

**IN THE DISTRICT COURT
AT MANUKAU**

**CRI-2016-092-012430
[2017] NZDC 25501**

THE QUEEN

v

ROSS PERCY HAYWARD

Hearing: 8 November 2017
Appearances: P Smith for the Crown
M Edgar for the Defendant
Judgment: 8 November 2017

NOTES OF JUDGE A M WHAREPOURI ON SENTENCING

[1] Ross Hayward, you appear before me for sentence having pleaded guilty to three charge. Two of importing a Class B drug ephedrine and one of attempting to pervert the course of justice.

[2] The drug charges, which you face by virtue of the maximum sentence of four years' imprisonment, are the most serious.

[3] The facts, briefly stated, are that on 23 August 2017, Customs intercepted a consignment from the United Kingdom sent to the country via DHL and intended for delivery to [address 1 deleted].

[4] Inside the consignment the authorities located 15 metal bars containing packages of white crystalline substance. The substance was ephedrine hydrochloride

which is a Class B controlled drug. The total amount of ephedrine weighed approximately 4.8 kilograms.

[5] Rather than seize the drug the authorities decided to carry out an investigation as to who the intended recipient was to be and who ultimately was responsible for the importation. A surveillance team was put in place to observe the [street name deleted] property, after steps were taken to make it appear that the consignment had cleared Customs and was available for delivery.

[6] You were seen to be waiting at the address on 30 August for the consignment. When the consignment did not arrive, you left the address but returned the next day. When a DHL delivery van pulled up outside the address, with a Customs officer posing as a DHL employee you approached the officer, gave a false name and told him that you were expecting a consignment or parcel. You were told the parcels were not in the van but had been marked for eventual delivery.

[7] The subterfuge continued for a few days more so the authorities could monitor you and those who you came into contact with about the consignment until your eventual arrest. From this continued effort, Customs identified the involvement of your co-offender Patricia Morris, who in turn led them to another co-offender Paul Hill.

[8] I note that Mrs Morris and Mr Hill have subsequently been charged with a greater number of importations and importations involving larger quantities of ephedrine.

[9] Customs were also able to identify an earlier consignment that had come into the country on 29 July intended for a Donald Williams at [address 2 deleted]. That was in fact your address. Inside the consignment LED Lighting was located in which approximately 6.8 kilograms of ephedrine had been concealed. The total amount of ephedrine that was imported by your offending was 11.6 kilograms.

[10] According to the agreed summary of facts the street value of the drug that was imported and with which you were connected is said to be approximately \$1.1 million.

[11] Following your arrest on 10 April 2017 you went to your co-defendant's home Patricia Morris. On that occasion you told Mrs Morris that your lawyer required of her a signed letter saying that you were not going to get paid for your role in the importations. Mrs Morris did not wish to write such a letter but you persisted until she finally did as you asked.

[12] Mrs Morris contacted her lawyer following this approach, and in turn the police were advised of your actions. It is those actions which led to the charge of attempting to pervert the course of justice.

[13] Your guilty pleas came in a staggered fashion, following two separate sentence indication hearings. The first hearing, which was in April, concerned the drug charges. The second hearing, which was in September, concerned the perverting charge.

[14] As the two sets of charges were different in nature, kind, time, place and general circumstances a cumulative prison sentence was considered appropriate for the second sentence indication hearing. Care was taken however to ensure the overall nominal end sentence for both sets of charges was appropriate reflecting the totality of your offending.

[15] The sentencing exercise that is engaged must reflect the purposes and principles set out in the Sentencing Act 2002. The relevant sentencing purposes here are to ensure denunciation, deterrence and accountability for the harm done by your offending. The most relevant sentencing principles to be applied in this type of case includes a sentence reflecting the seriousness of your offending, consistency with similar sentences imposed for similar offending by similar offenders and finally imposition of the least restrictive outcome or sentence appropriate in the circumstances.

[16] I turn to your personal circumstances. I have had the benefit of reading a pre-sentence report for you. The report tells me that you are 59 years old. You had been married for some 21 years, further to that marriage you are the father of three children. Your children are now grown up and they all live overseas.

[17] Prior to your offending you have been working as a handyman and that you knew your co-offender, Mrs Morris, as a neighbour. You told the report writer that it was Mrs Morris who came to you claiming that she had become involved in the scheme and that she had been threatened with harm. It was acting out of some altruistic sense of loyalty and a desire to assist her that you became involved in the offending.

