

**IN THE DISTRICT COURT  
AT HAMILTON**

**CRI-2017-019-004015  
[2017] NZDC 27135**

**THE QUEEN**

v

**BRETT IAN ANDERSON**

Hearing: 30 November 2017

Appearances: T Foster for the Crown  
M Pecotic for the Defendant  
cc Department of Corrections

Judgment: 30 November 2017

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**NOTES OF JUDGE N D COCURULLO ON SENTENCING**

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[1] Mr Anderson you appear today for sentencing in respect of the three charges as set out in the Crown charge notice - that being charge one possession of methamphetamine for supply, charge two possession of an offensive weapon namely the extendable baton and charge three driving while suspended.

[2] I gave you a sentencing indication on 21 September 2017. You accepted that indication. The content of that indication is to be read with and form part of the sentencing note. In that way I do not need to go back over the facts and the various matters which I worked out in respect of that minute before the Court.

[3] To recap, I found a starting point on the lead charge of eight years' imprisonment, an uplift of 12 months to nine years to reflect your previous

convictions and I indicated that the maximum discount for guilty plea 25 percent under *Hessell v R*<sup>1</sup> would be available to you upon that.

[4] The matters which have been traversed are largely the matters that were left and/or unknown when I saw you in September on that indication. They were essentially these - the personal mitigating features by way of remorse, your previous attempts to rehabilitate away from this nasty drug, the effectiveness of that together with the success and/or failure, the aspect of the Crown seeking forfeiture, the sale process of your Ducati motorcycle and the aspect of a minimum period of imprisonment which is opposed.

[5] Subsequent to that September call, I now have a number of other documents including a reflection upon the submissions filed by both your lawyer and the Crown, the various documentation about the value of the Ducati motorcycle, the pre-sentence report and importantly your affidavit about what you say has happened to you.

[6] I want to first in reflecting a removal of the *Hessell* discount and moving back to the nine years or 108 months' imprisonment, move to the sale of the Ducati motorcycle. I have considered the decisions provided including the *Bramwell* decision from the Crown and of my own research *The Queen v Fafeita [2013 NZHC 1832]* which respectively dealt with values of \$30,000 and some in excess of \$40,000 of value.

[7] Through your lawyer you would say that this quick sale assisted the whole process but meant that the Ducati was sold well under the value that you assert although perhaps not to a level in the decisions I have just mentioned. I have a clear view when considering what the Crown say of the discount and what your lawyer says of the discount that reflecting in part on the amount that the Ducati was sold for I should decrease or reduce your prison sentence by a period of three months.

[8] I move to the mitigation aspects. Here I have read a lot about you. If I understand the position correctly when you were before Judge Marshall on the serious drug dealing offences you faced for the 35 grams of methamphetamine attributed to

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<sup>1</sup> *Hessell v R* [2010] NZSC 135, [2011] 1 NZLR

you, notwithstanding some wider involvement, you were given significant credit for remorse. I am told upwards of some 15 months and upon your release you entered a supported environment and through your affidavit and particularly the pre-sentence report, you did really well. It seems that you were a model attendee of that rehabilitation, were able to sustain at least in the short term a turn away from this drug, able to move into a role of a mentor and/or tutor type situation and then ultimately into the community upon which with your trade, you were in the short term very successful.

[9] I am told that stress[ors] occurred including a breakdown in your marriage which is of short duration and that coupled with the other matters I have heard, has led to a failure for you to maintain your lifestyle away from involvement with this drug which has seen you return to the role that you are for sentence today.

[10] As I said for want of a better word and the submissions with counsel - it seems to me that that is a 'two edge[d] sword' for you particularly when I look at protection of the community and what you did. On the one hand using the therapeutic model, one could say that you are well capable of rehabilitation and I infer for the good work that you did do, that you are an articulate and intelligent man who when set a prescription of rehabilitation can put their mind to it and do that successfully.

[11] The other side of that however when I look at the protection of the community is that for all of that support network that was put in place, it came to pass that you were unable to maintain that position of rehabilitation and regrettably the response to the stressors was a return to your involvement with methamphetamine. That then bodes well for your rehabilitation but does not bode well because one of the things that is evident in the breakdown and relapse is clearly that the support structure was removed with a return to the community and that you failed to provide maintenance to your lifestyle and world.

[12] The therapeutic model cannot be the proverbial 'police officer' on the street corner looking to maintain you at each and every occasion and much of the maintenance I suspect in this space will be for individual persons to attend to. It is one thing not to maintain abstinence from the drug. It is another thing to relapse as spectacularly as what you have done here.

[13] Your lawyer asked me to consider that this offending means that in effect there has been no escalation in your offending. She says that of the last occasion you faced and were convicted of charges of manufacture, the volume was less and I am told there was a conspiracy. She says when I balance all relevant factors between the two pieces of offending it could not be said that there is an escalation. With respect I do not agree with that. I appreciate that the volume of the drug responsible to you is but one factor in the offending. On that account, the increase in offending is massive particularly when I consider the potential havoc that that quantity of about 240 odd grams of methamphetamine would wreak in the community through you distributing it as you say you were a courier.

