

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN
[SQUARE BRACKETS]

**IN THE DISTRICT COURT
AT GISBORNE**

**I TE KŌTI-Ā-ROHE
KI TŪRANGANUI-A-KIWA**

**CRI-2018-016-000270
CRI-2018-016-000273
[2018] NZDC 17900**

THE QUEEN

v

**JO MARIE WILLIAMS
SANDRA WILLIAMS**

Hearing: 17 August 2018

Appearances: C Stuart for the Crown
N H Wright for the Defendant J Williams
A W Clarke for the Defendant S Williams

Judgment: 17 August 2018

NOTES OF JUDGE M J CALLAGHAN ON SENTENCING

[1] Jo Marie Williams appears for sentence on charges of possession of methamphetamine for sale, and possession of cannabis for sale. The methamphetamine charge is a representative charge and it carries a life imprisonment sentence. The cannabis charge carries a maximum penalty of eight years' imprisonment.

[2] Sandra Williams is also for sentence on a charge of supplying a Class A controlled drug, methamphetamine. Again, it carries a maximum penalty of life imprisonment.

[3] The facts are that in late 2017 an operation was carried out in this area targeting the distribution of methamphetamine. There was a surveillance device warrant issued. Between 27 December 2017 and 9 January 2018, Jo Williams purchased 87 grams of methamphetamine from her main supplier for the purposes of supplying it to unknown persons. At the time she did that, she was on a sentence of home detention. She was unable to carry out the supply to the unknown people so she arranged for her sister, Sandra Williams, to make the payments and collect the drugs at pre-arranged meeting points. For reward, Ms Williams received methamphetamine for use when she returned to the address where Jo Williams was living.

[4] Most of the communications between the principal offender and Jo Williams were by text message. The particular transactions amounted to a total of 86 grams of methamphetamine in that period of time with varying amounts between seven grams and 28 grams. The Crown accepts in respect of Jo Williams that she had a methamphetamine habit and was using up to a gram a day herself which would show there was a very big addiction that she had. So the amount that she actually supplied of the 86 that she received, was 71 grams.

[5] Sandra Williams acted out of a sense of misguided loyalty to her sister in carrying out the courier role in respect of the uplifting of the drugs and returning them to her sister. She went to prearranged meeting points to make the payments and collect the drugs which she then gave to her sister.

[6] The search warrant that was conducted at Jo Williams' address on 31 January located a quantity of cannabis (28 grams), \$4300 in cash, and a small amount of methamphetamine. Forfeiture is sought in respect of the money that was located and that does not seem to be opposed.

[7] Sandra Williams has not appeared in Court before and is aged 37 years. This is her first appearance on any charges. A pre-sentence report has been compiled. She is assessed as a medium risk of harm to others and a high risk of reoffending because of the substance abuse that she was under at the time and the addiction she had at the time the reports were carried out.

[8] In that report, she did not accept she had done anything wrong. It recommended imprisonment. It also indicates that there is little or no remorse, or any motivation to change, and no rehabilitation programmes undertaken.

[9] She has now written a letter to me, undated, but given to me in Court today. She says that she has managed to remain meth-free for a considerable period of time. She said she has got her life back on a positive track. She wants help to access programmes and counselling to assist her in staying clean, having a healthy and positive lifestyle, and she wants to be a better person and a role model for her family. She does say that the reason that she was unable to express her true feelings in the report was because she has never been in this situation before and, for that reason, she has written this letter to me expressing how remorseful she is for the actions that she took because she felt, in effect, sorry for her sister.

[10] Jo Williams is a wee bit different because she has eight previous convictions for the possession for supply of methamphetamine, some in 2017 and some in 2015. She has also got previous convictions for possession of cannabis in 2015 and 2017 and other drugs or stimulants in 2015.

[11] Her pre-sentence report again says that she is at medium risk of harm to others unless she addresses the causes of her offending, that she is a moderate to high risk of reoffending based on her previous convictions and also her addiction. It points out that she had little inability to solve her own problems and little insight into her actions. She claims in the pre-sentence report that there was no financial gain and all she was doing was to support her drug habit. I find that somewhat hard to accept when the dollar amounts involved in the 14-day period is in excess of \$43,000.

[12] Her compliance with previous sentences has been poor to such an extent that this offending occurred while she was on a sentence of home detention for supplying methamphetamine. She accepts she will get a jail sentence. She has been in a psychologically abusive and violent relationship and says that is what caused her into the addiction of methamphetamine.

[13] She has got some fines which I intend to remit. They are the least of her concerns.

[14] I have read also the letter of support from her mother which urges upon me to give her yet another chance to turn her life around, that she knows she has made some bad decisions, and that she is there to support her daughter and her moko and she wants to have her daughter back home where she belongs with her children.

