

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

**I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-Ā-TARA ROHE**

**CRI-2017-091-000902
[2018] NZHC 1520**

THE QUEEN

v

WILLIAM ALLAN BERKLAND

Counsel; E M Light for Crown
C W J Stevenson for Defendant

Sentence: 22 June 2018

NOTES ON SENTENCE OF COLLINS J

Introduction

[1] Mr Berkland, you appear for sentence in relation to 14 charges:

- (1) one representative charge of supplying methamphetamine;¹
- (2) one representative charge of possession of methamphetamine for supply;²
- (3) two charges of possession of methamphetamine for supply;³

¹ Misuse of Drugs Act 1975, s 6(1)(c) and (2)(a); and Crimes Act 1961, s 66(2); maximum penalty life imprisonment.

² Misuse of Drugs Act 1975, s 6(1)(f) and (2)(a); and Crimes Act 1961, s 66(2); maximum penalty life imprisonment.

³ Misuse of Drugs Act 1975, s 6(1)(f) and (2)(a); and Crimes Act 1961, s 66(2); maximum penalty life imprisonment.

- (4) two representative charges of offering to supply methamphetamine;⁴
- (5) one charge of conspiracy to supply methamphetamine;⁵
- (6) one representative charge of supplying NBOMe (a Class B controlled drug – sometimes described as a “psychedelic” drug);⁶
- (7) one representative charge of offering to supply NBOMe;⁷
- (8) one representative charge of possession of NBOMe for supply;⁸
- (9) one charge of possession of cannabis for supply;⁹
- (10) one charge relating to the possession of Diazepam for supply;¹⁰
- (11) one charge of cultivating cannabis;¹¹
- (12) one representative charge of unlawfully possessing a firearm;¹²
- (13) one representative charge of unlawfully possessing ammunition;¹³ and
- (14) one representative charge of unlawfully possessing a taser.¹⁴

[2] You pleaded guilty to these charges following a sentence indication on 20 April 2018.¹⁵

⁴ Misuse of Drugs Act 1975, s 6(1)(c) and (2)(a); maximum penalty life imprisonment.

⁵ Misuse of Drugs Act 1975, s 6(2A)(a); maximum penalty 14 years’ imprisonment.

⁶ Sections 6(1)(c) and (2)(b); maximum penalty 14 years’ imprisonment.

⁷ Sections 6(1)(c) and (2)(b); maximum penalty 14 years’ imprisonment.

⁸ Sections 6(1)(f) and (2)(b); maximum penalty 14 years’ imprisonment.

⁹ Sections 6(1)(f) and (2)(c); maximum penalty eight years’ imprisonment.

¹⁰ Sections 6(1)(f) and (2)(c); maximum penalty eight years’ imprisonment.

¹¹ Sections 9(1) and (2); maximum penalty seven years’ imprisonment.

¹² Arms Act 1983, s 45; and Crimes Act 1961, s 66(2); maximum penalty four years’ imprisonment.

¹³ Arms Act 1983, s 45; and Crimes Act 1961, s 66(2); maximum penalty three years’ imprisonment.

¹⁴ Arms Act 1983, s 50; and Crimes Act 1961, s 66(2); maximum penalty four years’ imprisonment.

¹⁵ *R v Berkland* [2018] NZHC 753.

[3] This afternoon I shall:

- (1) set out your offending;
- (2) outline the appropriate starting point for that offending;
- (3) explain the adjustments that may be made to the starting point; and
- (4) provide you with your final sentence.

Offending

[4] The charges result from a police operation code-named “Operation Walnut” which commenced in November 2016. That investigation targeted the commercial supply of methamphetamine in the Wellington region.

[5] A surveillance device warrant allowed police to intercept private communications and carry out visual surveillance of two principal targets, yourself and Mr Blance. You were purchasing kilogram quantities of methamphetamine from Auckland-based suppliers. You and Mr Blance would then on-supply the methamphetamine to a number of associates in your distribution networks. Most of the offending took place at an address in Coates Street, Tawa. Associates would then on-supply the methamphetamine to others.

