

**IN THE DISTRICT COURT  
AT TAURANGA**

**CRI-2015-070-003085  
[2018] NZDC 12104**

**THE QUEEN**

v

**JAY DIXON McGRATH**

Hearing: 18 June 2018  
Appearances: O Salt for the Crown  
N Dutch for the Defendant  
Judgment: 18 June 2018

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**NOTES OF JUDGE I D R CAMERON ON SENTENCING**

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[1] Jay McGrath appears for sentence. He was found guilty by a jury on one charge of manufacturing methamphetamine, two charges of possessing equipment capable of being used in the manufacture of methamphetamine with intention that it be so used, one charge of possession of a .22 calibre pistol and one charge of possession of explosives, namely .22 calibre bullets. He also pleaded guilty at the commencement of the jury trial to a further charge of possession of equipment for the manufacture of methamphetamine.

[2] The brief facts are these. The defendant had rented a property in Te Puna. On 3 July 2015 at approximately 3.00 am police executed a drugs search warrant at that address. Parked outside the main double garage at the property was a white ute belonging to the defendant. Inside the white ute were two parr bombs measuring 300 millimetres in height and 110 millimetres in diameter and 270 millimetres in height and 120 millimetres in diameter.

[3] Parr bombs are unique to New Zealand. They are high pressure reaction vessels. All ingredients are placed in the bomb, sealed then heated. The reaction takes less time due to the high pressure created and allows for the more efficient manufacture of methamphetamine. One of the parr bombs had methamphetamine residue in it indicating it had been used in the manufacturing process.

[4] The garage at the property was searched and police found a number of items used in the manufacture of methamphetamine as follows:

- (a) A two litre Pyrex measuring jug containing methamphetamine residue.
- (b) On the floor at the rear left of the garage a Kambrook twin element electric hotplate containing methamphetamine residue. Swabs were taken from surfaces in the garage and the results indicated methamphetamine had been manufactured in the garage.

[5] Between 1 January and 3 July 2015 the defendant manufactured an unknown quantity of methamphetamine on at least one occasion in his garage at Te Puna. Also in the garage police located a .22 calibre revolver which had five live .22 rounds of ammunition and one used .22 round of ammunition in the chamber. A further eight .22 rounds of ammunition were found in a plastic bag also in the garage. Those are the facts.

[6] In terms of the defendant's criminal history, he has various convictions for offending from 1995 to 2015. In particular, he has two previous convictions for drug offending being the offences of possession of cannabis and possession of utensils for the consumption of drugs, that offending having occurred in October 2014 and in respect of which he received nine months' supervision.

[7] I have read a letter of remorse from the defendant handed to me today by his lawyer, Mr Dutch. I have read his pre-sentence report. He is 43 years of age. He has two children, but is currently single. The defendant has stated that he was addicted to methamphetamine at the time of this offending. The Probation Service have assessed him as being at medium risk of re-offending. He committed this offending while

subject to a sentence of supervision. He has excellent references describing him as a caring, honest and humorous person.

[8] The report notes that he was an accomplished water polo player and a very capable rigger in the telecommunications industry. The information that Probation have received is that he has attempted to turn his life around since the birth of his two year old and in many respects has achieved that goal.

[9] According to New Zealand Police he was exceptional in his compliance with reporting requirements while on bail at his parents' home. His father is in Court here today to support him. In the opinion of the police officer concerned he is making a genuine effort to overcome his methamphetamine abuse. He has had an excellent work ethic, he was working full-time prior to his remand in custody and indeed has worked for the last 20 years as a communications rigger building and maintaining electronic communication towers.

[10] Regrettably, he admits to having abused methamphetamine over a period of the last 20 years. However, there are very positive signs and there is no doubt that this defendant is committed to rehabilitating himself and overcoming that addiction. For that he will need, of course, intensive and ongoing drug treatment and programmes.

[11] I need to hold him accountable for his actions, denounce his conduct and deter he and others from this type of offending. Deterrence is, of course, a primary consideration in cases of this kind.

[12] The lead charge is, of course, the manufacturing of methamphetamine. The leading authority is *R v Fatu*.<sup>1</sup> Band 1 is not generally applicable to those who manufacture methamphetamine. As stated in that case a drug manufacturer is responsible for bringing the drugs into circulation and so usually will be more culpable than a dealer in drugs. The Court further stated that at least normally a drug manufacturer can be regarded at the top of the supply chain.

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<sup>1</sup> *R v Fatu* [2006] 2 NZLR 72 (CA).

[13] Band 2 is the appropriate band for the manufacture of methamphetamine. That band provides a range of starting points of between 4 and 11 years of imprisonment for those who manufacture up to 250 grams of methamphetamine. In this case when the defendant manufactured methamphetamine, how often he did that and the quantities manufactured are not known. Thus, the extent of any commerciality associated with the manufacture is not known.

[14] The defence submit that because there is no proof that methamphetamine was manufactured on a commercial basis he ought to be sentenced below the level of the range indicated for band 2. I do not accept that. Band 2 is intended to apply to those who manufacture up to 250 grams of methamphetamine and there is no requirement on the Crown to prove that it was done for commercial reasons.

[15] I acknowledge that *R v Fatu* also states that where there is a complete absence of commerciality and an absence of aggravating factors a sentence beneath the bands postulated is appropriate. Here it cannot be asserted that there was a complete absence of commerciality.

[16] The defendant gave evidence denying any involvement in the manufacture of methamphetamine and therefore did not maintain that he was manufacturing the drug for personal use only. In these circumstances I adopt the lowest end of the range in band 2, namely four years' imprisonment as the starting point. This includes the offending in relation to possession of equipment for the manufacture of methamphetamine.

[17] This is in line with the *Solicitor-General v McArthur*<sup>2</sup> where a "single cook" to raise funds for a wedding attracted a starting point of four and a half years' imprisonment. I acknowledge that case included the aggravating feature of the defendant's 10 year old son being exposed to the manufacture of the drug as he was on the property. I also acknowledge that in that case there was direct evidence of commerciality.

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<sup>2</sup> *Solicitor-General v McArthur* [2016] NZHC 1403.

[18] It is a serious aggravating factor that a pistol with ammunition was found in the same garage as the equipment used for the manufacture of the methamphetamine. An uplift of six months is appropriate for that offending, taking the total to four and a half years' imprisonment. I make no further uplift.

[19] In terms of mitigating factors, I acknowledge the defendant pleaded guilty to one charge of possession of equipment for the manufacture of methamphetamine at the commencement of the jury trial, but that did not result in any reduction in the evidence given in Court. Therefore, there will be no reduction in the level in respect of that.

[20] Mr Dutch submits that a discrete discount for the good prospects of rehabilitation ought to be applied. I agree. The defendant has made a real contribution to society in the hard work that he has carried out over the last 20 years and has been identified as a person who is determined to undergo steps to rid himself of his current addiction.

[21] Accordingly, on the lead charge of manufacturing methamphetamine the defendant is convicted and sentenced to four years and three months' imprisonment. On the charges of possession of a pistol and ammunition the defendant is convicted and sentenced to six months' imprisonment on each, concurrent with each other and concurrent with the four year, three month term.

[22] On the three charges of possession of equipment the defendant is convicted and sentenced to one year's imprisonment on each, concurrent with each other and concurrent with the other sentences.

[23] Accordingly, the defendant is effectively sentenced to four years three months' imprisonment.

[24] I make an order for the destruction of all drug related paraphernalia. I also make an order for the destruction of the pistol and the ammunition.

I D R Cameron  
District Court Judge