

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

**IN THE DISTRICT COURT
AT AUCKLAND**

**I TE KŌTI-Ā-ROHE
KI TĀMAKI MAKĀURAU**

**CRI-2018-044-001459
[2019] NZDC 25666**

THE QUEEN

v

PETER MALCOLM STIRRAT

Hearing: 17 December 2019

Appearances: H MacDonald for the Crown
T Cooper for the Defendant

Judgment: 17 December 2019

NOTES OF JUDGE R G RONAYNE ON SENTENCING

[1] Mr Stirrat, I have got a lot to say necessarily because you have been doing a lot. You are for sentence today on 14 charges and I need to go through them for the record. I am referring to, again for the record, the Crown charge notice dated 14 January 2019 which was the document adopted for the purpose of your guilty pleas.

[2] Charge 1 is a representative charge but relates to you supplying a Class B controlled drug MDMA between 17 April 2017 and 11 August 2017 at Auckland. Charge 2 relates to you supplying the Class A drug cocaine between 17 April 2017 and 9 June 2017 in the amount of two and a half grams. It is laid as a representative charge. Charge 3 relates to you supplying methamphetamine between 22 April 2017 and 10 December 2017 in an amount of at least 22.55 grams. That is laid as a representative charge. Charge 4 is a charge of offering to supply cocaine between 18 May 2017 and 10 June 2017 in an unknown quantity. It is a representative charge.

Charge 5 is a charge of offering to supply methamphetamine between 18 May 2017 and 22 November 2017 in a quantity at least 14 and a half grams. That is a representative charge. Charge 6 is a charge of offering to supply MDMA between 9 June 2017 and 11 December 2017 in an amount of at least 531 grams. That is a representative charge. The balance of the charges are specific. Charge 7 is a conspiracy to supply methamphetamine between 29 August 2017 and 30 August 2017 where you conspired to supply 56 grams of methamphetamine. Charge 8 is the same charge where you conspired between 1 September and 12 September 2017 with another mobile phone user to supply 504 grams of methamphetamine. Charge 9 is a charge of the same nature where you on or about 9 September 2017 conspired with another person to supply 84 grams of methamphetamine. Charge 10 is possession of methamphetamine for sale in the amount of 56 grams. Charge 11 is the same sort of charge relating to possession of 61.7 grams for supply. Charge 12 is the same type of charge relating to you possessing 83.4 grams of methamphetamine. I should say the preceding charge and this charge 12 relate to 15 December 2017. Charge 13 relates to you possessing on the same date 135.7 grams of MDMA, the Class B controlled drug. Charge 14 is the same sort of charge relating to you possessing 18.6 grams of MDMA for the purpose of supply. All of these charges carry either up to 14 years' imprisonment or life imprisonment. When you pleaded guilty, a number of other charges were withdrawn by the Crown.

[3] I need now Mr Stirrat to go through the summary of facts which is the basis upon which I must sentence you. In the afternoon of 15 December 2017, the police executed a search warrant at [address deleted]. That was your home address. You were present at the time. You advised the police officers that you had methamphetamine inside a safe located in the office at the address. You provided police officers with the combination to the safe. The office is located at the front of the property with no internal access into the main dwelling. The office contained business records and various other documents in your name. Amongst the documents seized by police was a notebook containing a tick list of names with values written beside the names. Located inside the safe in the office were two small plastic containers and one snap lock plastic bag, each of which contained methamphetamine. The first container held 19.9 grams of methamphetamine, the second 7.4 grams and the snap lock bag 13.9 grams. Also located in the safe were four separate bundles of

cash held together with rubber bands in the total amount of \$7650. Two further zip lock plastic bags were located in the office that together contained 19.6 grams of methamphetamine. A further 0.9 grams of methamphetamine was located inside a sunglasses case on the couch in the office. The total weight of the methamphetamine located inside the office was 61.7 grams and this relates to charge 11. Three further plastic containers were located hidden in a shoebox inside a cupboard in the locked basement of the main dwelling. The three containers each contained methamphetamine with a total combined weight of 83.4 grams which relates to charge 12. In total, 145.1 grams of methamphetamine was seized from your address.

