IN THE DISTRICT COURT
AT WHANGAREI

CRI-2016-088-000452
[2017] NZDC 25487

THE QUEEN

v

GUY WILLIAM BARTLETT

Hearing:	10 November 2017
Appearances:	J Wall for the Crown S Thode on behalf of J Moroney for the Defendant
Judgment:	10 November 2017

NOTES OF JUDGE D G HARVEY ON SENTENCING

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[1] Guy William Bartlett, you are for sentence today on one charge of cultivation of cannabis. The facts that I sentence you on are that you decided to embark upon what was a very ambitious cannabis cultivation. Whether or not you were the only person involved is not absolutely clear but as you very realistically say to your counsel, you have got to take responsibility for it.

[2] There were over 1000 plants scattered amongst some 13 plots, all of which were constructed in an identical way. Each of the plots was surrounded by a section of mesh wire that was dug into the ground and attached to that wire mesh was fishing net which, in turn, was attached to surrounding trees and bushes. Within each plot was constructed a small fence-like structure with sticks, the purpose of which was to direct the possums to a gap where a gin trap was laid. At every plot that was visited, large, man-made holes were found that were clearly designed to hold water.

[3] The covert camera coverage demonstrated that you visited a plot known as plot 4. You were clearly shown thinning that plot; discarding the male cannabis plants and the more growth-stunted female plants. The evidence establishes that you had followed precisely the same procedure in all of the plots. After listening to the evidence, I am satisfied that, once harvested, that plot would have been valued somewhere between 800 and 1.2 million dollars. It was clearly a sophisticated outdoor cultivation that was designed to achieve maximum profit.

[4] I am aware that you claimed during the course of the trial and also when the pre-sentence report writer spoke to you that you were a user of cannabis. I have to say that I found it somewhat interesting that, when your house was searched, there was no evidence of cannabis use in the house. After reading the letter, particularly from your daughter, I am prepared to accept that so far as your cannabis use is concerned you perhaps tried to avoid her seeing you do this. Ultimately, that is something that does not greatly matter.

[5] In preparing for sentencing I have had the advantage of reading the pre-sentence report. I have read the submissions filed by the Crown and your counsel. I have read the letters that were presented to me this afternoon written by your partner and your daughter. I have reviewed the authorities referred to in the submissions and I have, of course, listened to what has been said to me this afternoon.

[6] In any sentencing exercise, I have to have regard to the purposes and principles of sentencing. You have to be held accountable for the offending and there is a real need for me to try and promote in you a sense of responsibility for that offending and the harm that is done to the community by such offending. There is a need for me to impose a sentence that will deter not just you but others from offending in this way. I have to have regard to the gravity of the offending and, as cannabis cultivation offending goes, this is serious offending. I accept I must be consistent, and that is why the lawyers have referred me to other sentencing decisions; because it is only by considering those that I can fix on a sentence that can be described as truly consistent. I accept, of course, that I must impose the least restrictive outcome that I can.

[7] The pre-sentence report tells me that you are at modest risk of re-offending and you are at moderate risk of causing harm to others. Whatever your personal view of cannabis is, there is a great deal of information suggesting that it can cause very real harm, particularly for younger persons whose brains are not fully developed. It is clear that you had a very difficult childhood and I now have a much better understanding of that having read your partner's letter. You have lived an isolated life. You are in a long-term relationship and you have a daughter. Given what I have read, I cannot imagine that you are proud of the example that you have set for her. Fortunately, you retain the support of both of them. It is clear from what you said to the report writer that you accept the verdict of the jury. You say that you have got a drug problem. You say that you wish to do something about it, and you comment that you are now feeling better having not consumed cannabis for some time. The fact that you are willing to do something about it is a very encouraging prospect for the future.

