

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**CRI-2015-004-8179
[2016] NZHC 2066**

THE QUEEN

v

STEVEN BOREHAM

Hearing: 1 September 2016

Appearances: B R Northwood for Crown
M A Edgar for Defendant

Sentence: 1 September 2016

SENTENCING REMARKS OF LANG J

[1] Mr Boreham, you have pleaded guilty to 19 charges of supplying the Class A controlled drug methamphetamine. You entered your guilty pleas following a sentence indication I gave you on 15 July 2016.¹ In my sentence indication I set out fully the circumstances giving rise to your offending and I do not propose to go through those again at this point. My sentence indication will be annexed to my sentencing remarks and is to be read along with these remarks.

[2] In the sentence indication, I took a starting point of eight and a half years imprisonment. This reflected the fact that you had transported methamphetamine for Mr Vernon on 19 occasions. The Crown was able to establish that on 13 of these, a total quantity of 320 grams of methamphetamine was involved. This placed your offending within Band 3 identified in the Court of Appeal decision of *R v Fatu*.² As you no doubt realise, the actual amount you are likely to have carried would have been more than this but the Court sentences you solely on the basis of the quantity the Crown has been able to show that you carried.

[3] From the starting point, I reduced the sentence by ten months to reflect your previous good character. At the age of 33 years, you have no previous convictions at all. I then applied a discount of two years three months to reflect the fact that you would be entering guilty pleas and thereby saving the State the cost of a trial.

[4] The only issue I now need to determine is whether I should reduce the sentence further to reflect factors such as remorse. As I indicated when you were last before the Court, a sentencing Court in this situation has limited room to manoeuvre. The Court of Appeal has consistently said that personal circumstances count for little in the case of serious and commercial drug offending. Your offending clearly falls within that category.

[5] The probation report largely confirms the factual issues put to me by your counsel at the sentence indication. In particular, it confirms that you clearly fell under Mr Vernon's spell when he came to live with you. He ingratiated himself with you and your family by carrying out tasks around the property and befriending your

¹ *R v Boreham* [2016] NZHC 1602.

² *R v Fatu* [2006] 2 NZLR 72.

children. He then persuaded you to continue carrying drugs for him even after you indicated that you did not feel it was worth it. All of those issues reinforce the validity of the submissions made by your counsel at the sentence indication hearing.

[6] The pre-sentence report also records that you expressed remorse for your offending and said you were willing to take full responsibility for the role you played in it. The writer of the report says that you presented as motivated to undertake an appropriate programme in prison to address the thoughts and attitudes you had developed towards your offending and, in particular, the reasons why you agreed to become involved in it. Today you have also provided me with a letter in which you express remorse for what you have done.

[7] As I am sure you are aware, judges who sentence persons in your position regularly, if not always, receive letters such as this from prisoners who are about to be sentenced. On some occasions the Court gives recognition to them because it is satisfied they demonstrate genuine remorse. On other occasions the expressions of remorse are really no more than a reflection of the fact that the offenders regret the position they have placed themselves in.

[8] In your case, however, I am satisfied that your remorse is genuine. I am fortified in that view by the fact that you have no previous convictions, and up until this offending have led an apparently blameless life. For that reason I am prepared to make a further allowance to reflect the issue of remorse. As I have said, however, I am constrained in the extent to which I can make a further allowance. I propose to reduce your sentence further by four months to reflect that factor.

Sentence

[9] Mr Boreham, on each of the charges to which you have entered guilty pleas, you are sentenced to five years six months imprisonment. All of those sentences are to be served concurrently, which means you will serve an effective sentence of five years six months imprisonment. By my calculations this makes you eligible to apply for parole in one year ten months.

[10] The Crown has not sought a minimum term of imprisonment. As I recorded last time, you might consider yourself fortunate in that, but the Crown obviously has good reasons for taking that stance. I referred to some of those when you were last before the Court. This means that you have the next one year ten months to show the parole authorities that you have learnt from this offending. If you become involved in it again of course the Court will know that that has not been the case.

[11] Thank you, Mr Boreham.

[12] Stand down.