[15] In dealing with Sandra Williams, the Crown point out that this is a representative charge; that she was the intermediary between her sister and other users. They say that her role is definitely lower than that of her sister. That a starting-point somewhere in the region of four years would be appropriate. They refer me to the decision of *Wang v Police* where that person was a courier with two packages and a four-year starting-point; *R v Brown* where there were 12 packages and a five-year starting-point; and *R v Tait*, again a five-year starting-point with one package but the quantity of methamphetamine was somewhat higher than the other two.¹

[16] I accept that she has no previous convictions and is entitled to the full discount for a guilty plea.

[17] Mr Clarke has urged upon me to get to an end sentence which would enable me to invoke a home detention sentence. He accepts this offending is in band 2 of the decision of *R v Fatu* and says that it must be at the lower end of that band and that a starting-point somewhere around three to three and a half years would be appropriate.² That I should give a substantial discount for her previous good behaviour and says that the drug addiction was the motivation for her rendering assistance to her sister. But for that addiction, which she furthered using the methamphetamine her sister supplied on receipt of the packages that she delivered back, she received no actual financial reward for doing the task she was doing.

[18] The Court's duties at sentencing are to hold, firstly, a person accountable for their actions and in drug dealing the principal purpose is to denounce and deter those

¹ *Wang v Police* [2017] NZHC 787; *R v Brown* [2016] NZHC 612; *R v Tate* [2016] NZHC 2522.

² *R v Fatu* [2006] 2 NZLR 72 (CA).

people who want to get into the field of being suppliers of drugs. I have to carry out an assessment as to the gravity of this offending. I also have to be consistent with appropriate sentencing levels for similar offending and I must impose the least restrictive outcome that is appropriate in the circumstances according to the hierarchy of sentences.

[19] While this offending from your perspective was not while you were subject to any Court sentence, you were being a courier for your sister who you knew was on a home detention sentence and could not leave her address. There is some planning involved on your part because you knew that you had to go and source whatever was in the packages and you were rewarded by the fact that methamphetamine was consumed when you delivered the packages. That happened on six occasions. So, there are a number of occasions when that occurred.

[20] In mitigation, there is your age, you have no previous convictions, you have entered a guilty plea at the first available opportunity and you are entitled to a substantial credit for your good character.

[21] In assessing a starting-point, I am of the opinion that the facilitating of the supply of methamphetamine as a courier for a family member, knowing the full circumstances and the fact that it took place on six separate occasions, indicated that you knew firstly that it was a commercial operation and you must have known that the quantities were not small because of the fact that it occurred on so many occasions. It definitely falls into band 2 of *Fatu*. Your culpability as a courier is less than that involved in the case of *Wang* which I have been referred to and is certainly less than that of *Brown* and *Tate*.

[22] In my view, the starting-point here would be one of three years and nine months' imprisonment. That equates to 45 months.

[23] I have now read your letter and the fact that you have taken steps to address your addiction. I am prepared to give you a 10 percent discount for your remorse coupled with the steps you have taken to address your addiction. You are also entitled

to a discount for your good character. You have no previous convictions at age 37 and that is a credit for you. Again, I give you a 20 percent discount for that.

[24] You are entitled to a full discount for your guilty plea which came at a very early stage. That leaves me with an end sentence of 24 months and one week. I will round it to 24 months because that seems to me to be an appropriate penalty for you.

[25] I then have to consider whether or not home detention is an appropriate sentence. There is a home detention address available. You have never been in trouble before. Home detention is not an easy sentence. Normally, in a home detention sentence I would reduce it further and give you community work, but because of the nature of this offending, and the fact that the Misuse of Drugs Act 1975 directs to me to the fact that custodial sentences are the norm in the circumstances, I am going to make the sentence of home detention half the prison sentence. That will not be easy for you.

[26] Accordingly, you will be convicted and sentenced to 12 months' home detention. The address will be [deleted]:

- (a) You must travel directly from Court when you are released and await the electronic-monitoring company to come and complete the connection.
- (b) You must reside at that address and not move without the prior written approval of a probation officer. You must be there at all times unless an absence has been authorised by a probation officer.
- (c) You are not to possess, consume or use any alcohol or drugs not prescribed to you.
- (d) You must attend an assessment for alcohol and drug treatment, counselling or programme as directed by a probation officer and attend and complete any counselling, treatment or programme as recommended by the assessment and as directed by, and to the satisfaction of, a probation officer.

- (e) You must attend an assessment for any treatment, counselling or programme as directed by a probation officer and attend and complete any counselling, treatment or programme as recommended by that assessment and as directed by, and to the satisfaction of, a probation officer.

[27] Those last two conditions (that is, the alcohol and drug treatment, counselling or programme and the generic counselling, treatment or programme) will last for a period of six months past the end date of your sentence.

[28] In respect of you, Jo Williams, your situation is entirely different. The Crown in their submissions point out the fact that you were selling methamphetamine while you were on a sentence of home detention; that cannabis was also involved in the dealing; that you have those previous convictions; and that they say that on a *R v Fatu* (which is the leading case) basis a sentence of somewhere between four and a half to five years as a starting-point would be appropriate.

