

**IN THE DISTRICT COURT
AT HAMILTON**

**CRI-2014-019-002242
[2016] NZDC 5023**

THE QUEEN

v

BENJAMIN PETER MCPADDEN

Hearing: 23 March 2016
Appearances: T Needham for the Crown
R Boot for the Defendant
Judgment: 23 March 2016

NOTES OF JUDGE D M WILSON QC ON SENTENCING

[1] Benjamin McPadden, it has been a long and difficult road trying to deal with your sentencing. I gave you a sentencing indication as long ago as 11 February 2015 and there I set out in some detail what had actually happened. You were a persistent commercial street dealer dealing in quantities of a point to a quarter gram. The analysis of text messages was what founded the Crown's case against you and the Crown says that you sold a total of 6.5 grams of methamphetamine, two and a half grams of that between you and your co-offender and they suggest submitted there were 21 transactions where methamphetamine was actually supplied and 40 offers to supply where it cannot be said that there was in fact a concluded arrangement.

[2] I proceeded on the basis of those facts. You also disclosed by text messaging to show that you had obtained bolt cutters before the theft of a trailer from Mr Blackwood. The culmination of the offences of dishonesty and methamphetamine dealing raised issues about whether I should add cumulative

sentences for dishonesty and as I see it in the sentencing indication notes which I will have attached to these notes the dishonesty offences were driven and related to your methamphetamine offending.

[3] As I said to you then I have to hold you accountable and deter you and others from re-offending, to denounce the offending and protect the community but I also in your particular case have in mind the need for your rehabilitation and reintegration and indeed that over 12 months ago you had made excellent progress at Odyssey House and you have been in there since the previous October. At that stage it was anticipated that you would be able to complete that programme. Sadly, as we all know, that was not the case and you diverted from Odyssey House. I acknowledged in February this year that it is tough doing the Odyssey House programme and you had done very well up to the point where you exited it at a point actually where you were getting more responsibility and unfortunately you did not attend. You were giving your time to a new relationship which as I understand it has not continued. So you were in breach of bail and you were arrested for that and placed in custody.

[4] Mr Boot for you has been in touch with Odyssey House and they have got a place for you but it is not known when that place will become available. I am sorry to say Mr McPadden this cannot go on and the regret that I have about this is that it has taken so long and it has not been concluded but actually that is because you exited the programme and now I am faced with the obligation of sentencing you today to bring finality to this. In doing that, even on the most merciful basis, I cannot get to a sentence which is two years or less so I am unable to impose conditions of release. It seems to me that what I am however prepared to do is to make a recommendation and a commendation to the Parole Board that they bear in mind that the efforts you have already made in respect of Odyssey House, the long term that you spent there and the progress you made and commend to the Parole Board the thought that if a place does become available it might be thought appropriate to pick you on your new found resolution in that respect.

[5] You have been in custody for a significant amount of time so that your release is not too far away perhaps. I fix the sentencing on the methamphetamine

offending as a term of three years. I add to that a cumulative period of nine months for the dishonesty offences. You are entitled to a credit for the time you spent in Odyssey House and I allow that credit at 20 percent. I am adopting broadly the approach of Asher J in *R v Galloway* decision. I also credit you for your pleas of guilty with a further similar deduction and on my calculation that produces an end sentence of 32 months.

[6] Accordingly, you are sentenced to a term of 32 months on the methamphetamine offending and concurrent terms of 12 months on the dishonesty offending.

D M Wilson QC
District Court Judge