

**IN THE DISTRICT COURT
AT NORTH SHORE**

**CRI-2016-044-004163
[2018] NZDC 1174**

THE QUEEN

v

MATTHEW JOHN MACKAY

Hearing: 24 January 2018

Appearances: G Campbell for the Crown
G Anderson for the Defendant

Judgment: 24 January 2018

NOTES OF JUDGE N R DAWSON ON SENTENCING

[1] Mr Mackay, you appear in Court today for sentencing on 31 charges of supplying methamphetamine, four charges of offering to supply methamphetamine, five charges of selling cannabis and 10 charges of offering to sell cannabis. The methamphetamine charges have a maximum sentence of life imprisonment which reflects their seriousness.

[2] From July 2015, the Waitemata Tactical Crime Team commenced an operation investigating the supply of methamphetamine and cannabis in that district. During that investigation, they established that you were using two cellphones and they executed production orders for those two cellphones. An analysis of the text messaging content illustrated a pattern of drug related offending by you, including the supply and offering to supply of a Class A drug, methamphetamine, and the supply and offering to supply of a Class C controlled drug, cannabis. During the analysis of your text data, it was established that you had supplied methamphetamine on many

occasions and, similarly, had offered and had also supplied cannabis on many occasions.

[3] I have read the pre-sentence report, I have seen the certificates that have been handed up and also the letter of support, this being given on your behalf, and I have read and heard submissions on your behalf from counsel and also from the Crown.

[4] The principal sentencing factors I have to take into account are those of denunciation and deterrence. In other words, you need to be told very clearly that this type of offending is not acceptable in the community and there are severe consequences if you offend in this way and, for that reason, sentences need to be imposed to get the message home to you and others that if you do, then there is a severe penalty that you are going to pay for doing so. I also need to impose a sentence that will promote a sense of responsibility and an acknowledgment of the harm that is caused by the proliferation of drugs in our community. Methamphetamine is a particularly pernicious drug and you were actively involved in supplying it. The community need to be protected from this type of activity.

[5] There are aggravating features to your offending. First, you supplied a total of over 30 grams of methamphetamine and 29 grams of cannabis. You are a wide-scale commercial offender. You also offended on bail during the offending which took place in 2015 and during a sentence of supervision and community work during the 2016 offending. There was pre-meditation involved in your offending but that is an element to the offence and I am not taking that into account as an aggravating factor.

[6] In mitigation, you entered a guilty plea prior to trial and you have made some effort at rehabilitation.

[7] I note you are 46 years of age. The probation report notes that you minimise your offending in several different ways. The factors assessed as contributing to your offending include your antisocial lifestyle, the presence of antisocial friends and associates who influence your decisions and actions and your entrenched drug use. They note that your attitudes towards offending and drug use are of concern as you do not present with a meaningful motivation to change and they note that your offending

has continued uninterrupted over the last 30 years. I note that you have nine previous convictions for drugs and 102 other convictions on your record. It goes on to say you did not express any regret or remorse for your actions and you presented as nonchalant in relation to future prospects. You are assessed as posing a high risk of further offending and medium harm of risk and a minimal likelihood of compliance to any community-based sentence. The recommendation of the report is imprisonment. Overall, the pre-sentence report is not favourable to you at all, Mr Mackay.

[8] I have considered the case of *R v Fatu*¹ and, in my view, the offending falls within band 2 of that case. Taking into account the submissions I have had from the Crown and your counsel, I am of the view that a starting point for the lead offence of methamphetamine supply charges is a sentence of imprisonment of four years. An uplift of three months is appropriate for the cannabis offending and a further two months is appropriate for your history of drug convictions, taking it to a total of four years and five months. Your efforts at rehabilitation have been relatively minimal and for that I deduct one month. For your guilty plea, I am allowing just over 15 percent, so for that, I am deducting a further eight months. That takes it down to a sentence of imprisonment of three years and eight months.

[9] For the 31 charges of supplying methamphetamine and the four charges of offering to supply methamphetamine, you are sentenced to imprisonment of three years and eight months, all to be served concurrently on each other. For the five charges of selling cannabis and the 10 charges of offering to sell cannabis, you are sentenced to one year imprisonment on those charges, also to be served concurrently. I also make an order for the destruction of all the drugs.

N R Dawson
District Court Judge

¹ *R v Fatu* [2006] 2 NZLR 72 (CA)