[6] You were the right-hand man to Mr Blance, who was in charge of the operation. You ran the supply network and were in charge of counting and concealing large amounts of cash earned from the methamphetamine sales. In addition, you had your own customer base to whom you would sell controlled drugs.

[7] The Coates Street address was heavily fortified, including reinforced steel doors, purpose made hiding cavities and a sophisticated CCTV system. There was also an electric beam sensor installed to alert you and Mr Blance of any visitors to the car pad outside of the address.

[8] During the period police were intercepting communications, over 700 people visited the Coates Street address. It is estimated that you and Mr Blance supplied an average of approximately one kilogram of methamphetamine each week. Individual supplies ranged from less than a tenth of a gram to multiple units of 28 grams at a time. The methamphetamine was sold for between \$500 and \$600 per gram, or between \$12,000 and \$14,000 per 28 gram unit.

[9] The police investigation established that you and Mr Blance purchased at least 15 kilograms of methamphetamine, worth at least \$5,250,000. This amount was then supplied to your customers during the investigation period, resulting in an estimated profit of more than \$1,575,000. Police identified over 100 separate supplies of methamphetamine at the Coates Street address during the undercover phase of the operation.

[10] Some of your customers were drug dealers in their own right, and purchased methamphetamine for the purpose of on-supplying it. Interactions with these customers, who are your co-defendants, form the basis of the conspiracy charges.

[11] The summary of facts provides details of specific instances of your offending, namely:

- (1) on 3 March 2017, you came into possession of no less than two kilograms of methamphetamine after purchasing it from two defendants who are still awaiting trial; and
- (2) on 16 March 2017, you came into possession of no less than four kilograms of methamphetamine after purchasing it from the same two defendants.

[12] During the investigation police deployed undercover officers, revealing the following specific instances of offending by you:

- (1) on 21 February 2017, you offered to supply approximately 200 “tabs” of a drug called NBOMe to an undercover officer, and then supplied the officer with four tabs;
- (2) on 28 February 2017, you offered to supply 100 tabs of the same drug to an undercover officer; and
- (3) on 1 March 2017, you supplied 100 tabs to the undercover officer, and you were also found to be in possession of a further 300 tabs of that same drug.

[13] At the termination of the police investigation on 11 and 12 April 2017, search warrants were executed at several properties relating to the drug operation. During those searches, police found the following:

- (1) approximately three kilograms of methamphetamine;
- (2) numerous firearms, including two pistols, two rifles and a number of shotguns (along with nine air rifles, nine air pistols and a home-made pen gun);
- (3) ammunition of various calibres, including blank rounds adapted to fire projectiles;
- (4) one taser;
- (5) two mature cannabis plants and various harvested cannabis head material;
- (6) 250 milligrams of Diazepam; and
- (7) 20 NBOMe tabs.

Previous offending

[14] You have 19 previous convictions (four of those were in the Youth Court), including four for drugs offending, all relating to cannabis. Three of those convictions are possession related, while the final conviction was for cultivating (that was in the Youth Court). The most recent of these convictions is from 2003. The remainder of your convictions mostly consist of dishonesty and traffic offences.

Starting point

Methamphetamine charges

[15] There is a presumption in favour of imprisonment for Class A drug dealing offending.¹⁶

[16] The Court of Appeal's decision in *R v Fatu* is the leading sentencing guideline judgment for offending involving the supply of methamphetamine.¹⁷ Your offending falls within sentencing band four, which provides that the supply of very large commercial quantities of 500 grams or more warrants a starting point of between ten years' and life imprisonment.¹⁸

[17] In setting the appropriate starting point, I have taken into account the following aggravating features of your offending:

- (1) *Premeditation and planning.*¹⁹ A significant degree of premeditation and planning is inherent in your activities. The summary of facts indicates that you were running a thoroughly sophisticated operation, including surveillance and fortifications at the Coates Street address, the possession of weapons and a network of associates acting as informants and on-suppliers of methamphetamine.

