

**IN THE DISTRICT COURT
AT GISBORNE**

**CRI-2016-044-001846
[2018] NZDC 3336**

THE QUEEN

v

NICOLA LEANNE HENMAN

Hearing: 22 February 2018
Appearances: C R Walker for the Crown (via AVL)
M Terekia on behalf of A Simperingham for the Defendant
Judgment: 22 February 2018

NOTES OF JUDGE W P CATHCART ON SENTENCING

[1] Ms Henman, you appear for sentence in relation to the following two charges in the Crown charge list: charge 5 supplying methamphetamine and charge 6 conspiracy to supply methamphetamine.

[2] The facts are not in dispute. I deal with charge 5 first. During the interception phase of the operation the police discovered Mr Williams liaised a number of times over a two-week period with Ms Coronno about obtaining an intended five ounces of methamphetamine through her contact, namely, you in Auckland. You, in turn, liaised with your local contacts.

[3] Mr Williams, Mr Hemi-Smith and Ms Coronno travelled together to Auckland on 19 December 2015 to purchase the methamphetamine. Initially, you were unable to source any. When some was found to be available, Mr Williams did not consider it to be of sufficient quality and told another alleged offender in the syndicate,

Erica Sheridan, by phone he was unhappy about it. However, on the afternoon of 20 December 2015 a successful purchase was made through you for three ounces of methamphetamine. The ESR later analysed it to be 79.6 grams. However, on the trip back, the police stopped the vehicle as it approached Gisborne. The vehicle belonged to, and was driven by, Mr Hemi-Smith. Mr Williams and Ms Coronno were occupants in the vehicle.

[4] Just prior to being pulled over, one of the occupants threw the bag containing the methamphetamine and \$17,000 out of the window. It was later recovered by the police. CCTV footage showed Mr Hemi-Smith had earlier been wearing the bag at a service station in Papakura.

[5] Let me say at the outset, having described those facts, you are liable for this purchase of the three ounces of methamphetamine. But what the other offenders did later cannot be attributed to you.

[6] It is accepted in the summary Mr Williams at the time was a patched member of the Mangu Kaha gang in Gisborne, as was Mr Hemi-Smith. Mr Williams was the brother of Mr David Williams, also an associate of the gang. Your connection was through an association with Ms Coronno.

[7] Charge 6 deals with your unsuccessful attempts in late November/early December 2015, together with Lee Coronno, to arrange the purchase of ounces of methamphetamine in Auckland. They were intended for supply to Mr Williams and others and then for retail distribution in Gisborne.

[8] On 6 September 2016, His Honour Judge Adeane gave a sentence indication for a great number of the defendants involved in this case. For you, he set a starting-point of three and a half years' imprisonment.

[9] For the Crown, Mr Walker invites me to reconsider that starting-point. The Crown contends that, on the facts known then, that starting-point is somewhat light when weighed against the discovery of a new fact. The Crown's evidence now is that you were acting not only as the intermediary but also you actually made the purchase

of the three ounces yourself and then supplied it to the others. In short, the Crown argues that this extra aggravating fact shows you were closer to the action than was earlier appreciated back in 2016. The Crown therefore suggests a starting-point closer to four years' imprisonment is appropriate. This new fact was raised with your lawyers and sensibly you have acknowledged this extra fact is correct and that is your credit.

[10] In terms of fixing the starting-point, the issue really is whether the original indication of three years six months should remain as the overall starting-point, or whether there should be some adjustment for this extra aggravating fact.

[11] Mr Terekia, on your behalf, submits there should be no change. He says that whilst it is an aggravating fact, the earlier indication given by Judge Adeane was in fact quite stern.

[12] The Crown position is there should be an adjustment because there needs to be parity with the Crown's position in relation to Ms Coronno's case yet to be determined.

[13] It certainly is an aggravating feature. If it was considered back in 2016 it would have led to an increase in the starting-point. I do not accept the starting-point indicated by Judge Adeane was stern. I note he gave starting-points for several offenders involved and there does not appear to have been any subsequent adjustment to their starting-points. There needs to be parity between you and the other offenders. In my view, the appropriate position is to increase the starting-point and I do so to one of 45 months.

[14] I now move to factors in your favour. First, Mr Terekia relies on expressions of remorse by you. I have read your letter, Ms Henman. It clearly indicates genuine remorse on your part. In that letter, you talk about what you now consider to be bad decisions you made. It has affected your relationship with others in your family, particularly the young children who are connected to you. You have also explained that in some degree you were driven by an addiction to the drug. Sadly, that is an explanation I receive on a weekly basis. But your letter indicates to me you did not

want to shift blame to anyone else apart from yourself. That is always a strong indication of remorse.

[15] You also need to appreciate, and I am sure you do now, that when it comes to personal circumstances and issues of remorse a Court is restricted in the degree to which a discount can be given. That is because the higher Courts say that personal circumstances can never undermine the key sentencing principles which is deterrence and denunciation.

[16] However, the Courts do accept that personal circumstances, expressions of remorse, et cetera, are relevant provided they do not subordinate those principles and the ultimate outcome. In short, what the Courts are trying to do is maintain real deterrence of methamphetamine offending in this country. So, as I say, I am limited to the degree to which I can recognise this expression of remorse and your personal circumstances. Rounding matters for you, I consider the appropriate discount here is two months.

[17] The guilty plea. Your counsel seeks a discount of somewhere around 15 percent as appropriate. The Crown submit somewhere between 10 percent and 15 percent. I have considered the arguments Mr Terekia raised today. First, that once you decided to plead guilty, you wanted that indicated to the Crown quickly. You then arranged for yourself to be before the Court. Mr Terekia says that is different from other offenders who just delay and delay until the last moment. So, you need recognition for that. Also, Mr Terekia points out the Crown's preparation for the Coronno case is likely to have continued whether you pled guilty. For all those factors, I discount close to the 15 percent figure but not quite. In my view, the appropriate discount is six months.

[18] That produces a final sentence. Ms Henman on both charges you are sentenced to three years one month's imprisonment. It is concurrent on each charge.

W P Cathcart
District Court Judge