EDITORIAL NOTE: NO SUPRESSION APPLIED.

IN THE DISTRICT COURT
AT OAMARU

CRI-2016-012-001263
[2017] NZDC 12956

THE QUEEN

v

JAMES MICHAEL PATTON

Hearing: 14 June 2017

Appearances: A R McRae for the Crown
A L Pinnock for the Defendant

Judgment: 14 June 2017

NOTES OF JUDGE J E MAZE ON SENTENCING

---

[1] James Patton, you have pleaded guilty to two charges of importing methamphetamine. You are 22 years of age, you have a previous conviction for drink driving as a person under 20 and one for driving while licence suspended. So, you have absolutely no relevant previous convictions and I accept you can be treated as a person, aside of this offending, as of good character.

[2] You were contacted on Facebook by an unknown male calling himself Miracle Man. You engaged in a Facebook conversation. Miracle Man sent a photograph of what he said was product. You replied you knew people who would use the product. You say that, at that stage, you thought the entire thing was something of a joke but you did ask Miracle Man what percentage you would get for your handiwork, because 100 grams would be worth $100,000. Profits were agreed to be shared on a 60/40 basis, with you receiving 40 percent. The two of you agreed for the first package to be sent. You gave a fictitious name but your own home

address. Customs staff on 10 May 2016 in Auckland were suspicious about the package as it passed through, and examined it. The contents were declared to be slipper samples and dress samples, but examination of the shoes revealed 102 grams of a crystalline substance. On 20 May, police and customs engaged in a controlled delivery operation. The package was duly delivered to your home address. You accepted delivery and claimed to be the person named as the addressee. You signed the delivery document in that name. A very short while later a search was executed and the goods were seized.

[3] You immediately after that on the very same afternoon made a full confession to the police, informing them that, in fact, a second package was expected and you gave police identification details, address and name. As a result of that, the second parcel was able to be intercepted and it continued 95 grams of a crystalline substance. In fact, ESR analysis and weighing has shown that there were 288.9 grams in total but with 25 percent purity. The purity was analysed only in respect of the second consignment, but the Crown has accepted that that should be seen as the purity analysis applicable to the entire volume. So, in total, you were responsible for bringing into this country 72.2 grams of methamphetamine. The entire episode took place in less than a month from first soliciting contact by Miracle Man to you through to seizure of the second parcel. As there was 25 percent purity of the methamphetamine, I am told that 75 percent of what remained was dietary substance of some kind or another.

[4] The Crown says that this is Band 2 of *R v Fatu*[1], and the starting point should have been between five and a half and six and a half years, and the credit for plea should be 10 percent because it was late.

[5] Ms Pinnock on your behalf has reminded me that this was an operation in respect of 72.2 grams of methamphetamine; the balance is not. Both offences occurred within a short period of time. You immediately confessed and cooperated enabling the police to readily track the second parcel, which never in fact reached you. You had done nothing to enable you to pass the methamphetamine on, whether for profit or otherwise, and there was no sign that you had any connections with the

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

trade at all. Ms Pinnock submits that there is an element of chance in all of this which colours the operation to a significant degree and that is chance in respect of strength and chance in respect of value. She says it is important to remember this was an unsolicited offer in the first stages and there was a very low level of actual involvement in the planning by you. In respect of your personal circumstances, she reminds me you are 22, assessed as immature, struggling financially, and you initially thought this was a joke. You can point to your previous good character and I have a number of references as to that, and the enquiries recorded by the probation officer in the probation report confirm that is a true assessment of your nature and character. She reminds me you have been on stringent bail conditions for eight months. She says you should have the credit plea at one quarter because the analysis had to be done to know what the banding position was to be applied.

[6] Both counsel have referred to other cases and in particular *R v Punnett*[2] HC Auckland CRI-2004-044-007303 and Wyatt v Police[3] [2016] NZHC 231. Each case must be determined on its own facts to achieve a starting point. It is not simply a matter of calculation on the basis of weight. If it were and ten years was required for 250 grams, applying the reasoning in Fatu, then one year would be required for 25 grams, three years for 75 grams, and I do not adopt that approach.

[7] In the sentencing indication, I adopted a starting point of four years' imprisonment on the basis that this was an unpremeditated, unsolicited approach to which you then succumbed, and then to a lesser extent you engaged in the planning. There was an element of chance. There was no distribution arrangement in place, no actual distribution occurred. One of the deliveries never reached you. However, 72.2 grams of methamphetamine is a very significant amount. On that basis, I adopted a starting point of four years' imprisonment. There were no personal aggravating factors.

[8] As to personal mitigating factors, I acknowledged you had been on stringent bail conditions for a period of time, you could point to positive good character and the offending was out of character, facilitated purely by your vulnerability to

[2] R v Punnett HC Auckland CRI-2004-044-007303
[3] Wyatt v Police [2016] NZHC 231

temptation. I said that an allowance of six months' discount to reflect credit for time served on stringent bail conditions and previous good character was appropriate, and I then concluded that a further discount for plea should be 10 months, close to one quarter, with an end result of two years eight months.

[9] Ms Pinnock today says that I should allow a further discount to reflect the fact that you are assessed as being at low risk of reoffending, that you have leaned your lesson, that you are very remorseful, and that there are lasting consequences from conviction for offending of this kind. Those are matters to be reflected as specific personal mitigating factors applicable to you.

[10] Every conviction has consequences for every person who is convicted of any offence. However, I do accept that in the exercise I did not in fact allow anything for additional remorse and cooperation. And, in the circumstances (and I do not appear to have referred to it in paragraph 27 as a specific allowance), although the Crown opposes this approach, I accept a further two months' discount is applicable. It still will not get me to the point where I can consider a sentence of home detention, so I allow that on the basis that it is a proper matter to reflect as a personal mitigating factor.

[11] On charges one and three, therefore, you are convicted and you are sentenced to imprisonment for two years six months on each, concurrent. On charge two, the Crown offers no evidence and that charge is dismissed under s 147.

[12] I have borne in mind all that Ms Pinnock has said but, in effect, she is asking me to allow a discount based entirely on sympathy for your position. There can be no doubt that you have been trapped by vulnerability and temptation but, as Mr McRae has pointed out, this a charge of importing and those who are involved in the distribution of Class A drugs cannot expect sympathy for their personal circumstances to be reflected in the sentence.

J E Maze
District Court Judge