

**IN THE DISTRICT COURT  
AT WHANGAREI**

**CRI-2016-088-000376  
[2016] NZDC 3762**

**THE QUEEN**

**V**

**ASHLEY ROPE**

Hearing: 8 March 2016  
Appearances: J Wall for the Crown  
D Sayes for the Defendant  
Judgment: 8 March 2016

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**NOTES OF JUDGE K B de RIDDER ON SENTENCING**

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[1] Mr Rope, you are now for sentence on 30 charges of supplying or offering to supply methamphetamine, one charge of possessing methamphetamine for supply and one charge of possession of a pipe for the consumption of methamphetamine.

[2] These charges arise from an investigation that took place in October and November of last year when the police say that they became aware that you were running a methamphetamine dealing business throughout the Whangarei area using, as is often the case, or most inevitably always the case, cellular phones to arrange the transactions for the sale and purchase of methamphetamine.

[3] During this period the police investigated they noted 28 transactions involving 11.32 grams of methamphetamine with a value at \$7550. On two other occasions you offered to supply a total of .7 grams; it is not clear whether those transactions were completed against the charges of offering to supply.

[4] On 12 November you were in your vehicle parked in a local street and the police searched your vehicle which revealed a further .4 grams of methamphetamine, a set of working electronic scales, dozens of empty unused snap lock bags and \$340 in cash. All of these items, of course, and the two cellular phones which were seized consistent with methamphetamine dealing.

[5] A probation report has been prepared which notes that you yourself for some time have had a dependency upon methamphetamine and as you candidly put it, all you cared about was staying high and in order to do so to finance your habit, which of course is extremely expensive, you embarked on this enterprise whereby you were supplying methamphetamine into the community to enable you to obtain the necessary funds to feed your own drug addiction. Apart from that, the contents of the report are unremarkable, except that you further advised the report writer that you have in fact been using methamphetamine on a regular basis for some six years.

[6] There was no dispute that I am required to follow the Court of Appeal case known as *R v Fatu* [2006] 2 NZLR 72 (CA) where the Court set out the appropriate ranges of imprisonment according to which band the offending falls in to. The Court specifying three bands known as bands 1, 2 and 3. The range or the band is determined by the amount of methamphetamine involved. In your case because the amounts involved were over five grams there is no dispute that you fit within band 2 of *Fatu* as described by the Court of Appeal, where the Court said that starting points are in the range of three to nine years' imprisonment.

[7] So the sole issue for me is simply where within that range, which of course is very wide, reflecting the wide range of the amount of methamphetamine that the Court specified for that band. I am aware of a case known as *R v De Serville* HC Auckland CRI-2006-004-18441 where the sentencing Judge embarked upon an analysis of sentences imposed for band 2. In that case the High Court expressed the view that for amounts around about the 30 grams, sentences in the range of four to four and a half years were regularly imposed and a very recent decision, again from the High Court in Auckland, confirmed or supported that analysis.

[8] In this case, of course, the amount you were involved in is around about 12 grams, somewhat less than the 30 grams that the case of *De Serville* was dealing with. So taking that into account, in my view an appropriate start point is one of three years and nine months, which is getting down towards the bottom end of the scale.

[9] In my view there has to be a very modest uplift, mainly to reflect the fact that you committed this offending quite deliberately and intentionally while you were subject to that sentence of intensive supervision. Also, coupled with that are your previous convictions involving offending against the Misuse of Drugs Act 1975, but I accept Mr Sayes' submission that they, of their type, have to be seen as relatively minor. But when I combine those previous convictions and the fact that you were offending while subject to that sentence, in my view a modest uplift of three months is appropriate, taking you to a start point then of four years' imprisonment.

[10] There is no dispute that you should be entitled to have that reduced by a full quarter, given your early guilty pleas. By my calculations it appears to be either on the first or second appearance in respect of some of these charges. So on any view of it you have accepted responsibility immediately, although of course some relevance is the comment of the Supreme Court in the case of *Hessell v R* [2010] NZSC 135, [2011] 1 NZLR 607 where the Court said that that might have less significance where the weight of the evidence is overwhelming, which in this case could be said to fall in that category. But I will allow a full one-quarter reduction.

[11] It is also urged upon me that I should make some further reductions on account of the fact that you were not dealing in methamphetamine in order to acquire the trappings of a wealthy lifestyle. In my view, there is little force in that submission. The accumulation of assets is not the issue. It is your willingness to supply this pernicious drug into the community to satisfy your own addiction which is the serious factor. You were quite willing to have others consuming this drug in order to obtain money, and that is the key factor in my view, not the fact that you might not have been seeking to live a lavish lifestyle.

[12] The other aspect is that I am urged to take account of the fact that you have shown some insight in the time that you have been in custody. Whilst that certainly is to your credit, in my view that is more a reflection of the fact that you have been forcibly removed from your own consumption of the drug, and that has enabled you to see the situation you put yourself in. I note that you were arrested in November of last year and did not appear on some of these charges until February. There is no suggestion that throughout that period you have taken any particular steps to address your underlying addiction. So whilst, as I have said, you are entitled to have recognition of the fact you now have some insight, which at the age of 34 is perhaps hardly surprising given the fact that you now face a lengthy period of imprisonment, in my view it does not qualify you to have me further reduce the end sentence.

[13] Accordingly, on all of these charges you are convicted and sentenced to imprisonment for a period of three years. There will be an order for forfeiture of the money that was seized and I have cancelled that sentence of intensive supervision. I have remitted the fines as well.

K B de Ridder  
District Court Judge