¹⁶ Misuse of Drugs Act 1975, s 6(4)(a).

¹⁷ *R v Fatu* [2006] 2 NZLR 72 (CA).

¹⁸ At [34].

¹⁹ Sentencing Act 2002, s 9(i).

- (2) *Number and frequency of supplies/sales.*²⁰ I have outlined your numerous instances of offending, uncovered through the investigation. More than 100 supplies are said to have been made by you in your capacity as part of the organisation during the undercover phase of the operation alone. You are personally said to have supplied undercover officers on 11 occasions. Your offending occurred during a period of over six months, with over 700 people having allegedly visited the Coates Street address. This includes repeat customers, many of whom visited the address several times a day.
- (3) *Amount of methamphetamine.*²¹ The Crown says that much more methamphetamine was involved, but for the purposes of sentencing you, I proceed on the basis that 15 kilograms is the amount that is involved. That amount nevertheless sits at the extreme end of band four in *R v Fatu*, and appears to be one of the largest quantities of methamphetamine involved in this Court at least.
- (4) *Commercial gain.*²² It is clear from the summary of facts that you sold and supplied methamphetamine for profit. Police estimate your profit at being over \$1,575,000 for the period of the investigation. Commercial gain is a relevant aggravating factor in your circumstances.

[18] In terms of your role in the overall operation, you were one of the key offenders. You were Mr Blance's right-hand man, responsible for the operation in his absence and responsible for counting and concealing the cash earned from sales. You also had your own customer base, to whom you would supply other controlled drugs.

[19] To ensure consistency in sentencing,²³ I note that three of the other co-offenders from Operation Walnut were previously sentenced:

²⁰ Sentencing Act 2002, ss 8(a) and (b); 9(d).

²¹ Section 8(a) and (b), *R v Fatu*, above n 17.

²² *R v Fatu*, above n 17, at [32].

²³ Sentencing Act 2002, s 8(e).

- (1) Mr McGoldrick-Savaii was sentenced for methamphetamine offending involving 83.5 grams. A starting point of five years and six months' imprisonment was adopted.²⁴
- (2) Ms Waiariki was sentenced for methamphetamine offending involving 36.1 grams. A starting point of four years' imprisonment was adopted in her case.²⁵
- (3) Ms Svenson was sentenced on one charge of supplying methamphetamine and one charge of conspiracy to supply methamphetamine. The total amount involved in her case was 15.45 grams. A starting point of three years' imprisonment was adopted.

[20] Counsel have not been able to find comparable cases that also did not involve importing or manufacturing. The closest cases that have been found relating to supply alone are:

- (1) *Murray v R* – Ms Rose was sentenced for methamphetamine offending involving 8.44 kilograms over a period of four years, alongside firearms charges. A starting point of 18 years' imprisonment was adopted, and upheld on appeal.²⁶
- (2) *R v Rodgers* – Mr Rodgers was sentenced for methamphetamine offending involving 1.68 kilograms of pure methamphetamine, alongside cannabis, money laundering and dishonesty charges. Mr Rodgers was the leader of the operation. A starting point of 17 years' imprisonment was adopted with respect to the methamphetamine charges.²⁷

²⁴ *R v McGoldrick-Savaii* [2018] NZHC 233.

²⁵ *R v Waiariki* [2017] NZHC 2771.

²⁶ *Murray v R* [2014] NZCA 189.

²⁷ *R v Rodgers* [2012] NZHC 2296.