[18] You told the report writer that after the parcel had been delivered you gave it directly to Mrs Morris and received \$1500 for your involvement. It was after the first consignment that you were offered other consignments but you declined to assist any further. However after Mrs Morris approached you again and said that she was still under the threat of harm together with that of her son, Mr Hill that you agreed to assist in a second consignment.

[19] The pre-sentence report makes reference to a historic brain injury which you received. That injury is the focus of a forensic psychological report dated 7 November. The forensic report delves into the background of the serious head injury which you received when you were 18 years old as well as a further traumatic event namely a housefire in 2011. The 2011 housefire involved you being rescued from the premises in a state where you needed to be revived.

[20] The forensic expert report, prepared by Dr John Jacques, is a comprehensive and detailed one. The conclusion of Dr Jacques is that you are not suffering from a severe or enduring mental disorder. It is also the view of the psychologist that you do not present with the features typical of post-traumatic stress disorder either from the previous brain injury which you suffered as an 18-year-old or the housefire incident.

[21] That is important because I have seen material from you, as well as your former wife, which offers up those two particular incidents as some explanation for your offending on this occasion. Your view in particular is that your decision making was impaired due to one or other if not both of these historical events in your life.

[22] Given the conclusions of Dr Jacques that you are not suffering from any form of a severe or enduring mental disorder, my view is that there was no evidence that the

historic brain injury or the trauma associated with the housefire in 2011, which was either causative of the present offending or would make serving a prison sentence any harsher or disproportionately more severe than it would for anyone else in a similar position. Accordingly, I am not able to regard these features from your past as reasons in mitigation.

[23] Turning to the Crown submissions and defence submissions for your offending, I note that where the drug charges were concerned the Crown submitted that the starting point for you should be six to seven years' imprisonment with a 25 percent discount for guilty pleas. The defence submission was that the starting point for the same offending should be between three and five years with the maximum discount available for guilty pleas.

[24] The sentence indication, which I gave back in April, on the drug charges was that the Court would adopt a starting point of five years' imprisonment and that there would be a 25 percent discount for your early guilty pleas. I see no reason today to step back from that indication.

[25] On the charge of attempting to pervert the course of justice the Crown submitted that the starting point for your offending there should be 12 to 14 months' imprisonment with a deduction of 20 percent for your guilty plea. The defence in turn submitted that the starting point on that charge should be 12 months' imprisonment with a 20 percent deduction for your guilty plea.

[26] Both agree at the sentence indication hearing in September that whatever sentence was imposed for the attempting to pervert the course of justice charge should be cumulative on the sentence for the drug charges. I note that one methodology that could have been adopted was to consider in September what the original sentencing outcome had been were you to have pleaded guilty to all charges back in April.

[27] Taking this approach my view was that the starting point of five years on the drug charges would remain undisturbed and that there would need to be an uplift to reflect the later offending. That uplift would have been 12 months so that the end nominal starting point on all charges would have been six years' imprisonment. From

that there would have been a deduction of 25 percent for your early guilty pleas resulting in an end sentence of four years six months' imprisonment or thereabouts.

[28] Instead a discrete cumulative sentence was indicated in September for the perverting charge. The sentence indication which I gave you on the perverting charge, was that the starting point would be 12 months' imprisonment with a deduction of 20 percent to reflect your guilty plea. The end sentence therefore on the perverting charge became nine months two weeks' imprisonment. When that figure is added to the earlier sentence indication, which I gave you on the drug charges of three years nine months' imprisonment the end sentence becomes four years, six months, two weeks' imprisonment.

[29] I am satisfied that that sentence is appropriate and reflects your offending in totality. It is not out of proportion to the gravity of your offending when viewed as a whole.

[30] Accordingly, on the difference charges for which you are being sentenced today the outcome is as follows:

- (a) On the two charges of importing a Class B controlled drug the end sentence for you is three years nine months' imprisonment.
- (b) On the charge of attempting to pervert the course of justice the end sentence is nine months two weeks' imprisonment, both are sentences of imprisonment cumulative as between each other so that your overall end nominal sentence is four years, six months, two weeks' imprisonment.

A M Wharepouri
District Court Judge