

**IN THE DISTRICT COURT  
AT WHANGANUI**

**CRI-2010-083-001071  
[2017] NZDC 6227**

**THE QUEEN**

v

**ANDREW PAUL HAWKINS**

Hearing: 23 March 2017  
Appearances: M M Wilkinson-Smith for the Crown  
D M Goodlet for the Defendant  
Judgment: 23 March 2017

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**NOTES OF JUDGE D G MATHESON ON SENTENCING**

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[1] Mr Hawkins, it has been a while. In 2010 Judge Clapham gave a sentence indication of an end sentence of two years with no home detention in relation to a number of matters and I think it is helpful for me to go, and I acknowledge the excellent material from the Crown, but to go to your lawyer's submissions back then because they gave some clarity as to what was going on.

[2] Back then you faced four counts of offering to supply Class A drug, methamphetamine, under the Misuse of Drugs Act 1975 and one charge of offering to supply a Class C drug, cannabis. You also faced, and still do I should add, the charge of demanding with menaces pursuant to the Crimes Act 1961, s 239(2) and one charge of possession of utensils under the Misuse of Drugs Act.

[3] In late 2010, Judge Clapham gave a sentence indication to you of two years with no home detention. You accepted that sentence indication and you were

remanded on bail for sentence in early 2011 and you did not turn up. In the meantime you have been, well I can only assume you have been somewhere on the Central Plateau and you have in 2016 come to the attention of the authorities again on an unrelated matter and you are now before me for sentence.

[4] You are now 34. You are a family man with a partner and supportive people and a young son. During the time of your absconding it seems to me you have done pretty well. You found employment and you supported your family. However, today is the day of accounting and you are a realist and acknowledge that.

[5] I am not going to interfere with the issues that were raised back then and I am going to play it straight down the middle as was offered to you by Judge Clapham.

[6] Of relevance, from a pre-sentence report which I have read, is that background I have just described. You have an involvement with a gang, and you also have a previous history in relation to cannabis offending and supply offending and nominal dishonesty and some assaultative offending.

[7] The summary of facts was not challenged and it is appropriate that I acknowledge those. Over a period of a few weeks in early November 2009 you were engaged in a number of text message conversations involving both the offering to supply unknown persons with methamphetamine and agreeing to supply unknown persons with methamphetamine. The amount was regarded as minimal by your counsel and no real issue is taken with that.

[8] As to the demands with menaces charge, that related to a compensation issue that arose from the seizure of some cannabis. The complainant was involved in a minor car accident and as a result of that the police were called. When the police arrived they found six ounces of cannabis and seized that from your associate. You then, with some distorted thinking from back in those days, sought compensation from the complainant in a somewhat violent way and menacing way and you pleaded accordingly.

[9] The Judge in the sentence indication no doubt looked at, and I do, at the purposes and principles of the Sentencing Act 2002 and in particular was referred by the lawyers to the Court of Appeal decision of *R v Fatu*<sup>1</sup> which is the authority involved in looking at drug dealing or supply of this nature.

[10] I take on board that and I also note that counsel referred to a number of decisions and it seems that His Honour Judge Clapham, as I do, accepted that the appropriate starting point having looked at those decisions was somewhere in the region of two years' imprisonment. There was limited commerciality and sophistication in this.

[11] An uplift was thought appropriate in relation to the possession of utensils and of course the demands with menaces. By my working back through the paperwork that I have from two years, there was an uplift of around six months up to about 30 months and then it seems His Honour was prepared to discount 25 percent or thereabouts which brought you back to the two years.

[12] There may have been some detail or nuance to uplift and deduction in relation to that, but almost six years on the core message there is a start point of around two, uplift for the other matters and then a discount for your early guilty plea. Home detention is not an option. Judge Clapham said it was not.

[13] Your absconding in the meantime identifies that putting you out in the community to comply with the sentence is fraught and you have a history, in any event. Against that of course, there is the fact that you have kept your head down in the meantime.

[14] I had every sympathy for the Crown's position when I first had this file placed before me some days ago about its desire to look at an uplift for your disappearing away from the system for some years.

[15] There is authority for such an uplift to be included, but I think that that authority in that case was perhaps at a time when the sentence was first being put

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<sup>1</sup> *R v Fatu* [2006] 2 NZLR 72, (2005) 22 CRNZ 410

together. I see that this sentence was put together back in 2010 and I do not want to interfere with that. It raises all sorts of issues if I go in there and quite frankly it is time we finished the matter today and you got on with your sentence.

[16] Should there be any charges arising from that, then they can be dealt with on another day and at that time. As the Crown solicitor most responsibly identifies, things that would be taken into account would be the fact that over the last six years you have developed a family, developed an employment record that identifies that you have been able to work and you have developed a blemish-free criminal record it would appear.

[17] Very well, to conclude, it is my view that you should be now sentenced to imprisonment and I think for ease of reference, on counts 1, 2, 3, 4 and 5, you are sentenced to two years' imprisonment.

[18] In relation to the demanding with menaces you are also sentenced to two years' imprisonment.

[19] In relation to the possession of utensils, I imprison you for three months concurrent.

[20] All of those matters will be concurrent with each other, so the end sentence is two years.

[21] I also direct there will be the standard release conditions and they will be accompanied by special release conditions as per the pre-sentence report in that you are to attend for assessment for any alcohol and drug programmes as directed and to attend any assessment for any departmental programme as directed.

**D G Matheson**  
District Court Judge