

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

**CRI-2017-092-011344
[2018] NZHC 3165**

THE QUEEN

v

VICTORIA LOUIS JULIAN

Hearing: 4 December 2018

Appearances: Kristy Li for the Crown
Shane Tait and Jonathan Hudson for the Defendant

Judgment: 4 December 2018

SENTENCING NOTES OF MOORE J

Introduction

[1] Ms Julian you may remain seated until I formally impose sentence upon you. At that point I will ask you to stand.

[2] Ms Julian, at the age of 48, you appear for sentence before me for offending relating to the manufacture of methamphetamine at your home.

[3] The charges to which you have pleaded guilty are serious. They are that over a one month period in 2017 you first permitted your property to be used to make methamphetamine and secondly you supplied methamphetamine.¹ Both charges are laid on a representative basis which reflects the Crown's case that there were repeated episodes of offending of a similar sort throughout the month.

[4] You also face another charge of supplying methamphetamine. To that you have pleaded not guilty. That matter is going to trial. I only mention it for completeness so that you know I am sentencing you only in relation to the two charges you have pleaded guilty to and nothing else.

[5] In sentencing you this morning I shall follow the well-trodden and well-understood formula used in Courts of New Zealand when Judges sentence. There are four steps:

- (a) First, I need to deal with the facts of your offending. These will be well-known to you but I need to recite them not only because sentencing is quintessentially a public function which must be undertaken in open Court but also because the facts are relevant to my assessment of the seriousness of your offending.
- (b) Secondly, I must identify a starting point. By starting point I mean the level of sentence which reflects your offending without reference to your personal circumstances. That starting point can either go up or go

¹ Section 6(1)(c) and (2)(a). The maximum penalty is life imprisonment.

down depending on what aggravating and mitigating factors I regard as relevant.

- (c) Thirdly, I shall consider your personal circumstances. The Crown fairly acknowledges that there are no aggravating personal circumstances in play here but your counsel, Mr Tait and Mr Hudson, pressed me to consider a couple of personal mitigating factors. And so I shall consider those.
- (d) Finally, I need to apply a discount for your guilty pleas and then stand back and look at what is referred to as the totality principle; in other words whether the sentence I have arrived at under that formula properly reflects your culpability or blameworthiness.

[6] From the outset I need to record that in sentencing you I am guided by the principles and purposes of the Sentencing Act 2002. The particular purposes and principles relevant to your case are the need to hold you responsible and accountable for the harm you have done to the community and to promote in you a sense of responsibility for, and an acknowledgement of, the harm which you have caused. It is also necessary that your conduct not only be denounced but that any sentence I impose should send out a clear message to others who may be similarly inclined that the Courts will treat offending of this sort very seriously.

[7] I accept I must take into account the desirability of consistency with appropriate and comparable sentencing levels and impose the less restrictive sentence which is appropriate in the circumstances.

[8] I turn now to consider the first step which is describing the offending to which you have pleaded guilty.

The facts

[9] The facts are set out in the summary which you accept. Your involvement came to light during a Police operation codenamed Ardmore. It was a methamphetamine manufacturing investigation. It was run by the Auckland

Clandestine Laboratory Response Team over an eight month period between January and September 2017.

[10] The primary methamphetamine “cook” was identified as David Griffiths. He manufactured methamphetamine at five addresses across Auckland. Each manufacture took two to three days to complete. On a number of occasions he was helped by his partner, Melissa Boltman. Both Mr Griffiths and Ms Boltman have been charged with manufacturing methamphetamine.

[11] And this is where you came in. You knew them both. You own a property in Awhitu near the Manukau Heads. In August and September 2017 you allowed your property to be used by Mr Griffiths and Ms Boltman to make methamphetamine. This happened three times:

- (a) between 25 and 28 August 2017;
- (b) between 30 August and 2 September 2017; and
- (c) between 23 and 26 September 2017.

[12] It all finished on 26 September 2017 when the Police executed a search warrant at your property. The Police discovered an active, large scale clandestine methamphetamine laboratory. The Police interrupted Mr Griffiths who was in the throes of manufacturing the drug.

