

**IN THE DISTRICT COURT
AT HAMILTON**

**CRI-2016-019-001321
[2017] NZDC 13071**

THE QUEEN

v

EPELI LIVAI NUKU

Hearing: 19 June 2017

Appearances: D McWilliam for the Crown
W Dollimore for the Defendant

Judgment: 19 June 2017

NOTES OF JUDGE R L B SPEAR ON SENTENCING

[1] Epeli Nuku, you are for sentence on the following charges:

- (a) Charge 1 Possession of methamphetamine for supply.
- (b) Charge 2 Supplying methamphetamine.
- (c) Charge 3 Offering to supply methamphetamine.
- (d) Charge 4 Selling cannabis.
- (e) Charge 5 Offering to sell cannabis.
- (f) Charge 6 Possession of two glass bongs for smoking methamphetamine.

(g) Charge 7 Driving when forbidden.

(h) Charge 8 Resisting police.

[2] You are charged jointly with one Carly Jennifer Langdon in respect of charge 1 (Possession of methamphetamine for supply) which indeed I take as the lead charge for this sentence. Ms Langdon went to trial on that charge before me in May with a jury and was found guilty of that charge.

[3] This case against you has come before me today primarily intended to be a disputed facts hearing and that is because there was a dispute indicated by you as to whether all the methamphetamine found that particular night by the police belonged to you, whether it belonged to both yourself and Ms Langdon, or whether the majority of it was in fact Ms Langdon's property. Matters have been resolved today so we do not have to deal with that indicated dispute and you accept that all the methamphetamine that was found by the police that evening can be appropriately taken as in the joint possession of both yourself and Ms Langdon.

[4] On that basis, it is unnecessary to proceed with a disputed facts hearing as Mr Dollimore has acknowledged accordingly. I should point out that this resolution has been achieved in conjunction with a sort of preliminary sentence appraisal which has also been discussed with you, and Mr Dollimore has confirmed to me that it is acceptable except for the driving offences which really are of little consequence.

[5] On 7 March last year, you were the driver of a green Audi motor vehicle and you attracted the attention of the police. You were followed by the police. You drove into your property at [address deleted] in Hamilton. The police approached you, ascertained that you were driving when forbidden and wanted on an outstanding warrant. When they arrested you, you took a zip lock bag containing 6.21 grams of methamphetamine from your pocket and threw it towards Ms Langdon who had by that stage got out of the passenger door and was walking around the front of the vehicle towards the house. That appeared to be methamphetamine and so a search was then commenced.

[6] Another ziplock bag of methamphetamine was found in a handbag of sorts in the passenger foot well of the car where Ms Langdon had been sitting. She was eventually searched and a substantial quantity of methamphetamine was located in her underpants.

[7] I understood that the dispute that I was to resolve today was whether the methamphetamine found in Ms Langdon's possession was also to be considered as being in your possession at that time rather than just that one bag you threw away.

[8] Ms Langdon was found in possession of a total of 48.7 grams of methamphetamine, seven grams in the small handbag and 41.7 grams in the six zip lock bags that were in her underwear. Her defence at the trial really amounted to an admission of possession as it was abundantly clear, even if her explanation was accepted, that she was in knowing possession of this methamphetamine and that she was hiding it from the police for you. It is unnecessary to resolve that issue as I am quite satisfied that both of you were in this together but in any event you are to be sentenced on the basis that all the methamphetamine found was in your joint possession for the purposes of this particular set of charges.

[9] Equally, of course, and as specified in the summary of facts the police also found in the car \$960 in cash, a set of digital scales, and two pipes for smoking methamphetamine. Your cellphone was analysed by the police pursuant to a production order. It revealed 71 instances between 10 February and 7 March 2016 that you offered to supply methamphetamine. Forty nine of those offers revealed an amount of 19.45 grams was being offered for sale. There were also 22 instances of actual supply of methamphetamine with 14 of those supplies revealing a total amount of 4.55 grams of methamphetamine actually supplied.. There were seven instances of offering to supply cannabis with an identifiable quantity of three grams and one occasion where the cannabis was supplied but no quantity was able to be identified.

