

**IN THE DISTRICT COURT
AT WELLINGTON**

**CRI-2014-096-003827
[2016] NZDC 17607**

THE QUEEN

v

SAGE REBECCA ELLERINGTON

Hearing: 8 September 2016

Appearances: E Light for the Crown
P Paino for the Defendant

Judgment: 8 September 2016

NOTES OF JUDGE P A H HOBBS ON SENTENCING

[1] Ms Ellerington you appear today for sentence on four charges. A representative charge of supplying methamphetamine, a representative charge of offering to supply methamphetamine, one charge of possession of a restricted weapon and one charge of receiving.

[2] Between May 2013 and March 2014, you were the subject of several police investigations concerning the supply of controlled drugs in the Wellington region.

[3] On 16 May 2013 a search was conducted at your Lower Hutt address. A number of items indicative of drug dealing were located, snap lock bags, electronic scales and several cellphones.

[4] A further search was executed on 18 July 2013. On that occasion a glass pipe was found, a syringe containing a clear liquid was also found, and \$3890 in cash was located.

[5] Two cellphones found during the two searches were analysed which revealed extensive dealing in methamphetamine. You were arrested on 6 March 2014. You had a cellphone on you at the time but you managed to snap the SIM card. Further searches were carried out following your arrest, including at your parents house. Located in your bedroom was \$580 in cash and a further cellphone. An additional set of scales was also found which had methamphetamine residue on those scales.

[6] Also located was a hand held 1800 kilowatt Taser which had been offered to you for \$300, a stolen digital camera valued at \$450 was also found in your bedroom giving rise to the receiving charge. A search of your car revealed further items connected with the use and supply of methamphetamine as did a search of another address linked to you.

[7] Essentially, four cellphones were analysed following your arrest. In total some 507 methamphetamine dealing offences were identified over a 98 day period between 2013 and 2014, with offences identified on 93 of the 98 days which the police estimate to be an average of five supplies or offers to supply per day. A total of 44 grams is said to have been actually supplied with offers to supply a further 66 grams, therefore a total of 110 grams of methamphetamine involved.

[8] You are 28 years of age. You are still relatively young. You have three previous convictions for drug dealing. In 2009 you were imprisoned for three years and nine months for drug dealing offences.

[9] It has been some time since your arrest in 2014, and it is fair to say that a lot has happened in that time. Following a period of time in custody on these charges you were bailed to the Odyssey House Drug Treatment Programme. You were admitted on 8 December 2014. You graduated from that programme on 13 April 2016. I have read positive reports from Odyssey House about your attendance and participation in the programme at Odyssey House. The report

indicates that random drug tests had been undertaken, which had all been negative. You had graduated to a leadership role within the house. You self reported abstinence from drugs since your arrest. Until your recent arrest on further drug offending charges you had been on restrictive bail conditions which you complied with. Until your arrest you had obtained employment in the hospitality industry in Auckland. I had seen a letter from your employer confirming that employment. The employer spoke very highly of you. You have, over this extended period of time, had the invaluable support of your family who are here again supporting you in Court today.

[10] When you last appeared before me, when this matter was adjourned, and before your arrest, it seemed apparent that you had made significant progress towards rehabilitation, and that deserved recognition.

[11] Due to your recent arrest on further drugs charges the Crown says that I should proceed with caution, and limit any credit to be given for the rehabilitative steps that you have taken. That is a matter I will return to shortly.

[12] I must weigh and balance as best I can the principles and purposes of sentencing. Deterrence and denunciation for offending of this kind are always prominent features of sentencing.

[13] Methamphetamine is a drug that fuels crime and causes misery in our communities as a result of addiction. You should probably understand that better than anybody.

[14] I must hold you accountable for the harm that is caused by your offending, however, I must also consider your rehabilitation and impose the least restrictive sentence that is appropriate in the circumstances of your case.

[15] Both Mr Paino and Ms van Echten who appeared previously, today the Crown is represented by Ms Light, agree that your offending falls within band 2 of the leading guideline judgment for offending of this kind of the *R v Fatu*¹. That case

¹ *R v Fatu* [2006] 2 NZLR 72 (CA)

indicates a sentence of three to nine years' imprisonment for methamphetamine dealing, involving five to 250 grams of methamphetamine.

[16] Ms van Echten submitted to me on a previous occasion that your offending was on a commercial scale and that it warranted a starting point of five and a half to six years' imprisonment with a small uplift for your previous convictions and the other offending, namely the receiving and the Taser.

[17] To arrive at an appropriate starting point, regard must be had to the extent and gravity of your offending, which includes the number of supplies and offers, and the amount of methamphetamine involved.