[4] Located inside a bedside drawer in the spare bedroom of the main dwelling were two self-sealing plastic bags, each containing the Class B controlled drug MDMA. The first bag contained 107.9 grams of MDMA in the form of crystals and the second bag contained 27.8 grams of MDMA in the form of crystals. The combined weight of the MDMA seized from the beside drawers was 135.7 grams. This relates to charge 13. Also located with the MDMA was a set of digital scales and two boxes of self-sealing plastic bags, both of which are commonly used to weigh and package controlled drugs. Located hidden in another container inside a cupboard in the locked basement of the main dwelling house was a zip lock bag containing approximately 18.6 grams of MDMA in the form of crystals. This relates to charge 14. In total 154.3 grams of MDMA in crystal form was seized from your address.

[5] Police carried out an analysis of your cellphones. Information was also requested from a telecom provider in respect of two SIM cards located at your address. The following charges which I will describe arise from the analysis of the relevant text messages and Facebook Messenger communications between you and various third parties. The analysis covered a period of approximately eight months between April 2017 and December 2017.

[6] In relation to charge 1, between 17 April 2017 and 11 August 2017, you supplied a total of 5.7 grams of MDMA to various customers. You utilised text messages to facilitate that supply. In relation to charge 6, between 9 June 2017 and 11 December 2017, you offered to supply at least 531 grams of MDMA to various customers via text messages or Facebook Messenger. In relation to charge 2, between

17 April 2017 and 9 June 2017, you supplied a total of 2.5 grams of cocaine to various customers. Again you utilised text messages to facilitate this supply of cocaine. In relation to charge 4, between 18 May 2017 and 10 June 2017, you offered to supply an unknown quantity of cocaine for supply to various customers via text messages. In relation to charge 3, between 22 April 2017 and 10 December 2017, you supplied at least 22.55 grams of methamphetamine to various customers. Again, you utilised text messages and Facebook Messenger to facilitate this. In relation to charge 5, between 9 June 2017 and 11 December 2017, you offered to supply at least 14.5 grams of methamphetamine to various customers via text messages. In relation to charge 7, between 29 August 2017 and 30 August that year, you conspired with [customer name deleted] as named in your cellphone contact list to supply two ounces or 56 grams of methamphetamine via Facebook Messenger. In relation to charge 8, between 1 September 2017 to 12 September 2017, you conspired with [the customer] to supply 18 ounces or 504 grams of methamphetamine via text messages. In relation to charge 9, on 9 September 2017, you conspired with [the customer] to supply three ounces or 84 grams of methamphetamine via text messages. In relation to charge 10, on 17 September 2017, you arranged to supply two ounces or 56 grams of methamphetamine to [the customer] via text messages. You waited for [the customer] to arrive at an arranged location to complete the transaction, however [the customer] did not show up. You admitted the various possessions and also supplying to associates in exchange for money. You denied knowledge and possession of the MDMA.

[7] For today's purposes your criminal history is irrelevant and relates to matters that are somewhat historical now.

[8] In relation to the submissions that have been filed and spoken to today, the Crown urges me to bear in mind the quantity of drugs involved here. That remains a significant aspect of sentencing for this sort of behaviour. What the Crown says is that the amount of methamphetamine that you were involved in supplying here remains near the top of what is called band 2 in a case called *Zhang*.¹ The Crown asks me also to take the view that you took a leading role in this offending. You were operating

¹ *Zhang v R* [2019] NZCA 507

your own methamphetamine dealing business, says the Crown, and that you were not dealing at the behest of anyone else, so you were the principle offender.

[9] The Crown points to parts of your affidavit such as you saying that you supplied and offered to supply friends and friends of friends drugs via Facebook Messenger and text messages. You also supplied MDMA, cocaine and methamphetamine. You also say that you were mostly selling to friends or friends of friends and you convinced yourself that you are not a drug dealer because a drug dealer sells to strangers. You can now see that this makes no sense.