[29] They say there should be an uplift because of the offending while on an electronically-monitored sentence. That you must get a full discount for your guilty pleas. They say that a sentence should also reflect the fact that you had been sentenced to 16 months' imprisonment, commuted to home detention, which was the sentence you were serving when you were apprehended. They ask for a minimum period of imprisonment and they also ask for forfeiture of the \$4300 seized when the search warrant was executed.

[30] There is a suggestion from your counsel that I should take into account the rehabilitative needs that you were undergoing and the fact that Odyssey House was sought. But the Crown have addressed me on that saying that the Odyssey House issue was only when these charges were outstanding and bail was refused to allow you to go on that.

[31] In terms of your counsel's submissions, which I have listened to and read, she says that this was unsophisticated, that it is clearly within band 2. She says that a starting-point of approximately four years would be appropriate and that there should

not be any uplift for the re-sentencing but a concurrent sentence should be imposed. She says that you want rehabilitation.

[32] On that point, I have read the sentencing notes of Judge Cathcart when you were sentenced to home detention and they highlight the fact that the reason you got home detention was because of the rehabilitation that you were purporting to undertake.

[33] Your counsel also points out that there is a difficulty for a remand in custody because you will not get a credit if you are sentenced to a separate sentence in respect of the home detention matter. That has been canvassed by both counsel for the Crown and by your lawyer. I will come back to that shortly. But it seems that if I sentence you to a concurrent sentence on the earlier matter, then there should be no issue regarding calculating the start and end dates of your sentence.

[34] In sentencing you, it is necessary to make you accountable for your actions and it is necessary to denounce and deter you and others from dealing in drugs of this magnitude. I have to take into account the gravity of the offending and I have to be consistent with other sentencing levels for similar offending.

[35] The aggravating features here are the fact that you were on that electronically-monitored sentence when you committed this offending. There is obviously planning gone in to the purchase of the methamphetamine for onsale to such an extent in that you realised your predicament that you could not leave the address and so you got your sister to source the drugs for you on six separate occasions.

[36] In terms of mitigation, the only mitigating factor that you have is a guilty plea which came at a reasonably early opportunity.

[37] Accepting that some of the methamphetamine supplied to you was for personal use, there is still sales of 71 grams of methamphetamine. While the motivation might have been to source and help you with your personal addiction to methamphetamine, that is still a significant amount of methamphetamine which has been available for onsale into the community. This was a continuing operation evidenced by the fact that

the matter represents six discrete and separate instances of the supply of methamphetamine and the value is \$43,700, taking the lowest figure on each of the amounts which were delivered to you.

[38] There is a degree of sophistication because you were aware that you could not step outside the boundaries of your home detention address and you utilised your sister as a courier. Stepping back and looking at it from an objective point of view, in my view the starting-point here is one of four years and three months' imprisonment.

[39] Because of the fact that it was committed while you were on an electronically-monitored sentence for the same type of offending, and that sentence was never completed, an uplift of three months' imprisonment is appropriate.

[40] In respect of the fact that you were on that electronically-monitored sentence and you had still three and a half months to run, I am going to add seven months to your sentence to reflect the time that you would have had to complete the electronically-monitored sentence but for the intervention of the police and your arrest.

[41] In terms of the possession of the cannabis, an uplift of three months is appropriate for that. Your previous convictions – there are eight for methamphetamine dealing and two for possession of cannabis – in my view warrant a further uplift of three months. That leaves a total starting-point sentence of five years and seven months' imprisonment.

[42] I have to then stand back and say is that too high a sentence for the offending in its totality here? Looking at it from that perspective, the sentence of five years and seven months is only just too high in my view. Accordingly, I will reduce the starting-point sentence to one of five years and three months' imprisonment.

[43] You are entitled to a full discount for your guilty pleas. That is 25 percent. That leaves me with an end sentence of three years and 11 months' imprisonment. That is the sentence that I impose in respect of the possession for supply of methamphetamine which is a representative charge.

[44] In respect of the sentence for which you were on an electronically-monitored sentence, that sentence is cancelled and a sentence of 16 months' imprisonment is imposed, but that is concurrent with the sentence of three years and 11 months.

[45] There will be forfeiture of the money seized; namely, \$4300 to the Crown.

[46] In respect of your fines which are outstanding of \$1608 (plus the offender levy for today which is another \$50) so that will be \$1658. In light of the sentences that I have imposed, they are remitted in full.

ADDENDUM:

[47] Counsel for the defendant raised an issue of whether or not I would give any discount for hardship. I had overlooked to mention it. The hardship involved here is the fact that the defendant has children. But, in my view, no discrete discount would be appropriate. Notwithstanding her personal circumstances, she still chose to deal in methamphetamine while obviously having her children with her in her home. Accordingly, I am not minded to give any further discount other than those which I have already enunciated.

M J Callaghan
District Court Judge