

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

CRI 2006-063-4690

THE QUEEN

v

WILLIAM JOHN MELVIN HOWELL

Hearing: 30 May 2008
Counsel: R Bird for Crown
JN Briscoe for Prisoner
Judgment: 30 May 2008

SENTENCING NOTES OF RODNEY HANSEN J

Solicitors: Gordon Pilditch, P O Box 740, Rotorua for Crown
Davys Burton, P O Box 248, Rotorua for Prisoner

[1] Mr Howell, you appear for sentence having pleaded guilty to a charge that between 24 October and 13 November 2006 you conspired to manufacture a Class A drug, namely, methamphetamine.

Background

[2] The charge arose out of an abortive attempt to manufacture methamphetamine. You were brought to Rotorua from Nelson to assist in the manufacture, which was organised by two men who were actively engaged in dealing in methamphetamine, either purchased or manufactured by themselves. You had some experience in the area.

[3] One of the group arranged to rent a holiday home where the first stage of the process was carried out, which was the extraction of ephedrine from pharmaceuticals containing pseudoephedrine. You then went to the home of one of the principals to complete the process. That was unsuccessful and ultimately the product was burned. You and one of the others involved were stopped as you were leaving Rotorua and questioned. You gave the police a full account of what happened.

Personal circumstances

[4] You are a 37-year-old man currently living in lodgings in Auckland. I am told that you have no dependants, although you have a partner who is here in Court to support you today.

[5] You had a childhood which you describe as dysfunctional and unhappy. You said you were given easy access to drugs and alcohol. By the age of fourteen you were addicted to drugs. You left school without qualifications but qualified as a mechanic and have worked in that field, as I understand it. But you have been dogged by drug and alcohol dependency since you were an adolescent.

[6] Your record discloses a total of 38 convictions, many, if not most, for alcohol and drug-relating offending. Until recently your drug offending was mainly for the cultivation and use of cannabis. It escalated in seriousness to the possession of morphine in 2005 and a methamphetamine conviction in 2006.

[7] You have frankly acknowledged your addiction and early last year you took positive steps to address it by commencing a residential programme at Odyssey House. In the course of a year you moved through to the last stage of the programme known as Level Four Re-entry. That, according to a report from Odyssey House, signifies the final step of the reintegration process and is attained only when successful movement to one of Odyssey House's approved transitional facilities is completed and stabilisation of selected employment has been demonstrated. It denotes that the individual must have the capacity to function responsibly and meet commitments in a manner reflective of the wider general community. You have achieved that. You had obtained fulltime employment as a small engines mechanic and, when this report was written on 10 April, you were said to be a motivated and diligent member of that workplace.

[8] Sadly, you fell at this, the final hurdle, confirming what I hardly need to tell you and that is that a former addict must ever remain vigilant. You used methamphetamine and, as a result and automatically I think, you were discharged from the programme. However, to your great credit, within a matter of days you contacted Odyssey House and engaged fully into the programmes that they were offering. Since then, you have attended weekly at a support group there and at one-to-one sessions. The support worker at Odyssey House has reported that this indicates that you are committed to your rehabilitation and have a strong desire to live an addiction-free existence. It also records that Odyssey House is willing to work with you in maintaining that goal.

Sentencing options

[9] These are the circumstances in which I have to consider a sentence which, as you will have understood I am sure, invariably in cases involving serious Class A drug offending, leads to a prison sentence. The case of *R v Fatu* [2006] 2 NZLR 72

(CA), does not directly address sentencing bands for conspiracy to supply or conspiracy to manufacture. Sentencing for manufacturing methamphetamine is provided for in [43] of *Fatu*. The band applicable to your offending is band 2, involving the manufacturing of quantities up to 250 grams. A sentence of 4 to 11 years imprisonment is stipulated.

[10] In general terms, the range appropriate to a substantive offence should be adjusted by some 30% in conspiracy cases: see the discussion in *R v Johnson* HC WHA CRI 2006-088-001233 27 September 2006, and also *R v Savage* HC WHA CRI 2005-029-1267 21 July 2006. However, as those and other cases have emphasised, the actual starting point must be set having regard to the culpability of the offender, the nature and scope of the conspiracy and the nature of the offender's role in the conspiracy.

[11] These considerations lead me to conclude that were I to impose a prison sentence, the appropriate starting point would be at the bottom of the range or three years for this charge of conspiracy. That is justified, in my view, because although this was plainly a commercial endeavour, there is little to indicate the scale of the undertaking and your role was plainly a secondary one. Indeed, it is clear from the material placed before me by Mr Briscoe, that in many ways you were a reluctant participant and at quite an early stage you attempted to withdraw.

[12] Taking into account your guilty plea, your remorse which is plainly genuine, your cooperation with the police, and the prospects of rehabilitation that I have already fully discussed, an appropriate prison sentence would be two years.

[13] While, as a general rule, there is a presumption in cases involving Class A drugs that a sentence of imprisonment should be imposed, in exceptional cases and I am satisfied this is one of them, there is room to explore community-based options. You have demonstrated a genuine commitment to rehabilitation and, despite the recent setback, a desire to build on what you have achieved. You have a job. You have achieved a measure of stability in your life and, on that basis, Mr Briscoe - responsibly if I may say so supported by Mr Bird for the Crown - argues for a community-based sentence involving a period of intensive supervision.

[14] A sentence of intensive supervision may be imposed when the Court is satisfied that such a sentence would reduce the likelihood of further offending through the rehabilitation and reintegration of the offender and the nature of the offender's rehabilitation or other needs requires the imposition of conditions for a period longer than twelve months or conditions that are not available through a sentence of supervision.

[15] I am satisfied that those conditions are satisfied. I consider that a term of intensive supervision would significantly reduce the likelihood of reoffending and I also am satisfied that the conditions that would be attached are required for a period longer than twelve months and are not available in a sentence of supervision.

[16] I also take the view, however, that some further punitive measure is required in order to denounce your offending and as a deterrent measure and, for that reason, I also propose to impose a sentence of community work.

Sentence

[17] The sentence I impose on you is, first, intensive supervision for a period of 18 months. That sentence will be subject to the standard conditions set out in s 45F of the Sentencing Act 2002 and to the following special conditions:

- a) You are to continue counselling and treatment for drug and alcohol abuse at Odyssey House.
- b) You are to undertake such psychological and other counselling as considered appropriate by the probation officer.
- c) You are not to consume alcohol or non-prescription drugs.

In addition, I sentence you to a term of 200 hours community work.

Concluding remarks

[18] Mr Howell, I can only commend you for the steps that you have already taken to rehabilitate yourself. That requires a high degree of courage and commitment. I trust that with the support of others who are close to you and that is provided through the sentence I have imposed on you, you will be able to become free of your addictions and liberated to live a much happier and more constructive life. You may stand down.