

**IN THE DISTRICT COURT  
AT WHAKATANE**

**I TE KŌTI-Ā-ROHE  
KI WHAKATĀNE**

**CRI-2019-087-001589  
[2020] NZDC 8682**

**THE QUEEN**

v

**AUBREY KING SINCLAIR WINEERA**

Hearing: 15 April 2020  
Appearances: J Sutton for the Crown (via video link)  
B Nabney for the Defendant  
Judgment: 15 April 2020

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**NOTES OF JUDGE J P GEOGHEGAN ON SENTENCING**

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[1] Mr Wineera, you appear for sentence today in respect of a significant number of serious charges arising from your supply of methamphetamine. You appear for sentence on:

- (a) One charge of possession of methamphetamine for supply.
- (b) Two charges of supplying methamphetamine.
- (c) One charge of cultivation of cannabis.
- (d) Three charges of unlawful possession of a pistol.
- (e) Three charges of unlawful possession of a prohibited firearm.

- (f) One charge of unlawful possession of a prohibited magazine.
- (g) One charge of possession of cannabis.
- (h) Three charges of receiving property with a value of over \$1000.
- (i) One charge of receiving property with a value of under \$500.
- (j) One charge of breaching community work.

[2] These offences carry penalties ranging from a maximum of three months' imprisonment on the charges of possession of cannabis, the lesser receiving charge and the charge of breach of community work through to life imprisonment in the case of the methamphetamine charges.

[3] I need to spend some time setting out the factual background of your offending. On 23 January 2020 police conducted an inquiry at your address in Whakatane due to you having an active warrant outstanding for your arrest. The property was a small farm property that belongs to your grandparents and consisted of a house, a detached double garage and a couple of hay barns. You lived in a small room attached to the garage of the main house.

[4] When police entered your bedroom they found a pipe commonly used to smoke methamphetamine and they accordingly invoked a search pursuant to the Search and Surveillance Act 2012. An initial search of your bedroom located ammunition and methamphetamine packaged in small bags. As a result of that search, a further scene examination was undertaken.

[5] A number of items were found, relating to the sale and consumption of drugs in your bedroom:

- (a) Fourteen small snap lock bags containing methamphetamine with the weight of the snap lock bags varying between one and .25 of a gram.

- (b) \$2690 in cash inside a bag. Also located inside that bag was a small plastic container containing approximately 12 grams of methamphetamine.
- (c) A large bag containing numerous new, unused snap lock bags.
- (d) Set of working digital scales.
- (e) Three glass pipes used for the purposes of smoking methamphetamine.
- (f) Approximately four grams of cannabis head material was located both loose and in packaging.
- (g) A surveillance system linked a number of cameras around the outside of your room but near the shed.
- (h) Five cellphones.
- (i) A black notebook, commonly known as a tick book, containing names and amounts of money owed to you.
- (j) Cannabis paraphernalia including two cannabis bongs and seven small cannabis pipes which were planted in pots.

[6] The total weight of methamphetamine located at the address was approximately 16 grams.

[7] Of significant concern was the location, by the police, of a number of firearms and related ammunition throughout your address. The police located two nine millimetre loaded pistols. They were found in your bedroom underneath the pillow on your bed. Each pistol was loaded with four live rounds in the magazine. There were also numerous live rounds of ammunition. Two AK-47 military style semi-automatic rifles were located along with three 30 shot magazines loaded with live rounds of ammunition.

[8] All of those items were located hidden inside a black duffle bag inside the detached double garage at the address. Numerous live rounds of ammunition of various calibres were located as well as a 12-gauge semi-automatic Mossberg shotgun loaded with five, live 12-gauge rounds. That firearm was located hidden behind the backseat of a black Ford Territory vehicle parked in the driveway. In addition, a steel ammunition case containing numerous live rounds of ammunition of various calibres were found hidden in pot plants outside your bedroom window.

[9] The police also identified significant items of stolen property in their search. That included a driver's licence stolen from a vehicle in Tauranga in October 2019, a number of battery powered AEG tools which were stolen in a residential burglary in December 2019, a black Ford Territory motor vehicle stolen from Matatā in April 2019 and a yellow and black Ford Falcon ute which had been stolen from Auckland on 10 October 2019. The utility motor vehicle and the black Ford Territory motor vehicle had a collective value of around \$37,000.

[10] When the police spoke with you, you were open with them about your offending. You said that you were a user of both methamphetamine and cannabis and that you had been using methamphetamine since 2015. You told the police that you had been selling methamphetamine from the address since July 2019 and you gave details of the sales that you had been making. The details of the sales that you have provided are between July and December 2019. You told the police that approximately 77 grams of methamphetamine was involved, with a street value of approximately \$38,500. You told the police that you had “ramped up” your operation between December and the end of January 2020. The information you provided led police to the view that the amount of methamphetamine supplied was 105 grams with a street value of \$52,500. Accordingly, the total amount of methamphetamine which you admitted to selling amounted to 182 grams with a total street value of \$91,000.

