

**IN THE DISTRICT COURT  
AT PALMERSTON NORTH**

**CRI-2016-054-003671  
CRI-2016-054-003669  
CRI-2016-054-003670  
CRI-2016-054-003679  
[2017] NZDC 25439**

**THE QUEEN**

v

**BRIAN PAUL TAYLOR  
MARLENE DOROTHY TAYLOR  
ZION CODY KINGSTON PENE  
KIMBERLY SARAH MEIHANA**

Hearing: 7 November 2017

Appearances: J Harvey for the Crown  
G Stone on Behalf of O S Winter for the Defendant B Taylor  
P S Coles for the Defendant M Taylor  
P J Drummond for the Defendant Pene  
P L Murray for the Defendant Meihana

Judgment: 7 November 2017

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**NOTES OF JUDGE S B EDWARDS ON SENTENCING**

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[1] The defendants Brian Taylor, Zion Pene, Marlene Taylor and Kimberly Meihana are for sentence on charges relating to the supply of methamphetamine in the Manawatu area.

[2] Brian Taylor is for sentence on eight charges of supplying methamphetamine and one charge of conspiring to sell cannabis.

[3] Zion Pene is for sentence on six charges of supplying methamphetamine, one of conspiring to sell cannabis and additional charges of unlawful possession of a firearm and ammunition.

[4] Marlene Taylor is for sentence on one representative charge of supplying methamphetamine and one charge of conspiring to sell cannabis.

[5] Kimberly Meihana is for sentence on two charges of supplying methamphetamine arising out of two discrete transactions.

[6] In broad terms, in November 2016 the police commenced an investigation into the sale and supply of methamphetamine in the Manawatu area, focussing on the defendant Brian Taylor who is serving a lengthy sentence of imprisonment. A surveillance device warrant was issued in December 2016 which enabled police to monitor his communications.

[7] Mr Taylor ran a methamphetamine supply operation from Manawatu Prison. He was the principal or head of the operation. Zion Pene was a prime mover and for all intents and purposes the agent for Mr Taylor on the outside.

[8] Marlene Taylor is Brian Taylor's mother. She funded much of the operation. Her role was that of an active investor, rather than simply a banker and on one occasion she was personally involved in arranging for a methamphetamine deal to take place.

[9] Kimberly Meihana was involved in completing two transactions as part of the overall operation.

[10] The overall period of the operation which is the subject of these charges, including the conspiracy to supply cannabis, is in the vicinity of two months. The amounts of methamphetamine involved in relation to each defendant are as follows: Brian Taylor 112.05 grams of methamphetamine, Zion Pene 97.05 grams, Marlene Taylor 111 grams, Kimberly Meihana 40 grams.

[11] Prior to the sentence indication hearing held in September, I carefully considered the Crown's and counsel's submissions on the application of the guidance

in the Court of Appeal's decision in the case of *R v Fatu*.<sup>1</sup> It was acknowledged by all parties at that hearing that the amounts involved placed each defendant's offending within band 2 of *Fatu*, which provides a starting point range of three to nine years' imprisonment for quantities of methamphetamine between five and 250 grams.

[12] As the Court of Appeal emphasised in their guideline judgment however, placement within the relevant band is not dictated solely by the amount of methamphetamine on a strictly mathematical basis but also by considerations such as the scale, size and sophistication of the operation, the period or duration of the offending and the role played by the particular defendant. There is also a need in a case such as this to set starting points on a consistent basis, that is to bear in mind parity between the defendants.

[13] I do not intend to review the extensive submissions made at the sentence indication hearing stage about the appropriate starting points or placement within band 2 for each of the defendants. In the end, the Crown and the defendants were not too far apart on appropriate starting points and the starting points I indicated to each defendant were accepted and their guilty pleas entered on that basis.

[14] However, there was one issue that was an important one at the sentence indication hearing stage. The Crown submitted that the starting points for each of the defendants should be uplifted by between 20 and 30 percent to reflect the fact this operation was run by a sentenced prisoner from prison. I do not agree with that position, to my mind that is an aggravating feature personal to Mr Brian Taylor and is appropriately reflected by way of a significant uplift to his starting point only.

[15] It is, however, relevant to an extent to the assessment I made of the starting points for Zion Pene and Marlene Taylor, because of the more crucial role they both played in the operation, in particular in comparison to Ms Meihana. Their starting points must, as they do, reflect the fact that without their assistance and facilitation Mr Taylor would not have been able to undertake the operation from prison.

[16] I will now sentence each defendant in turn.

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<sup>1</sup> *R v Fatu* [2006] 2 NZLR 72 (CA).

