

**IN THE DISTRICT COURT
AT TAURANGA**

**CRI-2016-070-003941
[2018] NZDC 7394**

THE QUEEN

v

TANE KYLE DOUGLAS GIBBONS

Hearing: 17 April 2018
Appearances: S Davison for the Crown
W Nabney for the Defendant
Judgment: 17 April 2018

NOTES OF JUDGE C J HARDING ON SENTENCING

[1] Mr Gibbons, you appear today for sentence on eight charges. Charge 1 is possession of explosives in the form of ammunition. Charge 2 possession of a pipe for smoking methamphetamine. Charge 3 possession of equipment in the form of a hotplate. Charge 4 possession of a precursor substance in the form of hydrochloric acid. Charge 5 receiving a stolen motor vehicle. Charge 6 manufacturing methamphetamine and charge 7 threatening to do grievous bodily harm to a police officer.

[2] You pleaded guilty to three of the charges on the day of trial, but the trial had to proceed in connection with other matters and no particular discount can be therefore attributed to your plea in those circumstances.

[3] The charges arise from circumstances in 2016 where in June police executed a search warrant and found a stolen Mazda 323 with number plates changed, ignition

damaged and the VIN number removed. Located in your bedroom was a glass pipe and in your bedroom also a zip lock bag with methamphetamine residue and a round of .308 ammunition. In the kitchen there were five rounds of .22 ammunition.

[4] Methamphetamine and ephedrine were located, a hotplate located in the garage, and hydrochloric acid was found. Methamphetamine was also detected in swabs from various surfaces in the garage, such that it was indicative of something more than simply smoking; in other words, manufacturing.

[5] A couple of weeks later there was a further return by the police to the address because you did not turn up in Court. Voices were coming from shed and those in the shed were told to come out. You were challenged by the police and indicated to them that you had a gun in there, telling them to leave. The armed offenders squad was called and you were detained with an associate after some hours.

[6] The jury found the charges which were not admitted to have been proved. During the trial you acknowledged smoking methamphetamine and residing at the address. You have previous convictions for methamphetamine going back to 2007, a number of convictions for dishonesty and possessions in relation to utensils and methamphetamine in 2011.

[7] In sentencing you in relation to the drugs matters in particular, denunciation, deterrence and community protection are factors to the fore. That you are to be sentenced consistently with others and to the least restrictive sentence. A guilty plea on the charges where that was entered came at such a stage that no discount should be properly applied, as I have already said.

[8] The Crown submits that on a global basis a start point of six years should be taken with an uplift of six to 12 months for your prior offending. The Crown submits that this offending falls within band 2 of the leading authority of *R v Fatu*¹ and says that you are the main offender in manufacturing, that the explosives, precursors and equipment aggravate the situation.

¹ *R v Fatu* [2006] 2 NZLR 72 (CA).

[9] The Crown submits that five years should be applied for the drugs matters with the receiving and threat to kill adding a further year, and an uplift of six to 12 months for your previous drugs convictions and dishonesty convictions. They say you should be required to pay reparation of \$1660 for the damage to the car and \$28,175 being the estimated cost to clean up the methamphetamine contamination in the house and shed. The request that you pay reparation for the car is predicated on proof that you had something to do with the damage to it and there is simply no evidence of that. You are charged with receiving, not theft, and that cannot be sustained.

[10] Mr Nabney on your behalf says that there is simply no evidence as to the scale of manufacturing which occurred or that you were the sole or main person involved. He says there is no evidence that the amount manufactured was a commercial amount and makes reference to case of *R v Vowel*² where a starting point of some three years was taken in not entirely dissimilar circumstances.

[11] He says there should be no uplift for the equipment and precursor chemicals, that those are effectively included within the manufacturing charge, but that cannot be right as a matter of logic. Precursor substances which were used in the manufacturing have by definition been consumed, meaning that the precursor substance left amounts to a separate issue.

[12] He says that the uplift required for the threat to kill and suggestion of a gun should be minimal given that no firearm was present and that the receiving uplift should be only six to 12 months. He submits that the reparation should be limited to the shed, but on reflection today refines that to accept that reparation can properly be sought for the contamination to the house, but points out that there is an issue with payment.

[13] It is clear from the material before me, including the submissions, that you have got a long-term involvement as a methamphetamine addict and he says that your 16 months on electronically monitored bail should entitle you to some form of reduction given the strictures with which you have been living.

² *R v Vowel* HC Whangarei CRI-2006-088-3782, 4 May 2007.

[14] The probation report notes that you say that you use methamphetamine either when severely tempted or as a coping mechanism during times of stress and clearly not long before this there were times of stress with the sad loss of a young child which you were finding difficult to cope with.

[15] You are now wishing to have assistance for your methamphetamine problem and have made enquiries it is said of Odyssey House, but you acknowledge through Mr Nabney that the length of sentence which I am going to be required to impose is such that home detention to that address is not a possibility.

[16] The report says unless you can address your use of methamphetamine and make significant life changes, you are likely to continue to offend and concludes that you are at high risk of further offending. The recommendation is a sentence of imprisonment.

[17] It seems that the loss of your child resulted in a significant change of behaviour virtually immediately and set you pretty much on a downward spiral from there on. Sadly, my ability to take particular account of your personal circumstances is extremely limited in charges such as this. That you have been trying to make changes and have support from your partner and family is apparent from the testimonials which have been written and provided to me over the last few days.

[18] I am unable to accept the Crown submissions as to the appropriate start point. Mr Nabney is correct, that the scale of the manufacture was unknown and unproven and there is no properly available inference that you are the sole or lead manufacturer.

[19] In my view, the appropriate start point on the authorities is that referred to by Mr Nabney of three years' imprisonment, but there is separate criminality in connection with the possession of equipment and precursors after the previous manufacturing which justifies a further uplift of six months' imprisonment. The receiving charge is entirely separate from the drugs matters and justifies a further nine months. The threats to police in reference to a firearm six months. The fact that no firearm was recovered is the absence of an aggravating factor rather than a mitigating. It does not reduce the seriousness.

[20] The net result in a total sentence of four years and nine months before your history is considered. That adds three months, taking things to five years, but I reduce that by six months on a totality basis and because of time that you have spent on EM bail and your determination at this stage expressed to try and do something about your methamphetamine addiction. The net result is a sentence of four and a half years' imprisonment and that is the sentence which would be imposed.

[21] There is no doubt that you are properly responsible for the clean-up costs of the house which approximate \$28,000, but the authorities make it clear I may not impose reparation unless it is reasonably achievable within a reasonable period. I consider if you were ordered to pay \$30 a week for five years after your release that would be a reasonable amount to pay and reasonably achievable. You are, accordingly, ordered to pay reparation of \$7500 at \$30 a week, first payment required 28 days from your release.

[22] On the individual charges, you are sentenced as follows. On the possession of explosives, six months' imprisonment. On the possession of utensils, three months' imprisonment. On the possession of equipment and precursor substances, in each case nine months' imprisonment. On the receiving charge, six months' imprisonment. On the manufacturing charge, four and a half years and on the threatening to do grievous bodily harm, nine months. All of those sentences will be served concurrently.

[23] There will be an order for the destruction of the equipment, ammunition and pipe.

C J Harding
District Court Judge