

**IN THE DISTRICT COURT
AT HAMILTON**

**CRI-2017-019-003422
CRI-2017-063-002910
[2018] NZDC 8923**

THE QUEEN

v

JOHNATHAN CLAY SPEAR

Hearing: 7 May 2018
Appearances: A Pell for the Crown
M McIvor for the Defendant
Judgment: 7 May 2018

NOTES OF JUDGE P R CONNELL ON SENTENCING

[1] Mr Spear, before the Court as you know are a number of charges that you are for sentence on today, those charges arising in Hamilton in June 2017 and in Tokoroa in August 2017.

[2] Just so that you are clear about it, the Hamilton charges, the most serious of those offences was possession of equipment to manufacture methamphetamine, has a maximum of five years' imprisonment. You then associated with that possession of what is commonly called GBL, possession of cannabis and possession of methamphetamine. Those charges I can tell you now will be dealt with concurrently because the lead charge for the Hamilton matters is that possession of equipment for manufacturing methamphetamine. You then whilst on bail offended on those matters that brought this charge of possession of methamphetamine for supply. You will know as well as I do that has a maximum term of life imprisonment. Then associated with

that particular offending in August 2017 you were in possession of a taser, you had possession of cannabis, possession of utensils, two counts or charges of receiving.

[3] The Hamilton offending in terms of its facts, and I have to go through those because that is how I make an assessment of your culpability, you were a passenger in a motor vehicle in June 2017. The vehicle was stopped by the police and they found a motel room key when they searched you. They went to the motel. Your partner was in the process of leaving the motel complex. She was stopped and spoken to. Her vehicle was searched and the police found methamphetamine in her possession. The motel room to which you and your partner had access to was checked and searched. Police then found small plastic bottles that were identical to the one found in your partner's possession and one of the bottles contained methamphetamine. The police also found heat pads and a cylindrical drum containing liquid. Initial indications from the police laboratory team indicated they were being used to manufacture methamphetamine. There was a small quantity of cannabis and a one litre plastic juice bottle containing GBL. They were located in the room as well.

[4] At the police station the police heard from you that there was a bach out at Kawhia where a clean-up had found some 4.5 grams of methamphetamine inside that bach and your cellphone was found in the bach in a sofa and it had been left there inadvertently by you so it connected you up to that offending.

[5] The Rotorua offending involved, first of all, associates of yours taking a stolen drill and some stolen chisels in a motor vehicle that led the police back to your place. It was parked outside your address and the police got a search warrant for that stolen property and they found you in the lounge. You were in a state where you obviously had been caught cold and you ran into the backyard, took out a small plastic container from your trousers and tried to put that into the garden. The police picked it up; 20.01 grams was the amount of methamphetamine found. There was an allowance made for garden debris and that reducing it down to around about 13 or 14 grams.

[6] With that a search of the address found a small plastic container with 7.12 grams of methamphetamine, a bottle of MSM powder, \$15,000 in cash, there was a methamphetamine pipe, there was a taser and two taser cartridges, two lots of

electronic scales, there was a television set up that showed who was coming up the driveway on closed circuit TV, there were three zip lock bags of dried cannabis material, there was a stolen drill and the five stolen chisels that had led them to you.

[7] The probation officer's report is one that says you are at risk of re-offending, high risk as they have put it, but your risk of harm to other people is low. The suggestion of the probation officer not surprisingly is one of imprisonment.

[8] I have to be guided by the law and by the Higher Court decisions in this country, particularly *R v Fatu*¹ which sets out sentencing bands for cases involving the sale or supply of methamphetamine. Your case clearly falls within band 2 and that is supplying commercial quantities anywhere from five grams up to 250 grams with the Court of Appeal saying a sentence of minimum three years to maximum nine years is warranted for that type of offending. I have looked at a couple of decisions that have been referred to me to assist with that process of determining what the sentence should be for you. *R v Cooper*,² in that case there was selling of 16 grams of methamphetamine, offering a further nine grams, total of 25 grams, with a starting point of four years and six months' imprisonment and the Judge noted that the offending was towards the bottom end of band 2. It is not a dissimilar quantity in respect of what you held. The end sentence in that case after discount for guilty plea was four years' imprisonment. *R v Cole*³ is a sentencing for methamphetamine for supply and unlawful possession of a pistol. In that case it was 29 grams of methamphetamine and the usual paraphernalia of sale, like scales and snap lock bags were found. The Judge adopted a starting point of four years and three months' imprisonment noting the degree of commerciality in the offending and that was judged on amount found and also the other paraphernalia associated with sale. An end sentence of four years and five months was imposed in that case.

