

**IN THE DISTRICT COURT
AT WELLINGTON**

**CRI-2016-085-000951
CRI-2017-085-000705
[2018] NZDC 4227**

THE QUEEN

v

ANTHONY NORMAN TOFTS

Hearing: 6 March 2018

Appearances: A Garrick for the Crown
L Scott on behalf of B Crowley for the Defendant

Judgment: 6 March 2018

NOTES OF JUDGE B A MORRIS ON SENTENCING

Charges

[1] Mr Anthony Tofts, you face charges of robbery, party to attempting to manufacture methamphetamine, two charges of supplying methamphetamine, receiving stolen property, and two charges of possessing explosives.

Facts

[2] As to what happened, all of these offences were detected as a result of intercepted communications.

Robbery

[3] I deal with the robbery facts first. You were driving with your partner in the Wairarapa and saw a former friend driving in front of you in his \$15,000 ute. You considered he owed you money, so you undercut him to stop him. You demanded money, saying that he owed you \$5,000 and it had gone up to \$10,000, and you told him you were going to take his ute. That threat would have been seen in the context that you were a patched gang member, and he knew that, although also to be seen in the context that he was a previous friend of yours. You told him later that there was another patched gang member on his way. You heard him tell his partner to call the police. You said, "Did I hear that right?" and you then punched him in the face a number of times. You could see his eye was swelling. He received a swollen cheek, a black eye, and a swollen nose. You told him he would get his ute back if he paid the money. The victim asked him how he was supposed to get to work, and you arranged for your partner to get a car for \$500 down the road.

Drugs and other charges

[4] Insofar as the drugs charges and other charges are concerned, the police had intercepted communications of you and your brother, both patched gang members, to detect methamphetamine offences. During the course of the operation, the police noted you adopted various techniques to try and avoid police surveillance, including changing phones, coded language, and three-second cameras at your house. At the end of that surveillance, they executed a search warrant on your home and located electronic scales with traces of methamphetamine. There were also methamphetamine crystals weighing 6.29 milligrams and a pipe in your bedroom.

[5] The intercepted communications revealed, first, an attempt to manufacture methamphetamine. What occurred was that your brother offered to go and get a motorcycle belonging to you. He talked to you about bringing some "stuff" up with him. He did not know whether it was the "real stuff", and he did not know how much it was worth. You went to the ferry to pick up the bike, and he had the package with him. It was subsequently brought back with the bike to your garage. It was two kilograms of a substance intended to be used to manufacture methamphetamine. You did not know what it was mixed with, but you said you would be able to find out how

to process it. You both discussed and tried a process towards producing methamphetamine from a sample of a substance. You both tried one chemical process with a bad smell and also tried coffee filters. The word “meth” was used, together with other terminology consistent with some form of attempted separation process. You obtained a small amount of product and discussed that you were likely to get a few grams of methamphetamine out of that total product. It was agreed that you would take it to a mate who would know what to do with it.

Receiving

[6] Insofar as the receiving is concerned, the intercepted communications also revealed you had received figurines valued at \$2,100. They had been taken in a residential burglary. You said they were worth thousands and the owner would be shattered when he realised that they were gone. The figurines were located during the search.

[7] In addition, the communications revealed that on two occasions, on 29 February 2016 and 13 March 2016, you supplied small amounts of methamphetamine to two friends for them to use – two lines, 0.2 grams, on the first and 0.1 gram on the second. There is no evidence that any money was passed at all; this was a gift to a friend for their own use.

Ammunition

[8] Insofar as the ammunition is concerned, a search also resulted in seven detonators being found in your garage, the type used by farmers to detonate stumps. Originally, they were not illegal, but they had become so. I note that you pleaded guilty to possession of that despite saying you had forgotten completely that they were there.

[9] At a separate address connected to you, the police found 11 rounds of ammunition, though they were not with a gun. You did not wish to make a statement, and of course, that is entirely your right.

Reports

[10] I have read the victim impact statement in relation to the robbery. He had extensive concerns about his welfare, given the threats. And of course, he had to endure the injuries, though I note the injuries were not of the highest sort.

[11] I have also read the Probation report about you, Mr Tofts. The report in relation to the robbery noted your limited history, despite lengthy involvement with the Head Hunters. You have been 20 years in a good relationship with a partner who continues to stand by you, and you by her. You have two teenage [children]. And whilst you said this has been blown out of all proportion and the probation officer said you demonstrated no remorse, even to the probation officer it seemed quite clear you were very concerned about the impact all of this would have on your children. They noted, too, that you had self-referred, very much to your credit, to a drug and alcohol agency.

[12] The recommendation was imprisonment. There were concerns about your address, but I previously indicated that insofar as that offence was concerned, that would have been workable.

[13] The second report relates to the drugs, the receiving, and the ammunition charges. Home detention was suggested as offering you the opportunity to engage in rehabilitation, though it noted that the offending had occurred at home. It acknowledged, too, that you felt very keenly the hurt that you had caused your family through all of this and you did not want them ever to go through this again, and you engaged well in the interview.

[14] You also acknowledged that you had a methamphetamine addiction. I have read also the letters that you have provided, Mr Tofts, and it is quite clear that you are very cognisant of the impact on your family, particularly, and that you wish to turn your life around and not be involved in any drugs in the future.