[18] Mr Paino submits to me that yours is not the classic high end commercial dealing, but rather dealing borne out of your addiction to methamphetamine, and fuelled by a need to feed that addiction.

[19] It is obvious that you have been addicted to drugs since your teenage years. I have read the material that has been provided to me by Mr Paino about your earlier formative years and the problems that you faced. While your offending obviously has a commercial dimension to it, and it is clearly significant, I am prepared to accept that your offending involved high frequency sales of a lesser amount to support your habit in contrast to somebody perhaps higher up the supply chain who is providing large quantities to be distributed by others on the streets or through regular dealing.

[20] In the High Court decision of *R v McLaren*² Duffy J set a lower starting point than initially thought appropriate having recognised the impact of drug addiction on the defendant in that case. I intend to do the same in your case and I arrive at a starting point of four years and nine months' imprisonment for your offending.

[21] The Crown seek an uplift for your previous convictions. In my view, uplifts need to be approached with some caution. They are for those that are recidivists and

² *R v McLaren* [2016] NZHC 1431

for whom previous sentences have had little or no deterrent effect upon them. Care needs to be exercised to ensure that an offender is not simply re-punished for offending they have already been punished for. I think there is a risk if I apply an uplift in your case that that might occur. I do not believe that at this stage an uplift is appropriate, or required, and I do not intend to apply one.

[22] This brings me to the somewhat vexed question of what credit should be given for the steps you have taken towards rehabilitation. I have referred to those steps prior to your arrest. The point has to be made, and it is accepted by the Crown, and is made well by Mr Paino, that you are entitled to the presumption of innocence on those new charges.

[23] You have pleaded not guilty. I am therefore not dealing with proved further offending. Had that been the case then no doubt it would be included in this sentencing.

[24] The Crown however does submit that it indicates that your rehabilitation efforts have failed. That to some extent would seem to me to presume you are guilty. At the very least Ms van Echten who provided further written submissions to me on this issues says that a consideration of the summary of facts of the new offending indicates that you have not remained free from the drug world and those involved in it. That most certainly would appear to be the case.

[25] A cynical view could be taken of your rehabilitative efforts to date and the previous submissions made about those efforts in light of your recent arrest.

[26] The Crown, as I have said, says I should proceed with caution and suggests that your rehabilitative efforts have failed. With respect I think that is an unrealistic view of the process involved in recovery from drug addiction. It cannot be denied that you attended Odyssey House. It cannot be denied that your time there was significant and at the time appeared to be helpful and useful. It cannot be denied that you obtained employment, and that you were well regarded by your employer.

[27] It appears that as a result of regular drug testing you were, for an extended period of time, free of drugs.

[28] Recovery is not a linear process. It is unrealistic to expect it to be smooth sailing in every respect and without setbacks. Your arrest for further drug related offending is, obviously, a significant setback for you, and for your family, but to ignore what appears to have been genuine attempts at rehabilitation would, in my view, be wrong and would hardly be encouraging of further attempts that you might make in the future.

[29] I therefore think that recognition is appropriate. The Crown has referred me to several cases where it is suggested that the personal circumstances of a drug offender should not be taken into account. The Crown refer to the case of *Banaba v R*³ and *R v Yuen*⁴. However, in *R v Honan*⁵ it was accepted that efforts towards rehabilitation should be recognised, and as I have said I intend to do so in your case, as to do otherwise I do not think would be fair or appropriate.

[30] I am going to give you a 20 percent credit for the efforts you have made to date to rehabilitate and get yourself free from drugs, which would reduce the sentence by 11 months.

[31] As I have previously indicated I am satisfied that you are entitled to full credit for your guilty pleas which reduces the sentence by a further 25 percent, which leaves me with an end sentence of two years and 10 months in prison.

[32] I think that can adequately cover, not only the drug offending, but also the receiving charge which only has a maximum sentence of three months' imprisonment, and I also think it adequately covers the gravity of the charge in relation to the Taser, bearing in mind the circumstances of that possession, and the explanation for it given previously by Mr Paino.

³ *Banaba v R* [2016] NZCA 122

⁴ *R v Yuen* [2016] NZHC 571

⁵ *R v Honan* [2015] NZCA 94

[33] On the representative charge of supplying methamphetamine, and the representative charge of offering to supply methamphetamine, you are sentenced to two years and 10 months' imprisonment.

[34] On the charge of possession of a restricted weapon you are sentenced to six months' imprisonment, and on the charge of receiving one month imprisonment they will all be served concurrently. The effective sentence is two years and 10 months' imprisonment.

[35] The orders sought by the Crown in relation to the destruction of items and the forfeiture of the cash are also made.

PAH Hobbs
District Court Judge