[9] In this case you have heard Crown counsel submit that possession for supply is the lead charge, seeks a cumulative sentence for possession of the taser and then accepts that it is within band 2 of *R v Fatu*. Crown here say there are a number of

¹ *R v Fatu* [2006] 2 NZLR 72.

² *R v Cooper* [2013] NZHC 170.

³ *R v Cole* [2012] NZHC 2482.

aggravating features and they are quantity of methamphetamine and commerciality. There was the presence of weapons, there was premeditation, there was previous convictions and you were on bail for the Hamilton offending when you committed the Rotorua offending, which is an aggravating feature. Then they have submitted a number of cases for guidance that I have considered and come to a view that four years is appropriate in terms of the sentence with an uplift of nine months for the whole of the Hamilton offending. I have some dispute with that because the most serious charge in the Hamilton sentencing is one that carries with it a maximum term of five years' imprisonment so there is, in my mind, perhaps a higher point than nine months to be considered. I have been referred again to a number of cases by the Crown on that issue. If this was stand alone, the offending starting point would be somewhere between 18 months and 24 months. This is just the Hamilton matters that we are talking about.

[10] The Crown have taken account of the principle of totality and with that acknowledged that I have to apply that principle. They have suggested a cumulative sentence of somewhere in the range of three to six months' imprisonment for the taser weapon that you had in your possession. I am simply following the approach of Higher Courts which will always add something for the fact that there was a weapon present with the drugs and so on.

[11] Your counsel Mr McIvor here accepts that the possession for supply charge is the lead charge. He accepts you were on bail when the Rotorua offending was carried out. He accepts premeditation and previous convictions, acknowledges that this falls within the lower end of band 2 of *R v Fatu* and cannot argue in effect because of the application of those guideline sentences given by the Court of Appeal that the starting point could be somewhere in the late three to four years' imprisonment. He is asking that a full credit be given to you for the fact you did plead guilty and I assure you that will be the case. He accepts cumulative approach to the weapons charge and agrees that there must be an uplift for your previous convictions. That must be so because when you look at your record there are previous convictions for the same offending which do not help you. The Court always has to recognise there has to be an uplift for that and as I count it, in terms of methamphetamine for supply, there are the three prior convictions in respect of that.

[12] The way I intend to deal with this is impose sentence on the possession of methamphetamine for supply. I consider that a cumulative approach should be taken between the Rotorua and the Hamilton offending. In terms of the Rotorua offending, the methamphetamine for supply, there is a start point of four years' imprisonment. There is an uplift of six months for the possession of the taser weapon. You will understand that is a four and a half-year term.

[13] In my view, in terms of the Hamilton offending, particularly the lead charge of that, possession of equipment for making methamphetamine, that is a different time to the Rotorua offending, it warrants at least a 12-month start point. You will understand we have reached a position where that is a five and a half-year starting point of imprisonment total. There should be an uplift of six months for the previous convictions. If there was just one previous I would have made it three months but you have had more than one, as you know, and the uplift should be a term of six months. That takes you up to a six-year term of imprisonment. From that I am going to reduce it by two. That takes account of your early guilty plea and the letter that I have read today from you where you are acknowledging your addiction, your disappointment in yourself, your clear remorse for what has happened; you must always understand that when Courts are sentencing for supplying methamphetamine they are sentencing for the fact that harm is done to so many other people in the community where they have available to them, from you, methamphetamine and that is always the problem. Your problem is addiction. I acknowledge that. That is a personal problem. I am not really sentencing you for that. I am sentencing you for the harm you have done elsewhere by supplying the stuff and having it for supply to others. You must always appreciate that that is the first consideration that the Court gives for that. It is a maximum then with that deduction of two years but I do give you a reasonably generous deduction for that. It is a four-year term that you are now sentenced to.

[14] To make it clear from the charging document, in terms of the Rotorua charges it is a four-year term on the Misuse of Drugs Act 1975 charge of possession of methamphetamine for supply. On the possession of a restricted weapon, running concurrently with that as it will be recorded, is a four-month term. Possession of cannabis is simply one month. Possession of utensils one month. The receiving charges are all one month's imprisonment. Those terms are all concurrent.

[15] Then on the Hamilton matters, possession of the equipment that, in my view, warrants the sentence that I have imposed, which is a sentence of 12 months less your guilty plea so that would take it to a nine-month term that will show on the record. The others are all one month in terms of possession of methamphetamine, cannabis and the GBL. That is what the record will show.

[16] That completes that sentence. There is a forfeiture order now for the \$15,000 plus. There is an order now for the destruction of all equipment, drugs and materials used for making methamphetamine and equipment used. All of that is ordered to be destroyed.

[17] There is a separate order for the destruction of the taser.

P R Connell
District Court Judge