- (3) *R v Zhou* – Mr Zhou was sentenced for methamphetamine offending involving a quantity of 3.77 kilograms. Mr Zhou was a major distributor who purchased from the “main linchpin” of the group. A starting point of 20 years’ imprisonment was adopted and upheld on appeal.²⁸
- (4) *R v Huang* – Mr Wei (a co-accused with Mr Zhou) was sentenced for methamphetamine offending involving 4.3 kilograms. He was partially responsible for initiating a New Zealand operation for a drug lord in China. A starting point of 20 years’ imprisonment was adopted.²⁹

[21] Mr Stevenson has previously referred me to some recent cases involving the importation of methamphetamine, which involved quantities closer to your case:

- (1) *R v Le’Ca* – Mr Le’Ca was sentenced for importing 14.9 kilograms of methamphetamine, alongside charges of possession of methamphetamine and cocaine for supply. He played a senior importation role in that operation. Possession of methamphetamine was treated as the lead charge, with a starting point of 18 years’ imprisonment being adopted, with a two-year uplift for the importing charge.³⁰
- (2) *R v Uputaua* – Mr Uputaua (a co-accused with Mr Le’Ca) was sentenced for possessing 14.9 kilograms of methamphetamine for supply, alongside charges of attempting to import methamphetamine and possession of cocaine. Mr Uputaua was not a main player in the organisation. He was described as a “catcher”. A starting point of 15 years’ imprisonment was adopted for the possession of methamphetamine charge.³¹

²⁸ *R v Zhou* [2009] NZCA 365.

²⁹ *R v Huang* HC Auckland CRI-2006-019-8458, 8 May 2009.

³⁰ *R v Le’Ca* [2018] NZHC 274.

³¹ *R v Uputaua* [2017] NZHC 2320.

[22] In your case, the Crown has previously submitted a starting point of between 20 to 22 years' imprisonment is appropriate.

[23] I consider that your offending is similar to that of Ms Rose in *Murray* and that of Mr Le'Ca.

[24] The Crown accepts your culpability is less than that of Mr Blance, and that a lower starting point is warranted, although the Crown contends that the difference is only slight.

[25] Mr Stevenson submits that you were nothing more than an assistant, well below Mr Blance in terms of hierarchy. He has previously referred to intercepted communications showing that you mostly sold gram amounts, and that you did not have the authority to lower the price and that Mr Blance controlled your income.

[26] As I have previously said, I consider the actual position is somewhere between those advocated by Mr Stevenson and those by Ms Light. It does appear that you acted on behalf of Mr Blance on several occasions and that you had significant responsibilities within the organisation. You are described as being Mr Blance's "right hand man", and I think that that is an apt description of your culpability and it is the basis upon which I sentence you.

[27] Methamphetamine is a dreadful drug, which causes significant harm to individuals and to the community. The courts have consistently adopted starting points which reflect the harm caused by methamphetamine. Consistent with this approach and with other authorities,³² I consider a starting point of 16 and a half years' imprisonment is appropriate for the methamphetamine charges.

Other charges

[28] The Crown submits that an uplift of one year is appropriate to account for the firearms and dishonesty charges, citing in support of that the *Rose* case to which I have

³² *R v Le'Ca*, above n 30; *R v Uputaua*, above n 31; *Murray v R*, above n 26; *R v Rodgers*, above n 27; and *R v Huang*, above n 29.

previously made reference.³³ It also submits that the Class B and C drug offending warrants an additional uplift of one year.

[29] In *Mills v R*, the Court of Appeal explained that uplifts of 12 to 18 months are appropriate for firearms offending associated with drug dealing.³⁴

[30] I am satisfied that an uplift of one year in total appropriately reflects your other offending, and that uplift would not in my assessment violate the totality principle.

[31] This results in a total starting point of 17 and a half years' imprisonment.

Adjustments to the starting point

Personal aggravating factors

[32] The Crown accepts the age of your previous convictions does not warrant any uplift for your previous conviction.