[10] In relation to methamphetamine dealing, the Crown submits that I should adopt a starting point of six years and six months' prison. In relation to the conspiracy offending, the Crown urges one of two possible options. That is to look at it discretely or to treat it as an aggravating factor of your overall behaviour. I prefer the latter approach. The Crown also submits that I should in that regard adopt an uplift for this behaviour as an aggravating feature of your overall behaviour in the region of 15 months' imprisonment which would then bring your methamphetamine offending, including the conspiracy offending, up to a starting point, a notional starting point, in the vicinity of seven years and nine months. I am asked then by the Crown to uplift that further for the associated drug offending and that the original submissions by the Crown remain unaffected by the case of *Zhang* which suggested that, that is the submissions, that there should be a three-month uplift for the cocaine offending and a nine-month uplift for the MDMA offending bringing then us to a global starting point of eight years and nine months. The Crown disputes that I should give you much of a discount for addiction issues and that in the circumstances in which you pleaded guilty I should give you a 15 percent discount to recognise that. The Crown's approach to this would see an end point in the region of seven years and five months in prison.

[11] Your counsel has filed a good deal of material on your behalf and I have read it all. Your counsel's submissions are accompanied by your affidavit, other material such as the letter that I have just received from you today which is expressing remorse for what you have done and a strong desire to get on with your life after you have served your time and also to rehabilitate yourself. Case law has also been drawn to my attention but in summary your position and what you submit to the Court is this:

that I should adopt a global starting point in the region of seven years' imprisonment, that I should then give you a discount of 25 to 30 percent to recognise your addiction and take the view that you have established to a civil standard that your addiction was causative of your offending. I am asked to give you a further discount of 10 percent to recognise your otherwise good character, your personal circumstances, your remorse and your strong prospects of rehabilitation and then give you a 25 percent discount for your guilty pleas. That would result then on your submission in an end sentence in the vicinity of three years and four months' imprisonment.

[12] A good deal of detail is given to me in relation to the history of this matter because you were represented by a lawyer subsequently struck off for his extremely poor quality output. I can say that, Mr Stirrat, I do not pay much attention at all to the period of time when you were represented by that individual. I have to deal with you on the basis that you pleaded guilty but you could have pleaded guilty earlier but nevertheless you have pleaded guilty and you are accepting responsibility for what you have done and I have to deal with you on the basis primarily of what you have done.

[13] It is submitted also on your behalf, Mr Stirrat, that your role in all of this could be described as a lesser offender and that you were engaged by some sort of pressure, coercion or intimidation and that this factor applies to a moderate degree in your case. Some text messages are drawn to my attention which it is submitted on your behalf are said to imply that you were subject to pressure and/or intimidation. I have to say, Mr Stirrat, that the basis upon which that responsible submission is made is evidentially thin.

[14] It is also submitted on your behalf that your involvement was through naivety and exploitation and that that factor taken into account or referred to in the case of *Zhang* applies to you. That is because it said that you lacked experience in the drug world. I do not accept that. By the time you started dealing, you had been doing a lot of buying. You were not inexperienced in the drug world.

[15] I do not accept the submission, again responsibly made because everything that can be said for you has been said for you but I do not accept the proposition that you naively believed that you were just helping a friend.

[16] It is submitted also on your behalf that you were motivated primarily because of your own addiction. You were said to have been using approximately two to three grams of methamphetamine a day when you were arrested. Material has been put before me in detail relating to your addiction.

[17] It is further submitted on your behalf that at least by now you have a large debt in place and that you had a relatively small amount of cash in your possession when you were arrested and that there is nothing to suggest that you had a high lifestyle and you were making a great profit out of what you were doing.

[18] It is also submitted that you received small discounts on your drug orders for carrying out high-risk tasks. I really struggle to accept that, Mr Stirrat. When I look at what went on, there was some real deliberation about what you were doing. I also struggle to accept that there is any close and direct comparison between your situation and background and that of Mr Carnachan, which is one of the cases drawn to my attention. In that regard I am asked to give you a 10 percent discount to recognise your upbringing.

[19] It is submitted on your behalf that I should adopt an uplift of six months for the conspiracy offending, an uplift of six months for the MDA offending and that I should not apply any uplift for the cocaine offending. Thus, a global starting point is reached on your submissions of seven years' imprisonment. I should then, I am asked, give you a discount as I have already said for the addiction issues which at least in part was driving your behaviour and your good character and other personal circumstances.

