

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

**I TE KŌTI MATUA O AOTEAROA  
WHANGĀREI-TERENGA-PARĀOA ROHE**

**CRI-2021-088-002754  
[2024] NZHC 2292**

**THE KING**

v

**HERBERT RATA  
Defendant**

Hearing: 15 August 2024

Appearances: B M O'Connor, A J Goodwin for the Crown  
P K Hamlin, B A Mugisho for Mr Rata

Judgment: 15 August 2024

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**SENTENCING NOTES OF WHATAJ**

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Solicitors/Counsel:  
Marsden Woods Inskip Smith (Office of the Crown Solicitor) Whangarei  
Hamlin Law, Auckland

[1] Mr Rata, you have pleaded guilty to a charge for participation in an organised criminal group between February 2020 and 12 November 2021.

[2] I now sentence you for your offending.

### **Facts of the offending**

[3] Operation Freya was a joint Police and Customs exercise that detected various forms of methamphetamine and other drug related offending from March 2020 to 12 November 2021. Thirteen defendants were identified, including you, Mr Rata. All have pleaded guilty to various charges associated with this offending, which I will call collectively the enterprise.

#### *Overview*

[4] By way of overview, the enterprise included importation, manufacture and supply of methamphetamine and other illicit drugs. The importation involved 20 different illicit drug importations, including 16.9 kg of methamphetamine at 69 per cent purity. This amounted to 11.6 kg of pure methamphetamine. Customs also intercepted at least 2.547 kg of MDMA and 1.056 kg of pseudoephedrine (which could be used to manufacture 750 g of methamphetamine) in parcels bound for numerous Northland addresses. While the enterprise tried on numerous occasions to secure the materials needed to manufacture methamphetamine, only one manufacture was proven by police of about 400 g. Methamphetamine was also supplied by the enterprise, the most notably involving the supply of 14 ounces over four-day period in October, but the supply went for a longer period than that.

#### *Participation in organised criminal group*

[5] I mention this only as background because Mr Rata, you were not directly involved in this offending. Rather, you as a member of the Head Hunters were a passive member of this enterprise and received a financial kick back for providing the environment within which the enterprise operated. You also have unexplained income totalling \$100,166.87, including about \$16,915.69 in unknown deposits and \$9,780 in

cash deposits. You also had oversight of a prospect, Mr Ivan Watene, who was selling methamphetamine at a street level.

### **Sentencing**

[6] I turn now to the process I must follow for sentencing you. It is in three key steps:

- (a) first, I must set out what is called a starting point for a sentence of imprisonment;
- (b) second, I must then increase that starting point for any personal factors that raise further concerns about you, as well as take into account any reasons that justify a more lenient approach to your sentence; and
- (c) I must also at least consider giving you guilty plea discount.

[7] Throughout this process, I must be guided by the purposes and principles of sentencing, including the need to deter you and others who might offend like you, to denounce your behaviour, to protect the public and to provide for your rehabilitation.

#### *Starting point*

[8] Turning to starting point. Mr Rata, the Crown submits that the starting point for your offending should be four years six months to five years, highlighting your seniority within the Head Hunters, evidence of your enforcer role and evidence of your unexplained income in the relevant period. They say your offending is not directly comparable to most of the other defendants, as they were more involved in the day-to-day activities, but lower in the hierarchy. They also say you received some financial benefit that they did not.

[9] They also suggest that your position is similar to that of Ms Puru, who passively profited from the enterprise, though they add that given your role as providing the environment for the enterprise to operate, your offending was in fact worse.

[10] Your counsel Mr Hamlin submits that the proper starting point is two and half years. To support this, in addition to a number of cases he has cited, he refers to the starting points handed down to other participants, including Tupaea Kerr (22 months), Lynne Kilgour (two and half years), Ms Puru (four years), Iti Arama (three years), Jodie Kerr (two years) and Levi Tali (two and half years). He emphasises that while you are a patched member of the Head Hunters, you were only a passively a member of this enterprise. He also says rental and other fund raising during the relevant period explains the unaccounted-for deposits. He also submits that your offending is not like Ms Puru, who he says had a much closer relationship to Mr Kauri Kerr, stood to gain more and he refers the fact that other cases where lesser starting points were adopted provide a better reference point.

[11] I consider that a starting point similar to that of Ms Puru, of four years, is appropriate. It provides the closest reference point as it relates to the same enterprise. Also, like her offending, your offending was largely passive profiting from the group's activities. While Ms Puru may have had a closer relationship to Mr Kerr and stood to gain much and more than you, your supporting role as passive protection was arguably a more aggravating fact. I cannot be certain though of the level of your profit — it was certainly less than Ms Puru — but your unexplained income supports an inference that it was still many thousands of dollars. I consider that the suggestion your income was simply rental or fundraising to be fanciful.

[12] I also consider that your offending is comparable to the offending in *Fonua* who received a starting point of five years.<sup>1</sup> He was the secretary of a gang involved in methamphetamine dealings and passively profited from those dealings. His profits, however, were considerably greater than yours, receiving for example a car worth \$239,000. I am therefore satisfied that a starting point of **four years** is appropriate.

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<sup>1</sup> *R v Fonua* [2020] NZHC 3107.

*Step 2*

[13] The Crown also seeks an uplift of four months for the fact that you were on bail while the offending occurred. Your counsel submits only one month is needed to reflect this. I consider that a four-month uplift, or only **12 per cent**, is appropriate.

[14] I now turn to consider any discounts that might be appropriate. Your counsel seeks the following:

- (a) 15 per cent for background factors.
- (b) 15 per cent for rehabilitation and remorse.
- (c) 10 per cent for time in custody.
- (d) 10 months for time on EM bail.
- (e) 15–20 per cent for guilty plea.