[13] The dry weight of the methamphetamine Mr Griffiths was producing totalled 772.8 grams. The Police also located two containers of crystallised methamphetamine. This weighed 704.5 grams. Thus the total methamphetamine found at your home was 1.4773 kilograms. That is a very substantial amount indeed. As I am sure you are aware, methamphetamine commonly sells at street level for about \$100 for a 10th of a gram (or a “point”) or for between \$500 to \$800 a gram.

[14] Also at your property were some 25 kilograms of iodine. Iodine is classically associated with methamphetamine manufacture and commands very substantial prices

on the domestic black market. The amount of iodine found was enough to produce between 10 and nearly 16 kilograms of methamphetamine.

[15] Not found at your property, but discovered in a storage unit rented by Mr Griffiths, were other chemicals classically linked to methamphetamine manufacture. For example, 20 litres of hypophosphorus acid was found; enough to produce 20 kilograms of methamphetamine.

[16] It will never be known how much methamphetamine Mr Griffiths and Ms Boltman made at your address on the first two occasions. But it must have been significant.

[17] As I have already noted, you have also been charged with supplying methamphetamine and this arises from occasions when you supplied the drug to associates. The inference which both the Crown and your counsel accept is available is that the methamphetamine was supplied to you by Mr Griffiths and Ms Boltman in payment for you allowing them to use your property in the way they did.

[18] Intercepted communications show that across a period of just over two weeks in September 2017 you supplied or offered to supply methamphetamine to unknown associates on about 12 occasions. Again, we will never know how much was actually supplied or how much you earned from that trade. Certainly, we know that the Police found \$7,700 in your safe and an order is made for the forfeiture of that cash.

Setting a starting point

[19] And so I now turn to the first of the four stages I referred to earlier and that is setting the starting point.

[20] The Crown says that a starting point in the vicinity of two years and nine months' imprisonment is appropriate. Mr Tait says a starting point of two years and six months is warranted. As you can see by that comparison there is very little difference between the Crown and you on where the appropriate starting point should sit.

[21] Perhaps that is unsurprising because Lang J has given starting points for three other co-offenders who also allowed Mr Griffiths and Ms Boltman to use their properties to make methamphetamine. Substantial assistance can be drawn from those decisions.

[22] I noted, as did Lang J, I adopt the charge of permitting premises as the lead charge in this analysis.

Comparable cases

[23] Two of the three co-offenders Lang J sentenced were Dwayne Moran and Katrina Verdonk. They shared a home which they let to Mr Griffiths to make methamphetamine on 13 occasions over about five months. There the Crown submitted the appropriate starting point was three years' imprisonment for both defendants. However, Lang J regarded a slightly lower starting point to be appropriate. I quote his words on this issue because they are instructive. He said:

“In a case where an owner or occupier of premises vacates the premises for a brief period of time to enable a single manufacture of methamphetamine to occur the appropriate starting point will be around two years imprisonment. In the present case, however, the starting point must be significantly higher than that. The offending occurred over a period of two to three months, and both Mr Moran and Ms Verdonk were fully aware of what was happening. In addition, they supplied methamphetamine that had been manufactured at their premises. In those circumstances, I consider the minimum starting point to be one of two years nine months imprisonment. That reflects only the culpability in relation to the lead charge of permitting premises to be used for the manufacture of methamphetamine.”

[24] From that starting point he uplifted the sentence by three months and six months for Mr Moran and Ms Verdonk respectively to reflect the separate supply charges each faced.

[25] The third co-offender was Rya Emshoff who let Mr Griffiths use two properties which she rented specifically for the purpose of manufacture. Ms Emshoff was more entwined in Mr Griffiths' activities. For example, she attended a hardware store with him to buy equipment. She arranged for one of the flats to be repainted to conceal any traces of manufacture. For these reasons, Lang J regarded her culpability as slightly

greater than Mr Moran and Ms Verdonk. Weighing those factors he set a starting point of two years and nine months' imprisonment.

[26] The Crown has referred me to three other cases where starting points of between two years and six months and two years and nine months were adopted.² Mr Tait and Mr Hudson has referred me to one of those cases, *Lorigan*, as well as one other in which a starting point of two years and six months was adopted.³

[27] These cases confirm that the starting points suggested by both the Crown and your counsel are sitting within the correct range.

