, and to become drug free. You referred yourself to the Drug and Alcohol treatment program at Taranaki Base Hospital and, after completing their six week group program, you maintain you have gone “cold turkey”. In addition, you engaged with HRC Family Counselling Services for personal counselling for a short period of time in 2012.
- (2) The second factor is the level of your community involvement and the corresponding support you have received from your community. I have received 15 letters that attest to your good character and positive involvement in the Hawera community, and with you local iwi Ngati Ruanui and Nga Ruahine. You have lived with your wife for 24 or 25 years. You have three adult children, and two grandchildren who are supportive of you and who are willing to assist you in completing any community based sentence that I might impose.

[15] These factors do not warrant a discount from the starting point. However, these factors support your claim that you are willing to address the drivers of your offending. I consider you have the support networks necessary to do so, and to stay drug free in the long term.

[16] The other factor to be considered in sentencing you is your employment in the slaughter department at Silver Fern Farms, where you have been employed since 2000. A positive reference has been written by your supervisor, who attests to your value as an employee and your “exemplary” work ethic. You have expressed your wish to have any community based sentence tailored to allow your employment to continue.

### **Guilty plea**

[17] The only discount that I consider that is warranted is one for your guilty plea, which came at an early juncture. I propose a discount of 25 per cent (or six months) to reflect your acknowledgement of your wrongdoing and your acceptance of your responsibility for your offending.

### **Home detention**

[18] That results in an end sentence of 18 months’ imprisonment which allows home detention to be considered as an alternative to imprisonment.<sup>14</sup> The Crown strongly resists a sentence of home detention because of your Black Power connections and the pre-sentence report assesses your risk of reoffending as medium.

[19] I consider home detention to be an appropriate response in your case. Overall, it is better for your rehabilitative prospects if you remain in the community and in your job. I have been impressed by a letter written by your wife. She candidly explains your background. I have gained the clear impression that your wife will do more to police you than the state ever could. It is because of the level of support you have from your family who are committed to ensuring that you remain drug free, and the positive steps that you have taken towards your rehabilitation, that I consider I can sentence you to home detention to your home address.

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<sup>14</sup> Sentencing Act 2002, s 15A(1)(b).

## Overall assessment

[20] In reaching a final sentence I have reflected on the overall appropriateness of that sentence. In my judgement, the sentence that I am about to impose is an appropriate response to your offending. It is a sentence that:

- (1) holds you accountable for your offending;<sup>15</sup>
- (2) denounces your conduct;<sup>16</sup>
- (3) should deter others from offending in a similar way;<sup>17</sup>
- (4) is comparable to sentences imposed for similar offending;<sup>18</sup> and
- (5) is the least restrictive sentence that can be imposed in the circumstances.<sup>19</sup>

## End sentence

[21] Mr Hori, could you please stand. I sentence you to nine months' home detention. That sentence should be undertaken in a way which permits you absences from your home to allow you to continue working.<sup>20</sup> The following special conditions are imposed:

- (1) Those monitoring your sentence are directed to permit absences from your home address sufficient to permit you to continue normal working hours with your present employer.

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<sup>15</sup> Sentencing Act 2002, s 7(1)(a).

<sup>16</sup> Section 7(1)(e).

<sup>17</sup> Section 7(1)(f).

<sup>18</sup> Section 8(b).

<sup>19</sup> Section 8(g).

<sup>20</sup> See for instance, the sentencing notes of Dobson J in *R v Foreman* [2012] NZHC 1954 and Kós J in *R v Coombes* [2013] NZHC 70 at [34] which tailored sentences of home detention and community detention to allow the defendant to continue working.



- (2) You are to travel directly following court to 322 South Road, Hawera and await the arrival of a probation officer and monitoring company representative.
- (3) You are to remain at 322 South Road, Hawera for the duration of your home detention sentence unless with the prior written approval of a probation officer.
- (4) You are to attend an assessment for alcohol and drug use, then to attend, participate and complete any counselling, treatment, or educational based programmes as directed by the probation officer.
- (5) You are to attend an assessment for substance abuse, and if assessed as suitable, to attend, participate in and complete any treatment or counselling to the satisfaction of the probation officer and programme provider.
- (6) You are not to consume alcohol or any illicit substances for the duration of your home detention.

[22] I also order the destruction of the cannabis plant and seeds, and drug paraphernalia and equipment seized by the police.

[23] You may now stand down.

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**D B Collins J**

Solicitors:  
Crown Solicitor, New Plymouth