[8] The Crown, in their written submissions, suggest that I have a choice as to whether I sentence you on the full amount of plants covered or restrict your involvement to plot 4, but I have already made it very clear that in my view I do not have a choice; I have to deal with you on the basis that this was your cultivation. The Crown correctly refer me to the guideline judgment of *R v Terewi*.[1] It is a Court of Appeal decision and I am bound to follow it. The Crown properly submit that this offending falls within category 3 due to the volume and the potential yield of the plantation and the sophistication which was, for an outdoor growing operation, very sophisticated indeed. The Crown refer me to further decisions, namely *R v Prest*[2] and *Borg v R*,[3] and they submit that a review of those authorities will establish that the appropriate starting point here is somewhere between five and six and a half years' imprisonment. The Crown ultimately submit that *Borg v R* provides the most helpful comparison. They submit that a starting point in the range of five to five and a half years is appropriate. There is no suggestion that there should be any uplift for personal aggravating features but they also submit there are no mitigating factors.

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[1] *R v Terewi* [1999] 3 NZLR 62 (CA)
[2] *R v Prest* HC Auckland CRI-2008-004-028639, 27 May 2010
[3] *Borg v R* [2015] NZCA 289

[9] Your counsel, no doubt acting on your instructions, does not seek to try and distance you from this operation. You do deserve credit for that. Your counsel accepts that this offending does fall within category 3 of *Terewi* as indeed your counsel must, and I am pointed to *R v Prest*. Your counsel submits that the facts of *Prest* were more serious; and there a six year starting point was fixed. It is submitted that the appropriate starting point here is one of four years' imprisonment. Your counsel, as did the Crown, submit there is no need for any uplift for aggravating features, but they do make a tentative submission that your personal and family circumstances, and other matters that are contained in the report, justify a reduction in sentence.

[10] I accept that there are no personal aggravating features that would cause me to impose an uplift. I have considered the cases I have been referred to but I have also considered some other cases;

(a) *R v Nuttall*.[4] That involved 1592 plants. That was an indoor growing operation. The yield was about the same and a starting point of five years' imprisonment was determined.

(b) In *Taylor v R*[5] and *Grayson v R*[6] there were 2400 plants. The offending was at the upper end of category 3 and was a well-organised, large-scale operation. In that case, the Judge adopted a starting point of six and a half years' imprisonment.

(c) In *R v Wilson*[7] there were 520 mature plants. Those plants were producing very high quality cannabis. That placed it within the upper band of category 3 and a five year starting point was approved.

(d) In *Dixon v R*[8] there were 393 cannabis plants at various stages of maturity. There was also 17 kilos of dried cannabis leaf and a further 1.5 kilos of cannabis head. That offending was also within category 3

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[4] *R v Nuttall* [2013] NZHC 544
[5] *Taylor v R* [2013] NZCA 417
[6]
[7] *R v Wilson* [2005] BCL 95
[8] *Troy Robin Dixon v R* [2011] NZCA 236

but on appeal the Court of Appeal said that a starting point of six years was too high and an end sentence of four years was imposed which was based on a five year starting point with a discount of nine months for personal facts and circumstances.

[11] What those cases show is that there is a very wide range of sentences imposed for top-end cases of cultivation.

[12] When I take all of those factors into account, I am satisfied the appropriate starting point is a starting point of five years' imprisonment. I note what the pre-sentence report tells me about your background, about your whānau and about your determination now to do something about what you acknowledge is a serious cannabis issue.

[13] Prior to today, I could not understand why you chose to take this matter to trial. After reading the letters that I have read today, it makes it even more incomprehensible, because you did not have a defence. Had you pleaded guilty, I could have given you full credit for a plea; I now cannot do so. I do acknowledge, however, that so far as you personally are concerned, you are a worthwhile member of the community. You are a good partner and you appear to be a superb father and it is such a shame that it has come to this.

[14] To recognise your personal circumstances I am going to allow a modest discount from the starting point. Accordingly, on your conviction you are now sentenced to a term of imprisonment of four and a half years.

D G Harvey
District Court Judge