[20] I say immediately Mr Stirrat that I recognise the great support you have got here in Court. I say time and time again to relatively young men, sometimes quite young men sitting either in that dock or in one of the docks in this courthouse, that the fact that they have got family and friends supporting them is a very important factor. It is not just a show of force. That is because there are, time and time and time again

around this country and I am sure most others, young men sitting in docks to be sentenced and there is not a soul sitting in the back of the Court giving a toss so it is important. Much as you would like me to say so, I cannot say that it brings about a massive discount but it is a matter that I most certainly take into account. It used to be the fact that Judges would say that personal circumstances, when it comes to serious drug dealing in Class A controlled drugs particularly, do not count for much but they do and I take them into account.

[21] I take into account the letter that you have written and if I can digress again slightly, Judges often get letter from people in custody and they show an almost disturbing similarity. Yours is your letter and I accept it as genuine.

[22] It is said in essence that addiction is at the heart of what you did. I accept that that is an important factor. The relevant features of your offending really, Mr Stirrat, are these:

- (a) First of all the quantity of methamphetamine involved and this really is self-evident from the facts and it does place you in my view near the top end of what is called band 2 in the case of *Zhang*.
- (b) Secondly, while you might have in some measure been influenced by others I am not prepared in all the circumstances to infer any coercion of you. You were the person playing a leading role in the supply of methamphetamine, that is the methamphetamine that you supplied.
- (c) Thirdly, in relation to the conspiracy offending, this was simply part of your overall involvement in dealing but I do treat that conspiracy offending as an aggravating factor of your actual supplies.
- (d) Fourthly of course there was the associated offending involving cocaine and MDMA.

[23] For the methamphetamine dealing, Mr Stirrat, I take a starting point of six years and six months in prison. To that I add 12 months' uplift for the conspiracy

offending. That then brings the calculation you will appreciate up to seven years and six months. Then there was of course the associated drug dealing and of course I am referring to the MDMA and the cocaine and that must add to your overall culpability. You were not exactly a drug supermarket but you were not just selling some of the meth supplied to you for your own use to try and pay for it. It was more than that. For that associated drug dealing, I take a further uplift of six months. You will appreciate that brings then the running total up to eight years. I comment right now that it is significantly less than the Crown responsibly submitted to the Court.

[24] I then turn to what Judges refer to as mitigating factors or factors that make things for a sentencing exercise less serious than they otherwise might have been. This was clearly commercial dealing and I take the view that it was rationally carried out, albeit in part to feed your addiction, so I accept that part of it but you were acting perfectly rationally throughout. However, the addiction is a factor reducing your culpability but not in my view by a large measure. You were on your own affidavit evidence somewhat calculating in your activities including offering a range of drugs for sale and as you said in your affidavit leading a relatively normal life albeit addicted to methamphetamine. Mr Stirrat, it is simply not possible for this to be a scientific or a mathematical exercise and Judges simply have to do their best to come up with what they consider to be an appropriate percentage reduction for these mitigating factors. I allow 15 percent off that running total to recognise your background and your addiction issues and the role that those things have played reducing your culpability. I also include in this 15 percent discount the steps you have taken to start in on what I am sure will be a long course of rehabilitation and your family support, your friend support. As I said, it is very important. If you leave prison with no support whatsoever we all know what happens to those unfortunate souls. Also I take into account the letter of remorse you have written, so that is all represented in that 15 percent. You may think that it should be more. I am certain you do. That is my best effort to gather those things together. Eight years minus 15 percent comes down to six years and nine months.

[25] Finally, I deal with guilty pleas. That was on the day of trial. Even though it involved some and not all of the charges because a lot of charges were withdrawn, it was nevertheless on the day of trial and I still take into account the fact that until you

acquired the services of your current counsel you were poorly represented. It seems to me though that approximately 20 percent is the appropriate discount for your guilty pleas. That again is more than the Crown responsibly submitted to me I should give you. More or less, that comes to 16 months.

[26] The result, which is probably all you really wanted to hear from me, is five years and five months.

[27] On charges 2, 3, 4, 5, 10, 11 and 12 you are sentenced to five years and five months. On the remaining charges, 1, 6, 7, 8, 9, 13 and 14 you are sentenced to two years. Obviously that is all concurrent, so the total is five years and five months.

Judge RG Ronayne
District Court Judge

Date of authentication: 19/12/2019

In an electronic form, authenticated pursuant to Rule 2.2(2)(b) Criminal Procedure Rules 2012.