

**IN THE DISTRICT COURT
AT PALMERSTON NORTH**

**CRI-2016-054-000949
[2018] NZDC 1234**

THE QUEEN

v

MICKAL JAMES HAMMOND

Hearing: 25 January 2018
Appearances: J Harvey for the Crown
S Lance for the Defendant
Judgment: 25 January 2018

NOTES OF JUDGE S B EDWARDS ON SENTENCING

[1] Mickal James Hammond, you are for sentence on a number of drugs charges and charges of unlawful possession of a pistol and ammunition. The most serious of the drugs charges are two charges of possession of Class B drugs for supply, those are the drugs GBL and ecstasy.

[2] These charges were all offences committed in Palmerston North. You are also for sentence on a charge from Auckland for possession of cannabis for supply. That charge dates back to 10 August 2015 when you were stopped driving in Auckland city and around 11 ounces of cannabis was found in the car you were driving.

[3] On 13 April 2016, police executed a search warrant at the Palmerston North address where you were living with a number of others. They noted an extensive

CCTV surveillance and security system was operating. In the bedroom you occupied, they found a black carry case which contained just over 1.2 kilograms of MDMA, commonly known as ecstasy, 285.5 grams of the Class B controlled drug, gamma-Butyrolactone also known as GBL or fantasy, in a Powerade sports drink bottle and approximately 212 grams of cannabis plants packaged in a separate plastic bag.

[4] The police also found 11.8 grams of the Class A controlled drug methamphetamine. This was contained in a number of small zip lock bags also found in your bedroom. The charge that you are for sentence on in relation to the methamphetamine is possession simpliciter because the prosecution accept that it was for your personal use.

[5] Around 16.6 grams of cannabis oil was also found in a container in your bedroom. Inside the wardrobe in the bedroom, police found a modified .22 calibre pistol with a Hushpro silencer and a modified .22 calibre magazine loaded with live rounds. Two additional magazines loaded with live rounds were found elsewhere in the bedroom.

[6] An additional two cases found on the floor of the bedroom, near to the case which contained the drugs, contained cash in individual wads of different denominations. The total amount of cash was \$398,700. A number of cellphones and sim cards were also found, together with digital scales which bore traces of both methamphetamine and MDMA.

[7] It was accepted at the sentence indication hearing held on 31 October last year that the lead charges for the purpose of sentencing were charges 2 and 4, that is the charges of possession of the Class B drugs, MDMA and GBL for the purposes of supply.

[8] The Crown submitted, based on the authorities, that the appropriate starting point for this offending was between four and five years' imprisonment. Your counsel, Mr Lance, submitted the starting point should be at the lower end of that range.

[9] At the sentence indication hearing I canvassed the placement of your Class B drug dealing offending within the categories set out in the guideline judgment of *R v Wallace*.¹ I do not intend to repeat all of the issues that were canvassed then today, but in the end I considered that, given the aggravating features highlighted by the Crown but also taking into account a number of cases referred to by Mr Lance involving comparable offending, the appropriate starting point for the Class B drugs charges was four years' imprisonment.

[10] The Crown and Mr Lance did not differ in their view that the other offences from 13 April warranted a 12 month uplift to that. This included the aggravating presence of the firearm and ammunition. This took the overall starting point to five years' imprisonment.

[11] The next issue dealt with at the sentence indication hearing was the uplift warranted for the Auckland cannabis charge. I had considered it was best dealt with separately, by way of a cumulative sentence, taking totality into account. I was persuaded by oral submissions from Mr Lance that it made more practical sense to deal with it by way of an uplift. Ultimately, again after canvassing the authorities and submissions of counsel, I determined that the uplift for the Auckland charge taking totality into account, should be nine months' imprisonment.