[14] But even if I look at the wider issues of your role in each of this I cannot help but come to the clear conclusion that your involvement in this drug represents a clear escalation in my view and I observe the starting point in respect of both lots of offending as not ultimately determinative but somewhat indicative of the escalation of that.

[15] When I look at the issues in mitigation that have been clearly set out and primarily that is around remorse and endeavours to rehabilitate, I come firmly to the view that you could not expect the significant discount that you received on the last occasion notwithstanding the efforts made to rehabilitate.

[16] The Crown make the submission that if your remorse was given to the fullest level of discount, your behaviour would have included assisting the police as to the origin of these drugs. I understand what the Crown are saying. I do not necessarily accept it. You have already heard me say that faced with your arrest in respect of this matter, you well knew by your guilty pleas that you were going to be facing a significant term of imprisonment and in the significantly violent underworld that is and the commerciality of this nasty drug, part of I suspect all of that will be to ensure your safety from your perspective.

[17] Of course I have the dilemma of working out the priority of that against the havoc that would have been wreaked by the distribution of the drugs found upon you had it got through ultimately to users of this narcotic. In my view those mitigating

features personal to you including remorse means that I can discount your prison sentence further by six months which would make to that point a period of some 99 months' imprisonment.

[18] There are no other matters upon which I need to discount and so I intend to round it slightly to the *Hessell* discount which when I return to its 25 percent would reduce that figure by 25 months which would then make to that point an end sentence of 74 months' imprisonment or six years and two months.

[19] Before moving to the aspect of the minimum period of imprisonment I want[] to acknowledge the detail of the affidavit that you wrote to me. I have considered that and of your personal circumstances.

[20] So far as the minimum period of imprisonment is concerned, a number of decisions have been provided to me. I am aware of the relevant section in the Sentencing Act 2002 and indeed have considered the decisions of *R v Brown*<sup>2</sup> and also *R v Anslow*<sup>3</sup>. I do not understand the *Anslow* decision as being a decision that makes the criteria that an end sentence is greater than nine years before one can impose a minimum period of imprisonment.

[21] The Crown here say that for your repetitive offending with as they would call it, this pernicious drug, calls for significant denunciation and deterrence of what you have done. As you will know that is to send the Courts condemnation of involvement with this drug and to deter other like-minded persons by a sentence to you of dealing in this drug - not to mention sending a message to you. The Crown would also say that significant to the consideration of a minimum period of imprisonment would be the aspect of protection of the community which is at the heart of the consideration of a minimum period of imprisonment.

[22] I am well aware that you would be under usual principles eligible for parole after serving one third of the sentence I have just mentioned. I consider that against the request for a minimum period of imprisonment and indeed as the Crown would

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<sup>2</sup> *R v Brown* [2002] 3 NZLR 670, (2002) 19 CRNZ 534.

<sup>3</sup> *R v Anslow* CA182/05, 18 November 2005.

suggest - 50 percent. Your lawyer says that you well know that what you have done here is wrong, that there is every chance that you can successfully rehabilitate, that you should be afforded credit for the successful way at least in the short term that you have rehabilitated in the past and that the community does not need protection from your repetitive drug offending by the imposition of a minimum period of imprisonment.

[23] I have cognisance of what is the difference in the sentence between the eligibility for parole and what a minimum period of imprisonment would look like.

[24] In my view when I consider the Sentencing Act the relevant provision for this, it is inescapable that the heart of this sentencing in my view is to protect the community from you being involved as it was here in the larger scale distribution of this methamphetamine.

[25] This is not a small amount of methamphetamine that you had on your person. This is a significant amount which would have had widespread ramifications. This is repetitive offending by you and for the reasons as advanced I am satisfied that it is appropriate particularly to deter and denounce and for the protection of the community that a minimum period of imprisonment be imposed.

[26] I accordingly set a minimum period of imprisonment at 50 percent of the sentence aforesaid mentioned. In respect of Mr Anderson of charge one accordingly, you are convicted and you are sentenced to six years and two months' imprisonment. I order a minimum period of imprisonment of 50 percent of that sentence.

[27] Pursuant to s 142N Sentencing Act, I make an order for the forfeiture of the proceeds of the sale of the Ducati motorcycle to the Crown in the sum of \$11,000.

[28] On charge two you are convicted and sentenced for imprisonment for nine months and on charge three that is driving while suspended you are convicted and sentenced to imprisonment for three months and you are on that charge disqualified from holding or obtaining a driver's licence for 12 months and one day from today.

[29] In and of those prison sentences, they are concurrent meaning that the sentences under two and three run concurrently with the sentence under the lead charge - charge one.

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Judge ND Cocurullo  
District Court Judge

Date of authentication: 02/12/2017

In an electronic form, authenticated pursuant to Rule 2.2(2)(b) Criminal Procedure Rules 2012.