## **Brian Taylor**

[17] The starting point for you Mr Taylor, incorporating the amount of methamphetamine involved and your role as the principal of the operation, is six years and six months' imprisonment. I discount that by four months, which is around five percent, to reflect the fact that around half of the methamphetamine was less than 60 percent purity. This reduces the sentence to six years and two months' imprisonment. I apply an uplift of six months for the conspiracy to supply two pounds of cannabis. Two pounds is around 900 grams. This increases the sentence to six years and eight months' imprisonment.

[18] The personal aggravating feature of offending in this way while subject to a sentence of imprisonment requires a 20 month uplift. On a percentage basis that is a 25 percent uplift and increases the sentence to eight years and four months' imprisonment.

[19] You are entitled to the full available discount for your guilty pleas, as are all of the defendants, and applying that 25 percent discount reduces the end sentence to six years and three months' imprisonment.

[20] I must address the question of whether any further discount is appropriate for remorse. As I said at the sentence indication hearing, concrete demonstrations of remorse are difficult to define in any case but where dealing in methamphetamine in the community is concerned it is difficult to see what form they would take. I have carefully read the letter you have written, I accept that you regret involving your mother in this operation and regret the consequences for your family, as well as for yourself in terms of your parole in particular. However, you are also frank in your letter that your motivation was purely financial. You do not take drugs yourself and say that you have not since 1995. Because you have been incarcerated for such a lengthy period already, perhaps Mr Taylor you simply are not aware of the devastating consequences this drug has in the community. I am sure there are those within your own wider family who are affected by the blight of addiction to such an insidious drug. While I accept that you are remorseful for the position you find yourself in and in

particular for the position you have placed your mother in, I am not prepared to allow any particular additional discount for remorse.

[21] I have to consider the question of a further reduction for totality. You are currently serving a lengthy sentence of imprisonment and the totality principle says that when sentences are imposed cumulatively the length, while reflecting overall criminality and culpability, should not be so crushing as to remove all hope from an offender. At the sentence indication hearing your counsel submitted that a significant percentage discount should be allowed on a totality basis. However, I remain of the view that the discount afforded on this basis must not be such that it undermines the requirement for a stern response to offending in the prison environment. I remain of the view that the appropriate discount for totality in your case is nine months, leaving an overall end sentence of five years and six months' imprisonment.

[22] Mr Brian Taylor, on each of the charges of supplying methamphetamine, you are sentenced to five years and six months' imprisonment to be served cumulatively on your existing sentence. On the charge of supplying cannabis, you are sentenced to six months' imprisonment. That is concurrent.

### **Zion Pene**

[23] Zion Pene, the starting point for you for the methamphetamine offending is five years and six months' imprisonment. This starting point incorporates the amount of methamphetamine involved and your role in the operation, taking into account that without you acting for him on the outside Mr Taylor would not have been able to undertake the operation in the way that he did. I allow a discount of four months, in the region of six percent, from that to reflect the percentage of methamphetamine and the transactions you were involved in which was less than 60 percent purity. This reduces the sentence to five years and two months' imprisonment. An uplift of six months for conspiring to supply the two pounds of cannabis takes the sentence back up to five years and eight months' imprisonment. I am applying a further uplift of four months, which takes totality into account, for the charges of unlawful possession of a firearm and ammunition. This results in an overall starting point of six years' imprisonment.

[24] Turning to your personal circumstances, I have read the pre-sentence report, the letter from your partner and the certificates and letter from you provided this afternoon. Those show me that you have some insight into the destructive consequences of this insidious drug from your own use of methamphetamine. You developed your own addiction and now realise that it has destroyed everyone's life around you and that it is nothing but poison in the community.

[25] You believe yourself to be at a turning point, as you do not want to spend the rest of your life in prison. You have completed a number of short programmes while on remand and you want to undertake as much rehabilitative work, including the Drug Treatment Unit and the Māori Focus Unit, as you are offered while you are in prison.

[26] The letter from your partner highlights your positive qualities as a partner and a family member and expresses the view, as you do yourself, that missing out on your children's lives while you are in prison is a big incentive for you to follow through with your rehabilitation.

[27] I am prepared to allow a further small discount for your insight into your own addiction issues and your willingness to undertake rehabilitative programmes and treatment in prison. I am going to allow four months from the six year overall starting point which reduces it to five years and eight months' imprisonment. Applying the full discount available to you for your guilty pleas reduces that to an end sentence of four years and three months' imprisonment.

