

**IN THE DISTRICT COURT
AT HAMILTON**

**CRI-2017-039-000710
[2018] NZDC 7269**

THE QUEEN

v

GEORGE ALBERT MAKAVALU

Hearing: 16 April 2018
Appearances: A Pell for the Crown
W Dollimore for the Defendant
Judgment: 16 April 2018

NOTES OF JUDGE K B F SAUNDERS ON SENTENCING

[1] Mr Makavalu, you are for sentence now on five charges of drug offending: offering to supply methamphetamine, supplying methamphetamine and conspiracy to supply methamphetamine, all of which carry a maximum penalty of life imprisonment. In addition, there are two charges where there is a lesser maximum, possessing cannabis which carries three months' imprisonment, and possession of a utensil, a cannabis bong, which carries with it a maximum penalty of imprisonment for one year, but clearly, it is the supply of methamphetamine charge that is the lead charge for the purposes of sentencing you today.

[2] I will turn very briefly to the facts and the offending arises out of two separate incidents involving the police. Between 15 June and 30 July you used your home base as an address from which you distributed large quantities of methamphetamine. You obtained the drug in multiple gram lots and then on-sold methamphetamine at several grams at a time to customers. Payment, it seems, was in the form of cash or goods.

Sales occurred over that period on almost a daily basis and at times the summary says you struggled to keep up with the demand for the drug and you also ran a credit system for your clients, so this clearly was a commercial venture.

[3] On 13 July, the police executed a search warrant at your address. You were not home. They seized a CCTV surveillance system that had been installed on the property. They searched the property and they found a number of items consistent with the charges which includes resealable bags in various sizes, larger bags containing white crystalline methamphetamine residue, two smaller bags containing 1.2 grams of methamphetamine each, cut-off straws, digital scales, cannabis bongs and three grams of dried cannabis head or bud. Now the police got your mobile phone number. They analysed the data for a 30 day period and the data that was analysed confirmed sales for the period of 15 June to 13 July, so that is just that 30 day period, of 96 grams of methamphetamine and the estimated gross sales was \$48,000. The text messages also indicated numerous offers to supply methamphetamine.

[4] Now on 13 October, the police came to your home again and you had installed another and a new CCTV system, similar to the one previously seized. Again, telecommunications data which was analysed for a period, this time between 10 and 13 October, discloses you and an unidentified person was arranging to obtain 14 grams to methamphetamine to be on-sold, so that tells me that you continued with the supply of methamphetamine since the police first turned up at your house on 13 July.

[5] The pre-sentence report is a positive report, Mr Makavalu. You are assessed at being low to medium risk of re-offending. Your motivation to rehabilitate is assessed as high and there is the reference there to Odyssey House and all that it brings with it. Your remorse is described as genuine and it is repeated that you have prosocial family support and that is something that Mr Dollimore stresses on your behalf and you have members of your family present in Court today together with your fiancée and partner of over 10 years. I have in addition also read your letter of remorse and I accept you now do recognise the extent of your offending and accept that you expressed genuine remorse and insight.

[6] In terms of sentencing you and the starting point, I have been referred to a number of cases by both the Crown and by Mr Dollimore on your behalf. Ultimately, the guideline judgment is that in *R v Fatu*¹ and it is accepted that your offending falls within band 2 of the methamphetamine bands set out in *Fatu* and band 2 is supplying commercial quantities, five grams to 250 grams, with imprisonment for between three to nine years, depending on the quantity and where you sit within that band. There are cases such as *R v Wire*² from 2013 which would support a starting point within that band of around four and a half years' imprisonment and there is a case called *R v Byford*³ from 2008 and *R v Egan*⁴ also in 2008, Court of Appeal decisions where much higher starting points were imposed for methamphetamine in a similar quantity to that found by the police. In *Wire*, the amount was about 70 grams. *Byford* and *Egan* had methamphetamine of around 97 grams and 100 grams. In *Byford*, it was said that in terms of the methamphetamine, an end sentence of six and a half years was not manifestly excessive, because the drug offending would warrant a starting point of six years and, indeed, that was similar to *Egan*, where the amount of 100 grams justified a starting point of between five to six years' imprisonment.

[7] There is no dispute between counsel as to the discount for a guilty plea at 25 percent, but there is dispute as to the starting point. The Crown says five years six months to six years. Mr Dollimore, four years to four and a half years. He has said all that can be said on your behalf, Mr Makavalu, not shying away from the commercial nature of your offending, but stresses that you offended as you did to feed your addiction and he points out that whilst all of the paraphernalia pointing to sales and use by you were found at your address, it did not provide the police with any material from which they could conclude you have led a lavish lifestyle because of your offending. You have taken responsibility early by pleading guilty at an early opportunity and he refers to the very strong comments in the Probation report that you would benefit from Odyssey House.

[8] The purpose of sentencing you, Mr Makavalu, is to hold you accountable. It is to deter and it is to denounce you. Not only a specific deterrence, that is deterring

¹ *R v Fatu* [2006] 2 NZLR 72 (CA)

² *R v Wire* [2017] NZDC 10362

³ *R v Byford* [2008] NZCA 215

⁴ *R v Egan* [2008] NZCA 102

you Mr Makavalu, but methamphetamine is such a pernicious drug, it invades all aspects of New Zealand society, general deterrence is also a factor I must consider, and you present with all-too-familiar personal circumstances, a drug user from an early age, cannabis since you were 14, quickly becoming addicted to methamphetamine and turning to selling the drug through gangs because of your addiction. It seems that your addiction was to such an extent that you would smoke three grams of methamphetamine a day. Otherwise, your family describe you as a caring family member. They speak of you with love and with understanding, someone who they think has potential to become an honest, contributing member of society, and that may be so Mr Makavalu, but that will be in the future.

[9] In the immediate future, you will have to serve a sentence of imprisonment. Your letter tells me that you have already spent time considering how to rehabilitate to ensure you do not re-offend, and importantly keep the support of your family because if you do re-offend, you are going to lose that support that you still have to date.

[10] In terms of sentencing you, the supply of methamphetamine as I said is the lead charge. You were a dealer in methamphetamine and I am satisfied that the scale of your methamphetamine involved repeated sales up to 96 grams and also conspiracy to sell a further 14 grams. What does disturb me is that you continued after the police first came to your address and, having regard to all of the cases I have been referred to and to *Fatu*, I adopt a starting point of imprisonment for five years. Your previous history does include a conviction for possession of cannabis, but I do not give you an uplift for your previous history, nor do I give you an uplift for any other factors. That means that the overall starting point remains five years' imprisonment. This offending was more serious than *Wire* and closer to *Egan*.

[11] In terms of mitigation, I give you a full 25 percent for your guilty plea. In terms of the remorse and rehabilitation, it is genuine but it does need to be tempered with the fact that personal circumstances do not and cannot carry a great weight in terms of sentencing. I also need to have account to totality, and to ensure that the sentence that I impose has regard to rehabilitation and to a least restrictive sentence.

[12] Factoring in what I can, in addition to the 25 percent credit for a guilty plea, on charges 1, 2 and 6 which are the offering to supply methamphetamine, the supply of methamphetamine and conspiracy to supply methamphetamine, you are convicted and sentenced to imprisonment for three years and four months. On charge 3, possession of the utensil, you are sentenced to two months concurrent, and for possession of the cannabis, one month concurrent.

[13] I make an order forfeiting the drug paraphernalia and the surveillance apparatus and no evidence being offered on charge 5, that is dismissed.

K B F Saunders
District Court Judge