EDITORIAL NOTE: NO SUPRESSION APPLIED.

IN THE DISTRICT COURT
AT TAURANGA

CRI-2016-070-000562
[2017] NZDC 10650

THE QUEEN

v

CAINE KEREAMA KAHOTEA

Hearing: 23 May 2017

Appearances: S Davison for the Crown
M Ryan for the Defendant

Judgment: 23 May 2017

NOTES OF JUDGE P G MABEY QC ON SENTENCING

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[1] Mr Caine Kahotea is before the Court facing a seven charge Crown notice dated 14 July 2016. He has pleaded guilty to each charge.

[2] The principal charge is being in possession of a Class A drug for supply, that is methamphetamine. The approximate amount is three grams. Subsequent charges being charges 3, 4, 5 and 6 relate to different offers to supply methamphetamine. Again the approximate amount is three grams bringing up a total of six grams of methamphetamine. The seventh charge is an offer to supply pseudoephedrine.

[3] The summary of facts for charge 7 refers to the offer of a set of Contac NT for $10,000. The yield from a set of 1000 capsules of Contac NT is assessed at 90 grams of pseudoephedrine which could result in the final production of methamphetamine of between 45 and 67 grams of methamphetamine. In addition Mr Kahotea has pleaded guilty to charge 1, a charge of driving whilst disqualified.

[4] I have received submissions from the Crown solicitor and from Mr Ryan as Mr Kahotea's counsel. The Crown solicitor contends for a start point of three and a half to four and a half years' imprisonment for all drug offending. The Crown solicitor would acknowledge 15 percent only for guilty plea.

[5] Mr Ryan for Mr Kahotea takes issue with that percentage for guilty plea maintaining it should be full credit. He also challenges the Crown assessment of the ultimate product of methamphetamine that could be obtained from a set of Contac NT but the Court is well aware of the percentages that apply having heard expert evidence on that matter on a number of occasions.

[6] The sentencing decisions for importation, supply or possession for supply of pseudoephedrine are based around quantities and yields so percentages are relevant. I intend to approach the sentencing in this way.

[7] On charges 2 to 6 being the possession of methamphetamine for supply and the offering to supply that drug there is a start point of three years. That is at the lower end of band 2 in *R v Fatu*.[1] It contains within it a recognition that offering would justify a lesser start point than actual supply. Had the full six grams been in possession for supply the start point would have been marginally higher.

[8] On a stand-alone basis the offer to supply pseudoephedrine in the quantities as set out in the summary of facts would justify a start point in the region of 12 months and that is what I apply to this case. I increase the start point for all drug offending therefore to four years' imprisonment. I do not consider that offends the totality principle. The pseudoephedrine offending is separate and discrete and justifies separate and discrete consideration.

[9] From that start point I reduce the sentence by one year giving full credit for the guilty pleas.

[10] Mr Davison has submitted that because Mr Kahotea has not pleaded at the earliest reasonable opportunity then his ability to claim full credit for the guilty plea

[1] *R v Fatu* [2006] 2 NZLR 72 (CA)

is limited. What happened however was that Mr Kahotea, presumed innocent, exercised his rights to challenge the admissibility of the evidence which arose from a warrantless search of his car. That search revealed the drugs that are referred to in the summary of facts together with other paraphernalia consistent with use and supply, a quantity of cash and his cellphone.

[11] The challenge in the District Court was unsuccessful and Mr Kahotea went to the Court of Appeal. The Court of Appeal ruled that there was illegality in the search but on a balancing test the evidence was determined as admissible. Having exhausted his rights Mr Kahotea then immediately pleaded guilty. The Supreme Court in *Hessell v R*[2] made clear that a strict chronological approach to the timing of the entry of guilty pleas is not appropriate, there needs to be a broader perspective and Judges have a discretion at sentencing to take into account all relevant circumstances.

[12] In my view Mr Kahotea's exercise of his rights to challenge the admissibility of evidence and to appeal were properly exercised and as a matter of his right and should not impede his ability to claim full credit for his guilty plea. That is why the reduction of 25 percent has been allowed.

[13] On the charge of driving whilst disqualified, which is charge 1 in the Crown notice, there is a sentence of one month imprisonment concurrent and six months' disqualification from today.

[14] The Crown seeks forfeiture of the amount of cash found on Mr Kahotea when he was searched and the drugs were found. That amount of cash if $4650 and that is forfeit by consent under the provisions of s 32 Misuse of Drugs Act 1975.

[15] Finally I have a fine summary which shows that Mr Kahotea is in arrears of fines of $6217. He has confirmed directly to me over the AVL link today that he would wish those fines to be remitted and that a sentence of imprisonment be imposed. I indicated to him that that amount of fine would justify a further and cumulative sentence of one month imprisonment. He accepted that and the fines are

[2] *Hessell v R [2010] NZSC 135, [2011] 1 NZLR 607*

therefore remitted in full and the sentence of one month imprisonment is imposed cumulative on the term of three years' imprisonment that I have already determined on all charges.

[16] A further subsidiary order is an order for destruction of all drug related paraphernalia and the drugs themselves.

[17] Mr Kahotea, the end result is that the sentence in total is three years and one month. Your fines are fully remitted and as you have heard the cash has also been forfeit under the provisions of the Misuse of Drugs Act. You are disqualified for six months.

P G Mabey QC
District Court Judge