[10] What is abundantly clear from the material that has been provided to me including the pre-sentence report, your conviction history, the submissions from counsel and the letters that have been prepared from you and also from your mother,

is that you have a long-term methamphetamine addiction and the way that you have funded that addiction has been by dealing that same drug. That is exactly the life that you have either chosen or has chosen you by your poor decisions that you have made.

[11] One of the difficulties that is faced by someone who says, "*I only did this because I had this heavy addiction,*" is that of course you simply create the opportunity for others to become addicted as well and to follow you in your downward spiral of life; because that is exactly what it is. The only people who benefit out of drug dealing are those drug dealers who do not use, with that being an opinion I have formed over many years of dealing with cases such as this.

[12] It is abundantly clear that you fall into the second band in the leading authority of *R v Fatu*¹ and as such a starting point of between three years and nine years' imprisonment is to be considered.

[13] The Crown submissions are to the effect that a sentence starting point of four to four and a half years is appropriate before consideration of aggravating and mitigating factors.

[14] You have previous convictions. A number for possession of methamphetamine but also for various other offences.

[15] I start at four years three months to take account of the totality of the offending before an uplift for your previous convictions to an offending end point of five years' imprisonment. That is the observation that I made earlier. Mr Dollimore has discussed with you and there is no issue taken by you with it.

[16] What then can be said about mitigation? You say that you are remorseful and you have written a letter to me and you want me know that you are very sorry for all the trouble that you have caused. You say that you take responsibility for your offending. The difficulty I have with that relates primarily to your list of previous

¹ *R v Fatu* [2006] 2 NZLR 72 (CA)

convictions and the fact that you have been a person heavily involved in the drug sub-culture for many years.

[17] You have six previous convictions for drug-relating offending of which five are for dealing charges and two of those are in fact for dealing in methamphetamine. That clearly warrants an uplift and I consider that an uplift that brings it up to five years is appropriate.

[18] I accept that you are a drug addict. I accept that you have been funding your lifestyle and your habit by drug dealing but that cannot lessen the seriousness of this offending. What is required here is a deterrent sentence, one that tries to convince you that no matter how tempting it is to fund your habit with drug dealing it is not worth the risk. Additionally, the Courts must be consistent in the approach they are taking with drug dealing. Your drug dealing offences involving methamphetamine carry with it a maximum penalty of life imprisonment. I do not consider that you are in the big league that we would consider such a sentence but if you come back to Court after you are eventually released and you are convicted again of dealing with methamphetamine then you will be looking at a seriously long sentence. You should be in no doubt about that.

[19] As to remorse, I question that. I think that the only way that can be measured accurately and assessed appropriately is over a period of time to see how committed you are to your rehabilitation. I hope that you are able to maintain that resolve but in the end that is up to you. I leave it for the Parole Board to make that assessment. I join with the probation officer with the hope that you will be able to get into a residential drug rehabilitation programme because that is something that is sorely needed by you.

[20] As for the credit for your guilty plea, I note that you initially pleaded guilty on 20 October 2016 to charge 8 which is resisting police and indicated a plea of guilty on charge 7 which is driving while forbidden. Your pleas of guilty to all the drug dealing charges did not take place until 12 April 2017. That was after the case had been set down for trial. You are entitled to some credit for that because it certainly saved the state the cost of having to have a trial on all these matters in

respect of you and I fix that at 15 percent which amounts to nine months credit against the sentence that would otherwise be imposed.

[21] The all up sentence for you will be one of four years, three months' imprisonment.

Sentence

[22] Taking charge 1 as the lead charge, you are sentenced to four years three months' imprisonment.

[23] Charges 2 and 3, three years' imprisonment.

[24] Charges 4 and 5, two years' imprisonment.

[25] Charge 6, one year's imprisonment.

[26] Charges 7 and 8, convicted and discharged.

[27] There is an order for confiscation of the cash amounting to \$960 and destruction of all drug paraphernalia.

Judge RLB Spear
District Court Judge

Date of authentication: 04/08/2017
In an electronic form, authenticated pursuant to Rule 2.2(2)(b) Criminal Procedure Rules 2012.