Personal mitigating factors

[33] At your sentence indication I left open the possibility of further reducing your sentence if there was appropriate evidence of personal mitigating factors that could justify a reduction in your sentence. It has been said on occasions that personal mitigating factors count for little when sentencing serious drug offenders. Section 9 of the Sentencing Act however, requires the Court to take into account a number of personal mitigating factors when sentencing a defendant and this applies to those who are convicted of serious drug offences. Factors which can be taken into account, include a defendant's health and the steps that they have taken towards rehabilitation.

[34] I have read the report prepared by Mr Kilioni, an addiction therapist, who notes that you are likely to have a dependency on methamphetamine, a diagnosis which is consistent with your statements about your motives for offending. I have also had regard to the submissions contained in the letter from your partner.

³³ *R v Rose* [2013] NZHC 1380 at [43]-[46].

³⁴ *Mills v R* [2016] NZCA 245 at [18].

[35] Consistent with my approach in Mr Blance's case, I will give you a small discount to reflect your personal mitigating factors. That discount will be six months. I have reflected on the possibility of providing a further discount for your approach to forfeiture. I agree however with Ms Light that it is not possible for me to provide you with a discrete discount in relation to your approach to forfeiture in light of the Court of Appeal's decision in

Guilty plea

[36] You did not enter a guilty plea at the earliest possible opportunity, with disclosure having been completed in October 2017. Before providing my sentencing indication, Mr Stevenson submitted that you should be entitled to the full 25 per cent discount because of the enormous amount of material involved in this case, and because of some of the challenges that you have had in absorbing that material and with difficulties in assessing that material whilst in prison. I accepted that there was a three-month period before trial when you entered your guilty pleas, and I therefore indicated that I would be prepared to allow a discount slightly above 20 per cent, which would take into account the difficulties that Mr Stevenson stressed on your behalf.³⁶ I give you that discount now, which amounts to three years and nine months.

Minimum period of imprisonment

[37] The Crown submits that a minimum period of imprisonment of 50 per cent is appropriate in your case, in order to denounce your conduct and to deter others from committing similar offending. I do agree with the Crown's submission that the criteria for imposing a minimum period of imprisonment has been clearly established in your case. I therefore intend to sentence you to a minimum period of imprisonment of six years and six months in order to denounce your conduct, protect the community from you and hold you accountable for the harm you have caused by your offending.³⁷ That minimum period of imprisonment is slightly less than 50 per cent of the end sentence.

³⁵ *Henderson v R* [2017] NZCA 605.

³⁶ *R v Hessel* [2010] NZSC 135, [2011] 1 NZLR 607.

³⁷ Sentencing Act 2002, s 86(2)(a), (b) and (d).

Result

[38] Mr Berkland, please stand.

[39] In relation to the one representative charge of supplying methamphetamine, the one representative charge of possession of methamphetamine for supply, the two charges of possession of methamphetamine for supply and the two representative charges of offering to supply methamphetamine, I am sentencing you to 13 years and three months' imprisonment.

[40] On the conspiracy charge I am sentencing you to 10 years' imprisonment.

[41] On the three other drugs charges that carry a maximum penalty of 14 years' imprisonment, I sentence you to 10 years' imprisonment.

[42] On the drugs charges that carry a maximum penalty of eight years' imprisonment, I sentence you to five years' imprisonment.

[43] On the one charge of cultivating cannabis, I sentence you to three years' imprisonment.

[44] On the Arms Act charges, I sentence you to one year imprisonment.

[45] All of these sentences will be served concurrently, meaning that your end sentence is one of 13 years and three months' imprisonment.

[46] As indicated, I will impose a minimum period of imprisonment of six years and six months' imprisonment.

[47] I also make an order for the destruction of property, namely the drugs-related utensils and paraphernalia and items including cell phones and CCTV systems used to facilitate the drug offending and the destruction of all controlled drugs seized and any firearms and air guns and ammunition that cannot be returned to their rightful owner or owners.

[48] You may now stand down.

Solicitors:
Crown Solicitor, Wellington

D B Collins J