*Background and rehabilitation*

[15] I am going to address background and rehabilitation together.

[16] As to your background, Mr Rata, you are 50 years old. You are of Ngāti Wai. A report provided for you comprehensively highlights the following matters as causative of your offending and I agree:

- (a) first, gang membership and entrenched anti-social behaviours from a young age;
- (b) second, drug addiction, especially methamphetamine abuse; and
- (c) thirdly, childhood trauma.

[17] You self-describe as being “brought up in pub carparks”, that it was normal to wait there for your father to finish drinking. You were abused by your father, and your

sister says that your father's pressure and negative influence drove you into gang life, and during your time at school you formed lifelong criminal connections. Notably, 13 of your classmates were in opposing gangs when you were imprisoned. You began using cannabis at the age of 11 and taking alcohol from your father at age 13, and you were introduced to cocaine in your final years at school.

[18] On the brighter side, you have a partner of six months, that is at the time of the PAC report's preparation, might be longer now. You also have three adult children and two mokopuna, and another on the way. You were initially disconnected from them when you separated from the children's mother, but you are now wanting to be more involved in their lives as you continue your journey of recovery.

[19] In this regard, your commitment to rehabilitation while on bail is acknowledged by the Crown. You have attended several rehabilitative programmes, including the AOD Education Group, Safe Man Safe Family, Man Up and the Salvation Army Church and Recovery Addiction group. There are multiple letters of support that show you have significant support within the community and have taken steps to turn your life around. I have also had the benefit of a presentation by Mr Phil Paikea and Mr Charles Hohaia today. Mr Phil Paikea of Safe Man Safe Family has great faith in you and your capacity to contribute to your community. Mr Hohaia has come to know you over the last six months. He believes that you have really changed from the person outlined in the summary of facts. He says you acknowledge your wrongdoing, which is important, and that you have much to offer the community in the future.

[20] The Crown, however, says that you continue to minimise your role in the offending and presented material that is said to show that you may have been acting in a manipulative way for the purposes of sentencing. It also says there is no clear connection between some of your rehabilitative efforts and your risks, and the Crown submits that it is not clear for example that you are addicted to drugs. There is also emphasis that it appears that you intend to remain committed to the Head Hunters. They say a five to 10 per cent discount for rehabilitation is sufficient.

[21] It is now well recognised that a childhood marked by deprivation, abuse, exposure to drugs and alcohol can be causally connected to criminality, to joining up with gangs, and this can lead to a life of criminality. This is relevant to you, Mr Rata. I think that your trajectory of travel has clearly been affected by your upbringing. Balanced against that, you were a mature man when you engaged in this offending, and this should be reflected in any discount afforded to you for background features. Having said that, your clear commitment to rehabilitation, the messages that have been given to me about you to having changed and the potential you provide to making a positive contribution to the community are strong factors in your favour. Indeed, you have clearly taken steps to entrench pro-social conditions into your life. This must be encouraged. I am therefore satisfied that you should be afforded a **15 per cent discount** for background and a **15 per cent discount** for rehabilitation. That is a combined discount of **30 per cent**.

*EM Bail and time in custody*

[22] I turn to the EM bail and custody periods. You spent 70 days in custody and have been on EM bail for two years seven months. Your counsel submits you should receive a discount of at least 10 months for this. The Crown says that no more than seven months should be given as you were not subject to strict bail conditions for a lengthy period and indeed you benefitted from reasonably relaxed bail conditions for an extended period. Breaches of bail are also noted, including a trip of nearly two hours. Against all of that, I am content to allow **nine months** or about one third as a discount. While the conditions relaxed over time that was largely to enable you to participate in rehabilitation programmes — which are to be encouraged — and the relatively minor breaches are not such as to warrant a punitive approach.

*Guilty plea*

[23] Turning to guilty plea, as with many of the defendants, your plea was made very late — almost two years after the charges were laid. Your counsel says that you indicated willingness to resolve in late 2022, and following a plea arrangement the charge of conspiring to manufacture was withdrawn. But in reality, that is apparent to me you engaged heavily in the pre-trial process rather than make any genuine offer of resolution as early as you possibly could have — and your plea did not come until

March 2024. Given this, I am content that a **five per cent** discount for guilty plea is appropriate.

[24] In the result, arithmetically, from a starting point of **four years and four months**, I apply a combined discount of **25 months**,<sup>2</sup> and arrive at a sentence of **two years and one month**.

[25] But I am not going to let that get in the way of what I think the right outcome here is in this case. You are deserving of a home detention sentence.<sup>3</sup> It would have been an easy enough matter to adjust percentages to arrive at two years — I have not for transparency reasons. But I also note that you did spend an extensive period on EM bail, and in fact a period in custody. So, I am prepared on that basis to arrive at an end sentence of two years so that I may assess the appropriateness of home detention. For completeness, the Crown submits that the nature of your offending is such that caution is needed in terms of a home detention sentence, but accepts that you are otherwise suitable for home detention.

[26] I am satisfied that you have made significant strides in the rehabilitation process and it is clearly evident that you have the support of the community here, so that the case for home detention is compelling. You have already served an extended period with only minor breaches, so the suitability of the address for EM bail is not an issue and I also note that your PAC report recommends home detention. On that basis, please stand, Mr Rata.

[27] On the charge of participation in an organised criminal group, I sentence you to **12 months' home detention**. You may stand down.

Whata J

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<sup>2</sup> As I explained to counsel after sentence, I noted the reference to 25 months was wrong. The total discount was 27.2 months. The end calculation remained the same.

<sup>3</sup> As noted in *Moses v R* [2020] NZCA 296, [2020] 3 NZLR 583 at [49], the ultimate issue is whether the sentence is a just one in all of the circumstances.