

**IN THE DISTRICT COURT
AT AUCKLAND**

**CRI-2018-092-001907
[2018] NZDC 7136**

THE QUEEN

v

ROIMATA MATAIO

Hearing: 13 April 2018
Appearances: S Teppett for the Crown
T Clee for the Defendant
Judgment: 13 April 2018

NOTES OF JUDGE R J COLLINS ON SENTENCING

[1] As you have heard me say, you are for sentence in respect to two charges of possession of methamphetamine for supply, a charge of being unlawfully in an enclosed yard, a charge of possession of a pipe for the purpose of smoking methamphetamine, charge of possession of an explosive, possession of cannabis plant, two charges of breach of community work, two charges of failing to answer bail and then resentencing on two charges of summary offences assault and one charge of Crimes Act 1961 assault.

[2] I will deal with the facts of the two possession of methamphetamine charges because that is really effectively what you are going to be sentenced for today and I am going to sentence you to concurrent terms of imprisonment for all the other matters but no uplift for them and I will try and explain why that is the case.

[3] Now dealing with the matters which have come from the Crown solicitor's office at Manukau, those facts are that on 26 September last year you were at home, the police came to speak to you about a breach of your bail conditions and while at the address they found that you had been associating with a co-defendant and you were arrested for breach of bail conditions and ultimately because you were taken back to the police station with your property, your property was searched, and 3.6 grams of methamphetamine were found as a part of that property but the proceeds of matters being \$2773 in cash, electronic scales and a number of deal bags plus the pipe were found.

[4] Then in relation to matters which the Crown solicitor's office in Auckland is responsible for much earlier in time, in fact on 21 January last year, you were found at a property at [address deleted] in Te Atatu. When you were arrested on that occasion and searched just under six grams of methamphetamine was found in your possession.

[5] So, in relation to those matters you are for sentence along with the others that I have outlined. You really have got a very short history or list of previous convictions. In fact, prior to these matters the only matters which have brought you before the Court that I can see were the assault charges and I might be wrong on it Mr Mataio but I suspect if you were starting to use methamphetamine at that stage then that might well explain why a young man started to offend in that way just a couple of years ago in 2016.

[6] So, like most of the people that see me at work today, you are here because of methamphetamine and that then becomes reflected through your own use, you start dealing to fund your own use, your whole thinking becomes quite frankly wonky, you fail to answer bail, you do not turn up to do your community work so the whole thing goes off the rails. And I have got to accept that you wrote the remorse letter and if you mean what you say in there then you have got a good insight into what I have just been saying and what I have just said will not be news to you.

[7] But, and it is a big but, for this offending because of the damage that methamphetamine does I really do not have a lot of choice in what is about to happen. You are lucky today to have supportive family here. You would be surprised how few men sitting where you sit still have the support of their family and you have caused them, as you say in your letter, you have caused them a huge amount of pain and hurt by getting yourself involved with methamphetamine.

[8] Well I have had regard as to the pre-sentence report that Mr Clee has urged me to have regard to as well. Probably the most relevant paragraph there is where the report-writer says, "The identified related-offending factors are friends and associates. He advised at the time he was using a lot of alcohol and feeding an addiction to methamphetamine. His offending may be addressed by the rehabilitative programmes recommended such as counselling and a programme to address the management of drug addictions and other offending-related factors."

[9] Mr Mataio, the Court of Appeal has said that for dealing in methamphetamine where it is five grams or up to a much larger amount, 250, that the range is from three years' imprisonment to nine years' imprisonment. Well for the Auckland offending where you are arrested at Te Atatu, the Crown solicitor says three years, the bottom of the range is appropriate but there has got to be an uplift for the other three and a half-odd grams found on you when you were arrested again and offending on bail. In my view from that three years uplift of eight months is appropriate.

[10] Then comes the question of discount for a plea. For the biggest part of that indicated sentence the plea came on the morning of trial and a good argument could be made that no more than 10 percent should be allowed but I am taking the view that all matters should, if you like, go into the mix on a global basis and I am prepared to give you a 15 percent discount for plea overall because it becomes complicated with an uplift where you are entitled to a greater degree of maybe discount on the Manukau matters. So, let us round that out to seven months and so that takes a 44 month starting point to 37 months.

[11] Because I consider that I have taken a generous approach in that, I am not going to allow any further discount for actual remorse. What will be critical in that regard is that you will get to demonstrate how committed you are to leading a crime free life for the benefit of your family in due course and you will be able to demonstrate that to the Parole Board. So, if you would please stand.

[12] On the charge of possession of methamphetamine for supply it was dealt with by the Crown solicitors in Auckland, the Te Atatu matter, you are sentenced to a term of imprisonment of three years one month. That is the total term of imprisonment. All other terms of imprisonment that I am imposing are concurrent. That means they go along side and they do not add to it. So, the total is three years one month.

[13] With respect to the charge from Manukau, that is one year six months for the methamphetamine for supply charge there.

[14] On the charges of being unlawfully in a yard, possession of a pipe, possession of cannabis plant, possession of explosives, the breaches of community work and the failing to answer bail, all those matters concurrent terms of imprisonment of two months.

[15] In terms of the resentencing, the application by Corrections to cancel the sentence of community work imposed in the Papakura District Court on 20 April is granted and the sentences of 200 hours' community work on each of those three matters is cancelled and on each you are resentenced to imprisonment two months but that is all concurrent with the other sentences.

[16] So, total overall, three years one month and you will be able to make your application for parole at one third in due course.

[17] There will be an order for destruction of the cannabis plant.

[18] There will be an order for destruction of the pipe.

[19] Pursuant to s 32 Misuse of Drugs Act 1975, there will be an order for forfeiture of the cash \$2773.60 and order for destruction of the methamphetamine.

R J Collins
District Court Judge