[12] The next issue was the appropriate uplift for personal aggravating features, which in your case are your extensive previous convictions for drug related offending, including dealing offending going back to 2003. The other significant personal aggravating feature was that the Palmerston North offending was committed while you were on bail in relation to the Auckland charges. I determined that the minimum available uplift, and one which would not be disproportionate in the circumstances, was nine months' imprisonment which equates to around 13 percent. This resulted in an overall starting point of six years and six months' imprisonment, which is the indication that you accepted.

[13] Before I go on to consider the discount for your guilty pleas, which I determined at the sentence indication hearing should be in the region of 20 percent, I

¹ *R v Wallace* [1997] 3 NZLR 159.

turn to the issue of whether you should be afforded any further discount for personal mitigating features. What I said at the sentence indication hearing, and it remains my view today, is that in cases involving drug dealing the authorities say that discounts for personal mitigating features cannot be significant but this does not mean those factors are not relevant to the sentencing exercise.

[14] I now have the benefit of a pre-sentence report which sets out your background in some detail. Your assessment of your situation is, that your business grew too fast and you were seduced quickly into the wealth and attention that successful business brought you. You moved away from family and the positive influence they had on you and became entrenched in a party routine enjoying all the benefits that your business and the profits it made bought for you.

[15] When the business went into decline you chose to supplement your income with the sale of Class B drugs. You acted in effect as a middle man, profiting from on-selling these drugs. You acknowledge that you had concerns for your safety which is why you kept the rifle and ammunition with you. You are said to be remorseful for your offending and not simply for the position it has placed you in. You carry guilt for the effect on your family as well. You have a desire to rehabilitate yourself and return to re-establish your business and make your family proud of you again.

[16] The reason why the authorities say that remorse cannot in itself carry significant weight is, as Mr Harvey says, because of the huge damage that drugs do in the community in particular to those who are addicted to them. I note, however, you used methamphetamine yourself so no doubt are aware of the effects that addiction can have on you. I note also these drugs were not at the same level of perniciousness as methamphetamine is now accepted to be.

[17] I consider that your personal circumstances, remorse, your attempts at rehabilitation and your concrete plans for what you wish to do on release warrant some recognition. I also note your hand injury which may prison a more difficult sentence for you. I imagine that the work opportunities open to many prisoners will simply not be available to you given your disability.

[18] Those factors combined lead me to the view that a small further discount is warranted from the overall starting point of six years and six months and I am going to allow a six month discount, reducing the sentence to six years imprisonment.

[19] At the sentence indication hearing I determined the appropriate overall discount for your guilty pleas was around 20 percent. That took into account that the discount in relation to the Auckland charge had to be minimal given the time it had taken to reach resolution on that matter. It also took into account that plea negotiations in both Auckland and Palmerston North resulted in benefits to you in terms of the charges that have been withdrawn. The Supreme Court in *Hessell v R*² made it clear that it is not just the timing of the plea that affects the discount available but also any overall benefits to an offender arising from the resolution process.

[20] Applying that discount reduces the end sentence from six years' imprisonment to four years and nine months.

[21] Mr Hammond, on charges 1 and 3, that is the possession of Class B drugs for supply, you are sentenced to imprisonment for four years and nine months. I am not imposing conditions on the sentence. The question of the timing of your release and any conditions to apply are matters for the Parole Board.

[22] On the other charges, I am imposing concurrent sentences as follows, the Palmerston North charges, charge 2 possession of cannabis oil, one month's imprisonment. On charges 4, 5 and 6, that is possession of the pistol, possession of ammunition and possession of cannabis for supply, you are sentenced to 12 months' imprisonment concurrent. On charge 7, that is possession of methamphetamine simpliciter, you are sentenced to two months' imprisonment, concurrent.

[23] On the Auckland charge of possession of cannabis for supply, that is CRN ending 3958, you are sentenced to imprisonment for 12 months. That is also concurrent.

² *Hessell v R* [2010] NZSC 135, [2011] 1 NZLR 607.

[24] I make an order for destruction of the firearm, the ammunition and the drugs.

[25] Mr Hammond, I am cancelling your current sentence of community work.

S B Edwards
District Court Judge