Analysis

[28] The Crown fairly acknowledges that your offending can be viewed as less culpable than those cases I have discussed. This is because there were fewer cookups over a shorter period. However, as the Crown points out your involvement ended after the third manufacture only because the Police intervened. Were it not for that, particularly given the large quantities of iodine found at your address, it seems likely you would have continued to let your home be used in this way with the inevitable consequence that more of this pernicious drug would have been produced. And so, it is for that reason the Crown says that while there were fewer episodes of manufacture at your home that factor is not really particularly significant. The Crown says there is not much to distinguish your level of involvement and culpability from that of Ms Emshoff.

[29] On reflection, I have difficulty accepting your culpability sits at that level. Ms Emshoff had a much more active role in the manufacture. She actively assisted Mr Griffiths in obtaining materials. She assisted in cleaning up the house. Nothing in the papers before me suggests that you were such an active participant.

[30] Furthermore, the Crown's submission that the number of manufactures in the period over which you allowed your home to be used is largely irrelevant. I must

² *R v Lorigan* HC Auckland CRI-2010-055-1742, 29 November 2011; *R v Bate* [2014] NZHC 237; *R v Martin* [2012] NZHC 2381.

³ *R v Smith* HC Auckland CRI-2010-057-1017, 22 February 2011.

sentence you on what you did rather than what you might have done, although I do not lose sight of that factor completely when considering the overall context of your offending.

[31] Having said that, while your culpability may be less than that of your co-offenders it remains relatively high given factors such as the amount produced, your knowledge of what was happening and the sheer commerciality and scale of the operation. In my view a starting point of two years and six months' imprisonment is appropriate.

Uplift for other offending

[32] Both the Crown and your counsel agree that a three month uplift to reflect the other offending of supplying methamphetamine is warranted. I agree with them. While the total amount traded is unknown, the intercepted messages show that you were selling the drug "in points". You did this on 12 occasions. On the basis that a starting point of at least 12 months' imprisonment would otherwise be available,⁴ the Crown submits a three month uplift is appropriate. That is the same uplift Mr Moran received for supplying small quantities of methamphetamine on approximately 13 occasions.

[33] And so that leads me to an overall starting point of two years and nine months' imprisonment.

Personal circumstances

[34] As I have noted, the Crown very properly and fairly does not seek an uplift for your previous drug convictions. While they are relevant, it cannot be overlooked that they were 14 years ago.

[35] But as I touched on earlier, Mr Tait does submit there are two relevant personal mitigating factors. The first of these is remorse and secondly the time that you have spent on EM-bail. I turn to consider each of those now.

⁴ See for example *R v Tua* [2014] NZHC 3049, where Toogood J stated this starting point would be appropriate for one charge of supply of 0.1-0.2 grams of methamphetamine.

Remorse

[36] The pre-sentence report records that while you agreed with parts of the summary of factors and expressed what the author described as “mild remorse” you maintained that you did not knowingly allow the manufacture of methamphetamine in your home. You have since expressed remorse in a letter to the Court. You have shown insight into the harm you have caused to the wider community by being part of this trade which is causing such harm within our community. Despite your encouraging letter I am not satisfied that a discrete remorse discount is warranted in your case. Typically the benefit of that kind of discount is given to those who demonstrate a high level of genuine and sincere remorse independent of that implicit in a plea of guilty. The evidence before me does not support that level of genuine remorse.

Time spent on EM-bail

[37] But I do agree with your counsel that some discount is warranted for the restrictive conditions of bail imposed on you. Mr Tait tells me that after you were arrested on 26 September 2017 and after that, you were remanded in custody for 34 days until 30 October 2017. From 30 October 2017 until May 2018, in other words another six months you were subject to a 24-hour curfew on EM-bail. Then, from May 2018 until your pleas, the 24-hour curfew was relaxed allowing you to leave home for six hours a day. In other words, you spent seven months on 24-hour EM-bail and a further six months on 18-hour EM-bail.

[38] It is well settled in our law that you are entitled to a discount to acknowledge restrictive bail conditions. The Court of Appeal recently commented that a four month discount for 10 months spent on EM-bail was not inadequate although a higher figure would not necessarily have been wrong.⁵ In another case the Court of Appeal commented that an appellant subject to a 24 hour EM-bail for just over a year was entitled to a discount of four to six months taking into account the very restrictive conditions and the appellant’s compliance.