[11] You provided the police with details of how you would communicate with potential buyers using phone calls, texts and Facebook. But it also appears a lot of people would turn up unannounced. You provided explanations as to how you came across the ammunition and the fireworks some of which you apparently purchased from people who did not want to surrender them under the police buy-back system

and others from persons you could not name or could not remember. You confirmed that you realised that the stolen property located by police was stolen.

[12] So that is the factual background upon which you will be sentenced today. You have previous convictions for offending in both Australia and New Zealand. You resided in Australia for a limited period and during that time you were convicted of 11 offences including two convictions for fraud, one conviction of possession of a prohibited weapon and three for possession of cannabis. You have an extensive criminal history in New Zealand which includes 25 convictions for offences involving dishonesty, three for drug offending and two for violence.

[13] I have been assisted by the submissions filed by Ms Sutton for the Crown and Mr Nabney on your behalf. I have also read the pre-sentence and cultural reports which have been provided for the Court. Both reports tell me that clearly, you have significant family support. You are described by your grandfather as a fine, clever man capable of achieving many positive things were it not for your drug use. A former employer has spoken highly of you and has stated to the pre-sentence report writer that he would consider re-employing you if you obtained help for your drug addiction. A drug and alcohol assessment referred to in the pre-sentence report showed you to be a high risk of amphetamine use and low risk of alcohol use. Clearly your methamphetamine addiction is a significant issue and I accept that it has contributed to your offending.

[14] The cultural report which has been prepared tells me that, clearly, you have not had an easy upbringing, your parents having separated while you were very young and your mother having struggled to support you. Your father was heavily involved in drug offending and in the manufacture of methamphetamine and according to the report received an eight-year sentence for offending of this kind. Having said that, you clearly had little to do with him and indeed you had no contact with him between the ages of 11 and 21. But, that lack of contact and the contents of the report would suggest that that caused you to put your father on something of a pedestal, clearly something which he should not have been on, given his offending.

[15] You have had little contact with your iwi throughout your life, you having links to Tuhoe through your father. You left school without any education or qualifications and at around 14 you had already started to offend and to use cannabis. You have reported that methamphetamine use has plagued your life although you concede that for a period, after moving to Australia in 2010, you stopped using methamphetamine and had full-time employment. Regrettably, it appears that that was short-lived and you have referred to serving a 12 month sentence in Perth for drug related offences, although you have clarified that for me today by telling me that you were on remand and that indeed there may be some outstanding charges in Australia that you have yet to answer. After your returned to New Zealand methamphetamine use has continued to be a significant issue in your life.

[16] In sentencing you I need to take account of the principles and purposes of sentencing. The applicable purposes are the need to hold you accountable for the harm done to the community by your offending, to promote in you a sense of responsibility for that harm, to protect the community and to deter you and others from offending in this way and also to provide, as far as possible, for your rehabilitation. Applicable principles are to impose the least restrictive outcome appropriate in the circumstances.

[17] In respect of offending of this kind, Mr Wineera, worth of note is the reference by the Court of Appeal in it's recent judgment in *Zhang v R* to the Ministry of Health's drug harm index which calculated the social cost associated with methamphetamine in 2016 as \$1,239,000 per kilogram.<sup>1</sup> That shows the enormous damage that is done to the community in New Zealand day in and day out through offending of your kind.

[18] As I have said I have had the benefit of very helpful submissions filed by Ms Sutton for the Crown and Mr Nabney on your behalf. Both counsel agree that the quantity of methamphetamine involved, namely 198 grams, places you at the upper end of band 2 set out in the Court of Appeal's guideline judgment in *Zhang*. That band applies in cases involving quantities under 250 grams of methamphetamine and sets out a range of two to nine years' imprisonment as being appropriate. It is recognised by the High Court in a decision called *R v Cutler* quantity is not the sole determining

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<sup>1</sup> *Zhang v R* [2019] NZCA 507.

factor in terms of determining culpability and the gravity of the offending.<sup>2</sup> Ms Sutton submits that a start point of six to seven years is appropriate while Mr Nabney submits that a starting point of six years is more appropriate. Ms Sutton, not surprisingly, points to the street value of the methamphetamine you supply as being \$91,000.

[19] I refer to paragraphs 13 to 15 of Ms Sutton's submissions in which Ms Sutton referred to the relevant characteristics of your role in the present offending as including:

- (a) The fact that you clearly had a role in the operation and management of the operation based on the cash located by the police and the scale of the operation.
- (b) That your offending was motivated by financial or other advantages, that there was an expectation of financial gain regardless of whether the profit was to purchase methamphetamine for yourself.
- (c) That there was actual profit as evidenced by the \$2690 cash located in your bedroom.
- (d) That you had some awareness and understanding of the scale of the operation.

[20] In the Crown's submission your offending has characteristics both from the significant and leading descriptions as set out by the Court of Appeal in *Zhang*. The submission of the Crown is that your offending can be viewed as commercial methamphetamine dealing in which you played a significant role. A reference, in that regard, is made to all of the items uncovered by the police when they searched your property.