Starting point - Offences

[15] I have to look at the offences themselves to determine what is appropriate for the those, before I turn to matters affecting you personally.

Robbery

[16] First is the robbery, and I have taken into account by comparison assistance the decision of *R v Mako*¹. I have taken into account the sentence indication that was given on the aggravated robbery. But of course, this is a robbery not of an aggravated type. As previously indicated to you, I consider a starting point of two years' imprisonment is consistent with all the purposes and principles in our Sentencing Act 2002, particularly that of deterrence but also consistency with others

Party to Attempt to Manufacture.

[17] Insofar as the charge of being a party to attempting to manufacture methamphetamine, I refer to the sentencing notes that I have already given in relation to your brother. They are dealt with separately because of the other set of charges that you have, but I incorporate them as being relevant to this sentencing, and I note that you have listened to them both.

[18] The starting point that I have found for the offence of attempting to manufacture is two and a half years' imprisonment.

[19] Really, the issue I have to determine is whether the fact that you are charged as a party warrants any discount from that. I do take into account on the one hand what would push very much against that, and as the Crown would emphasise to me, you were involved in the discussions at the outset; you were involved in the discussions at the end; you were, it seems on the summary, involved in the attempt itself and could possibly have been charged, on the basis of that summary, with an attempt. Ownership, of course, is not the nature of this charge of attempted manufacture of methamphetamine.

[20] On the other hand, whilst I accept all that, and that would mean a significant discount is not warranted, this was your brother's item that he had always intended to go down and get. It was for his use; it has not been put forward it was for your use. You were there to assist him. The Crown says that means this is more akin to a

¹ *R v Mako* [2000] 2 NZLR 170 (CA)

situation where you are, in effect, helping to supply someone else. But I consider in all the circumstances, that it does warrant some small distinction, and I reduce that starting point to two years and two months.

Other charges

[21] Insofar as the small amount of methamphetamine is concerned, dealt with on its own it would not result in imprisonment at all. But of course, imprisonment is the only option. But in light of the very small amount and that it was in the context of a gift, whilst not minimising the very serious nature of the drug, I consider that a starting point of one month is appropriate.

[22] The receiving charge is of relatively valuable items worth over \$2,000. You knew the items that you received would have an emotional impact on those who had them taken from them. The maximum is seven years' imprisonment. I consider an increase of two months is warranted.

[23] As for the ammunition and detonators, I do not find, looking at these facts, that they were there, as is sometimes the case, to be used as support or security for a drug operation. They were unrelated. I accept what the Crown says, that the detonators were found in the same garage. However, they were not readily accessible, and the ammunition was found in a different address and there was no firearm with it. Those offences warrant an increase of one month.

Total for Offences

[24] I have considered that each of these are separate; they should be cumulative on each other – that is, on top of each other – giving a total sentence of four years and six months.

Totality

[25] Whilst I have considered they should not be concurrent but should be dealt with cumulatively, what I now need to do is to stand back and look at this offending as a whole and determine what is the appropriate reflection of that overall offending and culpability on your part, again bearing in mind the least restrictive outcome but

also one that reflects deterrence. When I do that and I stand back from all of these offences, I consider that a reduction from the four years and six months' total is warranted. Four years, in my view, is an adequate reflection of your overall culpability, even accepting what the Crown has submitted, that there was no distinct overlap between the two sets of the offences; they were, of course, very separate.

[26] In terms of that reduction, given I have to sentence you separately with different discounts for pleas on the two sets of offences, I achieve that totality by placing a two-year starting point on the drugs charges.

Personal Factors

[27] The next question I have to determine is how this is affected by factors that affect you personally. Should this go up for your previous convictions? They are not sufficient to warrant an increase. In addition, as opposed to your brother, the co-offender, you have taken real steps to treat what you accept is a methamphetamine addiction. You attended drug and alcohol counselling through the Red Door agency, and they spoke very highly of you and you wanting to turn your life around and the steps that you took to do that. I accept from your letter, too, that you have a real desire to be there to be a good father for your children and for your partner.

[28] That reduces the starting point on each of the separate sets. On the robbery, I reduce that to one year and 11 months. On the drugs and other offences, I reduce that to one year and 11 months.

[29] There is then the plea. Again, you deserve significant credit, in my view, for that guilty plea to the robbery. It was on the first occasion when it had been reduced from aggravated robbery, and it means you accept responsibility for what you have done, and it means that no one has to give evidence, particularly the victim. That warrants a 25 percent discount, making that one year and five months.

[30] Insofar as the drugs and other charges are concerned, again I make reference to what is said in your brother's sentencing notes. The Crown says nothing; the defence says the full discount. In my view, referring to all those factors, rather than repeating them, a 20 percent discount is warranted. It was a vastly different offence

that was ultimately charged. That reduces the starting point by one year and six months.

Sentence

[31] That leaves a sentence of three years and one month. Sadly, of course, that does not enable home detention to be looked at. And in any event, I think the combination of these offences would mean it would not be adequate.

[32] But what I suggest to you, too, Mr Tofts, is that you have taken great steps to ensure that when you are released, you will be a good father who can be a role model for your children. You have paid the price for this offending. When you are released, you can hold your head up high and continue to be a good father for your children and for your partner beside you.

[33] There is also the forfeiture of the ammunition, the detonators, the scales, the bags, the methamphetamine and cannabis. There is no dispute with that.

B A Morris
District Court Judge