⁵ *Parata v R* [2017] NZCA 48 at [15].

[39] I am told and it has been confirmed this morning that you completed your remand without breaching the terms of your bail. In those circumstances, I consider a three or four month discount is appropriate and I will split that range at fix it at three and half months.

Guilty plea

[40] You pleaded guilty before callover in this Court. Everyone agrees that you are entitled to the full 25 per cent discount available for an early guilty plea.

End sentence

[41] What all this means is that from a global starting point of two years and nine months' imprisonment I have reached an end sentence of 22 months' imprisonment.

[42] Given that this is what is described as a "short term of imprisonment" I am required to consider whether a less restrictive sentence than imprisonment would achieve the relevant purposes and principles of sentencing. The decision of whether to commute a sentence of imprisonment to one of home detention requires a detailed and nuanced analysis.⁶ To quote the Court of Appeal in a case called *Fairbrother v R*,⁷ it involves:

"... a considered and principled choice between the two forms of sentence, recognising that both serve the principles of denunciation and deterrence, and identifying which of them better qualifies as the least restrictive sentence to impose taking into account all the purposes of sentencing."

[43] A number of factors suggest to me that home detention does qualify as the less restrictive and appropriate sentence in your case. The pre-sentence report records that your risk of re-offending is assessed at low to medium. More importantly, the Department of Corrections' risk assessment tool calculates you as presenting an extremely low risk of re-offending. You have also expressed a willingness to be held accountable. That is a positive sign. I also note that you have been drug free for 15 months. Importantly, in my view, is the clear support that you have from your family, particularly your parents and children and your friends. That you have a strong support

⁶ *Ransom v R* [2010] NZCA 390, (2010) 25 CRNZ 163 at [41].

⁷ *Fairbrother v R* [2013] NZCA 340 at [30].

network around you will help you with your rehabilitation and reintegration. Finally, it is positive that the proposed home detention address is the same address where you completed 13 months EM-bail without incident. That address has been assessed as suitable for home detention and your friend has confirmed in writing her agreement for you to remain at the property.

[44] I do not overlook some countervailing factors which would ordinarily operate against the grant of home detention. Foremost amongst them is the nature of your offending. Methamphetamine, as I have touched on, is an appalling drug. Its addictive powers are well-known and the ravages and consequences of the harm it wrecks causes ripples which touch every corner of our society. The Courts have a duty to do what they can to dissuade the peddlers of this poison and when they can to signal their abhorrence to the trade by imposing hefty deterrent sentences. However, I am persuaded that such a course is neither in your best interests nor in the best interests of society. You are surrounded by those who love and support you and that factor, tied with the evidence that you present a low risk of re-offending gives me confidence to conclude that you are, indeed, committed to reintegration and rehabilitation.

[45] It is for those reasons I am satisfied that a sentence of home detention in your case is the correct result. In determining the length of that sentence I note that you spent 34 days on remand before you were granted bail. I factor that in and having done so I come to the conclusion that the appropriate sentence is one of 10 months' home detention.

[46] I impose the conditions referred to the pre-sentence report. In addition to those conditions it will be for the Department of Corrections to impose whatever other conditions it regards as appropriate. In particular, I consider your participation in a course such as the short rehabilitation programme referred to in the pre-sentence report. Courses of that sort will, I am sure, be beneficial.

Sentence

[47] Ms Julian would you please stand.

[48] On the representative charge of permitting your premises to be used for the manufacture of methamphetamine and the representative charge of supply of methamphetamine, I sentence you to 10 months' home detention on the conditions referred to at page 7 of the pre-sentence report.

[49] That sentence is to be served concurrently in respect of each charge. In other words, the final sentence is one of 10 months' home detention.

[50] Before you are released from Court this morning to start your sentence I hope you understand that the sentence I have imposed is a merciful one. It has been set because I have confidence that your prospects of making a positive change in your life are good. And they are good because, unlike so many men and women who come before this Court on drug-related charges, you have the support systems around you; your friends and your family who vouch for you and are prepared to support you in the challenging journey which lies ahead. They, more than anyone else, deserve your gratitude for you avoiding jail today. The rest is now up to you.

[51] Stand down.

Moore J