[21] Mr Nabney in his submissions does not accept that your role could be seen as necessarily, leading or significant. In his submissions Mr Nabney points to the following factors as being applicable:

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<sup>2</sup> *R v Cutler* [2019] NZHC 2737.

- (a) That you were motivated solely and primarily by your own addiction.
- (b) That there was little or no actual or expected financial gain.
- (c) That you had no influence on those above you in the chain.
- (d) That you had no operation with management function in a known operation within a chain.
- (e) That there was some awareness and understanding of the scale of the operation.

[22] Mr Nabney asked me to view you as being at the lesser end rather than the more significant end of the categories referred to in *Zhang*. In that regard reference is made to you as a low-level dealer. In assessing all of those factors, I accept Mr Nabney's submission that you clearly have an addiction to methamphetamine which is a significant driver for your offending.

[23] Having said that, your possession of loaded firearms is a particularly concerning aspect of your offending. While the Court must be cautious to avoid double counting in respect of the firearms charges, it is also relevant to a consideration of the type drug dealing operation you were involved in. I have referred to you when discussing the submissions of counsel as a one-man band and it strikes me that although there is a commercial element to your operation that cannot be denied, the operation was at the lower end in the sense that it did not, as far as I can see, involve any other persons or any other involvement of other individuals.

[24] Standing back and considering the factors referred to by counsel, as I have said, it is clear that you were operating a commercial operation, albeit at a relatively low level in my assessment. I am therefore satisfied that six years' imprisonment as submitted by Mr Nabney is an appropriate starting point for the methamphetamine charges, which of course are the leading charges.

[25] Clearly there must be an uplift for the other offending. The Crown submits that two to three years' uplift is warranted, something with which Mr Nabney does not

take issue for quite understandable reasons. I agree with the submissions of Ms Sutton that the firearms charges alone, particularly taking into account the presence of military style and loaded weapons, would justify a starting point of three and a half years' imprisonment. I accept also that the charges or receiving, involve property of a significant value with a collective value of almost \$40,000 and that a starting point of two years would be appropriate if looking at that offending alone.

[26] Taking into account all of the other charges therefore, I consider that an uplift of three years is appropriate and does not offend the principle of totality. Your convictions come on top of a significant number of recent convictions for dishonesty. I do not accept Mr Nabney's submission that the sentence which would otherwise be imposed, absent previous convictions, would satisfy the need for deterrence and protection of the community and that accordingly no further uplift is required. I consider that an uplift of nine months is appropriate to take account of your previous convictions.

[27] That amounts to a sentence of nine years and nine months' imprisonment before taking account of personal mitigating factors. In this regard, Mr Nabney points to the contents of the cultural report and understandably emphasises the matters set out there in which include your dependence, of course, on methamphetamine. The Court has to be cautious about self-reporting of these matters, but in your case that dependence is not based solely upon your self-reporting. It is supported by the comments of your grandparents and your former employer. It is supported by the drug and alcohol assessment referred to in the pre-sentence report and it is supported to a degree by the nature of your recent previous convictions, the majority of which are for offending of a kind commonly associated with drug dependency.

[28] I accept therefore that you are entitled to an allowance for those matters which also include your remorse and that such an allowance should be 10 percent which reduces the sentence of nine years and nine months to one of eight years and nine months. From that I make a further allowance of 25 percent for your guilty pleas leaving an end sentence of six years and seven months' imprisonment.

[29] Accordingly:

- (a) On the charges of possession of methamphetamine for supply and supply of methamphetamine you are sentenced to six years and seven months' imprisonment.
- (b) On the charge of cultivating cannabis, you are sentenced to 12 months' imprisonment.
- (c) On the charges of unlawful possession of a pistol, you are sentenced to 18 months' imprisonment.
- (d) On the charges of unlawful possession of a prohibited firearm, you are sentenced to two years' imprisonment.
- (e) On the charge of unlawful possession of a prohibited magazine, you are sentenced to one years' imprisonment.
- (f) On the charge of possession of cannabis, you are sentenced to one months' imprisonment.
- (g) On the charge of receiving probably to a value over \$1000, you are sentenced to two years' imprisonment.
- (h) On the charge of receiving property of a value under \$500, you are sentenced to one months' imprisonment.
- (i) On the charge of breach of community work you are sentenced to three months' imprisonment.

[30] So, all up six years and seven months' imprisonment Mr Wineera. In addition, I make:

- (a) An order for forfeiture of the \$2690 in cash,

- (b) An order for destruction of all items relating to the sale of methamphetamine including electronics and surveillance equipment.
- (c) An order for destruction of all firearms and ammunition seized.

[31] In respect of CRN's 0231 and 0233 which are charges of receiving, the Crown offers no evidence in respect of those charges. They are dismissed accordingly. Mr Wineera, I know that is a significant sentence which is being imposed on you today. But I really do hope that you are able to deal conclusively with your drug addiction and that you can have a better life for yourself when you are released from prison. I wish you all the very best with that. [Thank you, Your Honour. Thank you.] Your community work sentence is cancelled. [Thank you, Your Honour.]

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Judge JP Geoghegan  
District Court Judge

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