

**IN THE DISTRICT COURT  
AT INVERCARGILL**

**CRI-2017-025-001371  
[2017] NZDC 18823**

**THE QUEEN**

v

**KERRY N ROBERT MCDONALD**

Hearing: 23 August 2017  
Appearances: M A Mika for the Prosecutor  
P B Redpath for the Defendant  
Judgment: 23 August 2017

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**NOTES OF JUDGE M J CALLAGHAN ON SENTENCING**

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[1] Kerryn Robert McDonald, you are for sentence on a charge of possession of a Class A controlled drug, namely methamphetamine, for the purpose of supply.

[2] The facts are that the police executed a search at your address on 25 May 2017 on unrelated matters. You were present, along with your partner and her school-aged children. While the police were trying to gain entry to the property, you were observed at the rear of the property throwing a bag over the fence into a neighbouring yard. The bag was subsequently recovered and was found to contain 112 grams of methamphetamine. This has an estimated street value of \$112,000.

[3] During the search, surveillance cameras and a number of plastic containers used for packaging methamphetamine were seized, and a set of scales was found in the pantry.

[4] I have heard argument from your counsel and from the Crown regarding the situation concerning the cameras. I have made a finding that I cannot be satisfied that the cameras were used for the purposes of alerting you to the fact that people were coming regarding drugs.

[5] The facts that I have found are that the camera, which will have alerted you to the fact that the police were there, was set up over the driveway. There was no evidence before me that the police utilised that entranceway, and I have subsequently seen counsel in chambers regarding that. They have advised me that one of the ways to get to the front door of the property where the police entered was via that driveway, but there was still no evidence before me that the evidence that any of the police accessed by that method. There was another way of getting to the front door covered by the porch, and that was another possible way of the police getting to the address.

[6] Having made the finding that the cameras were not used for the purposes of drug dealing, that means that I have to reassess the starting points for this offending. I have to establish where this fits into the band of the decision of *R v Fatu*<sup>1</sup>. In my view, this sits at the bottom of band 2 and the top of band 1.

[7] There were scales found at the property. Your counsel argues that they were in the pantry area and were kitchen scales. There is nothing before me which indicates they were actually used for methamphetamine. There were also some plastic craft containers. They were found in a toolbox in the garage. Again, there is no evidence that they were used for the breaking down of the 112 grams of methamphetamine, and while the quantum of the drug is such that the inference is that this was commercial, the submission that you were a caretaker of those drugs cannot be, at this stage, refuted by the Crown.

[8] It is on that basis, I will be sentencing you.

[9] The starting point in respect of this quantity of drug - and the facts which, I have found, satisfy me that you were a courier - is that the starting point should be one of five years' imprisonment.

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

[10] There are no other aggravating factors: there are no tick lists, there was no cash found at the property. Accordingly, on my assessment, the starting point would be one of five years' imprisonment.

[11] There is an aggravating feature, however, in that when you committed this offence, being the caretaker or the holder of these drugs for another, you were on parole from prison. That, in my view, warrants an uplift of three months' imprisonment from the starting point.

[12] You must be entitled to a discount for your guilty plea which came at an early stage. That, in my view, is 25 percent. That would leave me with an end sentence of four years' imprisonment.

[13] I then have to consider your situation. You have been recalled on a sentence for importing BZB substances. For that, you received a sentence of four years and two months. That commenced in December 2015 and expires in April 2018. You have subsequently been recalled on that sentence and you are serving the full term of it.

[14] The issue is whether or not I should reduce the sentence that I have fixed at four years, or whether or not I should make it concurrent or cumulative.

[15] In my assessment, this is completely separate offending from the other offending. It is unrelated to it in any shape or form, other than the fact that it was committed while you were on parole. It involves Class A drugs and it shows, in my view, a willingness to participate in the illegal drug market, either as a person who would hold for another, or as someone who is prepared to deal in that illegal market.

[16] As there is no connection between the two offences, I do not consider that that warrants a concurrent sentence. Being very mindful of the totality principle, I cannot find any valid reason to not impose a cumulative sentence of four years' imprisonment on this matter.

[17] Accordingly, you will be sentenced to four years' imprisonment.

M J Callaghan  
District Court Judge