

**IN THE DISTRICT COURT
AT MANUKAU**

**CRI-2017-092-009507
[2018] NZDC 7162**

THE QUEEN

v

ANTHONY WIARI FALEFATA

Hearing: 12 April 2018
Appearances: L Radich for the Crown
D Ratima for the Defendant
Judgment: 12 April 2018

NOTES OF JUDGE J BERGSENG ON SENTENCING

[1] Mr Falefata, you appear for sentence today on six charges of importing the Class A controlled drug methamphetamine. The maximum penalty available on that charge is life imprisonment. Additionally, there are police charges which you have also pleaded guilty to, one of theft, one of obtaining a document, two of using a document and then two charges of breaching a sentence of community detention.

[2] I gave a sentence indication to you on the importation charges on 8 March which you accepted. The sentence indication was a starting point of between 13 years and 13 years six months' imprisonment.

[3] By way of background, the facts which are not in dispute are that over a period of between November 2016 and August 2017 you were involved as what has been described as a catcher's role for six importations of methamphetamine. The total amount involved was 1.166 kilograms. The value of those drugs was established as

between \$699,000 and \$1.166 million dollars. The importations were reasonably sophisticated in that they came from countries, such as Thailand, India, Cameroon, Lagos and Nigeria. The methamphetamine was hidden within various items, including picture frames, instant coffee packets, pens and Milo sachets. While your role was described as that of a catcher, it also involved you being in direct contact with overseas people and arranging for the address and obviously confirming details, receiving tracking numbers and so forth.

[4] At the time of the sentence indication the Crown submission was for a starting point of between 13 and a half and 14 years' imprisonment. It was acknowledged that you should be given credit for your plea of guilty, some modest reduction for your personal circumstances and they were seeking a minimum period of imprisonment of 50 percent.

[5] On your behalf, your counsel made the submission for a lower starting point, somewhere between 10 to 12 years. It was acknowledged that your offending fell within band 4 of the *R v Fatu*¹ classification but that there should be credit available for you for your plea of guilty, for your youth. It was acknowledged that there should be a discreet uplift for the police charges, but the submission was that there should be no minimum period of imprisonment. It was also submitted that your involvement in the importation was, in a large part, to feed your own drug habit, that you have very little, if anything, to show in terms of financial gain.

[6] Without repeating everything that I said in the sentence indication, the Court of Appeal in the decision of *R v Fatu* gave a guideline decision as to where different offending involving Class A drugs fall. Band 4 in *R v Fatu* indicates that anyone who is importing 500 grams or more then the starting point is 12 years and up. I indicated that the aggravating factors, aside from the quantity of methamphetamine being imported, was that there was a high degree of planning and premeditation in your importations, that it took place over some nine months, that there were six individual importations and that there was a degree of sophistication in those importations. As I

¹ *R v Fatu* [2006] 2 NZLR 72 (CA).

indicated, the starting point I noted was between the range of 13 years to 13 years six months' imprisonment.

[7] I have now had the opportunity of considering the provision of advice report, that gives me a bit more information in terms of your personal circumstances. There is concern expressed that you have got yourself involved in further serious offending given that while this offending was being committed, you were completing a sentence on a charge of aggravated robbery. That is your only previous conviction, but the report-writer was of the view that despite having gone through the Court process once, you were prepared very shortly thereafter to again become involved in serious offending.

[8] I have been given some information in terms of your personal circumstances regarding drug use you have clearly had and likely still do have, an issue with methamphetamine. To your credit, while you have been in custody you have taken the opportunity, you have attended and completed one of the alcohol and drug programmes, you have also been tested as to whether or not there have been drugs in your system on a number of occasions and on each occasion that test has come back clear.

[9] The starting point that I will adopt is, as I indicated in my sentence indication, one of 13 years' imprisonment. To that starting point there will be an uplift of two months for the fact that you were completing a sentence at the time and also on bail, there will be a further two months to reflect the other police charges that I have referred to. So that gets me to 160 months.

[10] I indicated that there would be a modest reduction for your personal circumstances. The Supreme Court in *R v Jarden*² indicated that in cases involving serious drug offending, limited regard was to be given for personal circumstances, but they did not say that there could be no reduction. I am going to reduce the starting point by 10 percent or that is 16 months. That gets me to 144 months or 12 years' imprisonment. You are entitled to the full 25 percent credit for your guilty plea that is

² *R v Jarden* High Court Christchurch CRI-2005-009-1306, 18 June 2007.

a further reduction of three years and that gets me to an end sentence of nine years' imprisonment.

[11] What is then required is a consideration of whether there should be a minimum period of imprisonment imposed.

[12] The Crown submission is that while your age is acknowledged, the Higher Courts have said that minimum periods of imprisonment for offending such as this is routine and common.

[13] The argument presented by your counsel is that in light of your age, your limited history, the fact that you have already undertaken steps to address your drug habit, that this is one of those cases where a minimum period of imprisonment would not be required and that it is best left to the Parole Board to determine your release date.

[14] Section 86 Sentencing Act 2002 provides that a minimum period of imprisonment can be imposed if the Court is satisfied that the usual parole period is insufficient in terms of holding you accountable for the harm to the community as a result of your offending, denouncing your conduct, deterring you and others from committing the same or similar offences, and protecting the community from you. As I have noted, you have one previous conviction, although it is a relatively serious conviction.

[15] You are a young man, you are 20 years of age, you have, from a very early point when this offending came to the attention of the police, been co-operative. You acknowledged the offending when you were interviewed by the police. You sought a sentencing indication at a relatively early stage in the proceedings and that was accepted by your entering pleas of guilty. So there is clearly an acknowledgement on your part of the offending that can be taken as an indication of remorse. At your age 20, as the Court of Appeal in *R v Churchward*³ noted, younger people can sometimes take longer to mature and to be able to consider the consequences of what they are doing.

³ *R v Churchward* Court of Appeal, 2/3/06, CA439/05.

[16] I have decided in your case, because of those factors, not to impose a minimum period of imprisonment. My view is that a sentence of nine years' imprisonment is a long sentence for someone of your age and given the steps that you have already taken, I am satisfied that a minimum period of imprisonment is not required. You are addressing the issue and hopefully, given the finite term of the sentence, when you are released you will be in a better position to reintegrate into the community so that you do not immediately re-offend and end up back in prison.

[17] So, the end sentence is one of nine years' imprisonment. There is no minimum period of imprisonment.

[18] On each of the police charges, and the breaches of community detention, the sentence is two months' imprisonment. That is concurrent. So all up it is nine years.

[19] There will be an order for destruction of the drugs.

J Bergseng
District Court Judge