[28] Mr Pene, on each of the charges of supplying methamphetamine, you are sentenced to four years and three months' imprisonment. On the charge of conspiring to supply cannabis, you are sentenced to six months' imprisonment. That is concurrent. On each of the charges of possession of the firearm and ammunition you are sentenced to four months' imprisonment, those are also concurrent sentences, so do not affect the overall length which remains at four years and three months' imprisonment.

[29] I make an order for the destruction of the firearm and ammunition.

## **Marlene Taylor**

[30] Marlene Taylor, the appropriate starting point for you, incorporating the amount of methamphetamine involved and the role you played in the operation, including the facilitation and funding which allowed your son to conduct the operation from inside prison, is five years and six months' imprisonment. I deduct three months from that, which is around five percent, to reflect the percentage of methamphetamine involved which the Crown accepts was less than 60 percent purity. This reduces it to five years and three months' imprisonment.

[31] The same six month uplift which I applied to Mr Taylor and Mr Pene for the conspiracy to supply cannabis must apply to you, which increases the sentence to five years and nine months' imprisonment.

[32] Ms Taylor, I was satisfied at the sentence indication stage that you were entitled to a discount for personal mitigating features, including your previous good character and that this offending represents a significant fall from grace for you. The discount I indicated also reflected that at the age of 70 and with some serious health issues, prison will not be an easy sentence for you. I indicated I was going to allow a 10 month discount for those factors.

[33] Having read counsel's submissions, the pre-sentence report and the many letters and references in your support, I have decided that a further discount is warranted. The pre-sentence report notes that you acknowledge your offending in full but are at a loss to explain why you became involved. You were dealing with a lot of stress and grief at the time, in particular having lost your husband. You show real insight into the impact methamphetamine has in the community and has had on your own family and in that way your offending is completely at odds with the values that you hold as important. As I noted, you have been involved all your life with voluntary organisations and indeed worked in the Justice system in a number of different roles. This is for you a difficult way to end such a distinguished period of service to and in the community.

[34] Mr Coles notes that the personal consequence for you of imprisonment will include the loss of your home. That is something which could be viewed as inevitable

for offending of this seriousness but it is part and parcel of the stable and productive life you have led to date and a factor I think should be taken into account. I also accept that you have shown genuine remorse and shame for what you have done.

[35] I am going to reduce the sentence of five years and nine months' imprisonment by 14 months, instead of the 10 months I indicated at the sentence indication stage, which takes it to four years and seven months. Applying the full available discount of 25 percent for your guilty pleas results in an end sentence of three years and five months' imprisonment.

[36] Ms Taylor, on the representative charge of supplying methamphetamine you are sentenced to three years and five months' imprisonment. On the charge of conspiring to supply cannabis, you are sentenced to six months' imprisonment. That is concurrent, so it does not add to the length.

[37] I am deferring the start date of your sentence until tomorrow, 8 November 2017. Section 100(1) Sentencing Act 2002 allows for the deferment of a sentence of imprisonment for humanitarian reasons. The police have advised that they will be unable to transport you to Arohata Prison until tomorrow which will necessitate your spending the night in the police cells. You have, as I mentioned, a number of serious health conditions for which you take medication. I do not consider it is appropriate for you to spend a night in the police cells, so I am going to allow you to report to Arohata by 1.00 pm tomorrow, 8 November to commence your sentence. I note that neither the Crown nor the police oppose this.

[38] Before I finish with you Ms Taylor, I must deal with the question of forfeiture. The Crown has made an application to forfeit the sum of \$4015 that was found at your home when you were arrested. Section 32(3) Misuse of Drugs Act 1975 covers forfeiture. It provides that I may, in addition to sentencing you, order that money found in your possession be forfeited to the Crown if I am satisfied that money was received by you in the course of or consequent upon the commission of your offending or was in your possession for the purpose of facilitating the commission of your offending.

[39] The Crown does not dispute that a number of people have confirmed that at around the time of your arrest you had been given \$3000 as koha to be put towards a headstone for your late husband. This was information you provided to the detective who interviewed you on your arrest. You have provided explanations for the balance of the money as being set aside for grandchildren and being held for others. In short, you deny that the money was in your possession as a consequence of the drug dealing operation or was to be used for that purpose.

[40] The Crown submit, referring to text message traffic around the time of your arrest, where your son asked you to hold \$3000 for a cannabis deal, that this shows the money was for the purpose of facilitating the commission of an offence. The Crown also points to earlier references to sums of money you acknowledge were related to drug deals in late October. There are also from text message communications between you and your son.

[41] I am satisfied that you have provided, and did from the outset, an explanation which rebuts the inference that could be drawn that \$3000 of the sum found at your house was for the purpose of facilitating the commission of a drug dealing offence. The explanation that the money was for the purpose of your husband's headstone is not recently raised and it has been confirmed by other people. While it may well be that the balance of \$1015 was mixed at times with profit made as part of the drug dealing operation, it does not reach the stage where I am satisfied that the money was either received by you in the course of or consequent upon drug dealing operations or was in your possession for that purpose. The application for forfeiture by the Crown is declined.

### **Kimberley Meihana**

[42] The starting point for you, Ms Meihana, taking into account the amount of methamphetamine involved and your more limited role in comparison with the other defendants, that is two transactions only, is three years and six months' imprisonment. I am deducting three months from that to reflect the percentage of methamphetamine you dealt in which the Crown accepts was below 60 percent purity. That is around a seven to eight percent reduction and reduces the starting point to three years and three

months' imprisonment. There must be an uplift for your previous relevant conviction, that is your 2013 conviction for conspiring to supply methamphetamine. At the sentence indication hearing the Crown suggested that a six month uplift would be appropriate. As I indicated, I may have gone a little higher myself but I am content to adopt that uplift which increases the sentence to three years and nine months' imprisonment.

[43] There was considerable information before me about your personal mitigating features at the sentence indication stage. I indicated that I considered a discount of nine months or in the region of 20 percent would be appropriate for personal mitigating features, which reduces the sentence to three years' imprisonment. I will refer again to those personal mitigating features shortly.

[44] You are entitled to some allowance for the lengthy period you have spent on electronically monitored bail. As at September that was five months, although there had been some relaxation of conditions over that period. As Mr Murray has mentioned today, you also spent a period in custody initially. I allow a four month discount for time spent on EM bail, which reduces the sentence to two years and eight months' imprisonment. Allowing the available 25 percent discount for your guilty pleas reduces this to an end sentence of two years' imprisonment. This is at a level where commuting the sentence to home detention is an option available to the Court.

[45] I was not prepared to indicate at the sentence indication stage whether I would be prepared to commute the sentence to home detention, preferring to leave that to sentencing when all relevant reports would be available and also noting that the Crown then, and still, oppose the sentence being commuted to home detention.

[46] The decision whether or not to commute a sentence of imprisonment to home detention is a balancing exercise which involves considering the relevant purposes and principles of sentencing and your personal circumstances and deciding whether home detention is an appropriate and adequate sentencing response.

[47] The Crown oppose commuting imprisonment to home detention because of your previous relevant conviction and the fact this did not deter you from offending

again in a similar way and because of the statutory presumption of imprisonment where Class A drug offending is concerned. However, the presumption of imprisonment applies unless the Judge is of the opinion that in your particular circumstances you should not be sentenced to imprisonment.

[48] On your behalf, Mr Murray points to the stark difference between your position back in 2013 and now. It is clear from the pre-sentence report and the many letters in your support that you have taken real and significant steps towards your rehabilitation over the remand period. Your incentive is largely your two children, in particular your five week old baby. Your midwife was interviewed by the probation officer who prepared the pre-sentence report and she confirms that there are no concerns about your ability to care for your baby and in particular no issues with ongoing drug use.

[49] Importantly, your mother told Probation that her and her husband's decision to allow you to move back in with them and look after your baby, your older child being in their care, was not influenced by the fact of your pregnancy but by the fact that you took responsibility and that you are making real steps to change and address your rehabilitative needs. Coming from a mother who you have clearly put through significant stress in the past, it is real confirmation of the efforts you are making to change, in particular for the good of your children.

[50] While the Crown is perhaps correct in that your own addiction issues saw you once again involve yourself in dealing to support your habit, that to my mind should not preclude you from having a further opportunity to serve your sentence of imprisonment by way of home detention.

[51] There appears to be no concerns about your compliance. While a lengthy sentence of home detention is not easy to comply with, you complied with your last sentence without incident and you have complied with the strict conditions of EM bail.

[52] You have completed a residential programme at the MASH Trust earlier this year and you are now at the maintenance stage with ongoing support from a number of different agencies involved to assist you. I am of the view that home detention in your case is an appropriate and adequate sentencing response.

[53] Kimberly Meihana, on the two charges of dealing in methamphetamine, you are sentenced to home detention for the period of 12 months. The conditions of that sentence are all set out in the pre-sentence report dated 2 October. You will serve the sentence at your parents' address, as set out in the report.

[54] The standard post-detention conditions will apply for six months after home detention ends and the special post-detention conditions set out in the pre-sentence report will also apply until six months after your home detention ends.

S B Edwards  
District Court Judge