Lang J

Solicitors:
Crown Solicitor, Auckland

**NOTE: PUBLICATION OF THE JUDGMENT AND OF THE REQUEST FOR
A SENTENCING INDICATION IN ANY NEWS MEDIA OR ON THE
INTERNET OR OTHER PUBLICLY ACCESSIBLE DATABASE IS
PROHIBITED BY SECTION 63 OF THE CRIMINAL PROCEDURE ACT
2011 UNTIL THE DEFENDANT HAS BEEN SENTENCED OR THE
CHARGE DISMISSED.**

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**CRI-2015-004-8179
[2016] NZHC 1602**

THE QUEEN

v

STEVEN BOREHAM

Hearing: 15 July 2016
Appearances: B R Northwood for Crown
M A Edgar for Defendant
Sentence: 15 July 2016

SENTENCE INDICATION OF LANG J

[1] Mr Boreham faces 19 charges of supplying the class A controlled drug methamphetamine. The maximum sentence for each of those charges is life imprisonment.

[2] Mr Boreham is due to stand trial in this Court in October 2016. He now seeks a sentence indication in respect of the charges that he faces. A sentence indication is an indication of the sentence that the Court will impose in the event that Mr Boreham was to enter guilty pleas to the charges at this point.

[3] The Crown has now offered no evidence on the remaining charge, which is charge 66 in the charge list. You are discharged on that charge pursuant to s 147 of the Criminal Procedure Act 2011.

Background

[4] Mr Boreham's offending was detected as part of a large police operation designed to detect those involved in the manufacturing and distribution of methamphetamine in the wider Auckland area. In order to investigate this matter, the police obtained surveillance warrants from Judges of the High Court. They then intercepted electronic communications, including text messages and cellphone conversations, between persons in respect of whom the warrants had been issued. Mr Boreham was not initially a target of the police operation. His involvement became apparent after the police intercepted communications between other persons indicating quite clearly that he was involved.

[5] The principal person in this drug supply ring was a person called Mr Jiang. He was distributing drugs on a wholesale basis to a Mr Vernon. Mr Vernon would then distribute drugs at a wholesale and retail level to persons further down the chain.

[6] The period during which Mr Boreham's offending occurred extended between June and August 2015. By June 2015, Mr Vernon had been arrested on a methamphetamine-related charge and had been granted EM bail to reside at Mr Boreham's address. Mr Boreham's counsel advises me that this occurred after Mr Vernon's partner and Mr Boreham's partner became work colleagues. Mr Vernon

and his partner then prevailed on Mr Boreham and his partner to take Mr Vernon into their home whilst he was on EM bail. That proved to be a disastrous decision.

[7] It appears that Mr Boreham fell under the spell of Mr Vernon. Mr Vernon was able to persuade him to pick up and deliver packages containing methamphetamine and cash. In this way Mr Vernon could continue to deal in drugs whilst being subject to a grant of EM bail. In addition, Mr Boreham and other persons like him provided a measure of distance between Mr Vernon and the drugs.

[8] The police have established that Mr Boreham picked up, and/or delivered, drugs on Mr Vernon's behalf on at least 19 occasions. On some of these the police have been unable to establish how much methamphetamine was carried. They have ascertained, however, that a minimum of 320 grams of methamphetamine was picked up and delivered during 13 of these deliveries. Obviously it is likely that more methamphetamine than this was delivered in the remaining six deliveries, but there is no means of measuring these.

[9] Mr Boreham's role was therefore to act as a driver who obeyed Mr Vernon's instructions to pick up and deliver methamphetamine and cash. He did not have any proprietary interest himself in the methamphetamine and cash. There is no suggestion that he received anything himself other than the most insignificant payments of cash and supplies of methamphetamine as reward for his efforts. The difficulty for Mr Boreham is the sheer quantity of methamphetamine that he carried, and the number of occasions on which this occurred.

Starting point

[10] Counsel agree that the starting point for the sentence to be imposed on Mr Boreham must be determined having regard to the principles outlined in a decision of the Court of Appeal called *R v Fatu*.³ In that case the Court of Appeal identified the starting points that are generally applicable in respect of bands of methamphetamine-related offending. Band 2 identified in *Fatu* relates to the manufacture or supply of between five and 250 grams of methamphetamine.

³ *R v Fatu* [2006] 2 NZLR 72.

Offending within this range will call for a starting point of between three and nine years imprisonment. Offending in the next band, Band 3, relates to offending that involves between 250 and 500 grams of methamphetamine. This will require starting points of between eight and 11 years imprisonment. Given the quantity involved in Mr Boreham's case, it is clear that his offending fits within Band 3 identified in *Fatu*.

[11] The quantity of methamphetamine is not the only factor that drives the starting point. The Court is required to assess the overall role of the offender in order to determine where the starting point must lie.

[12] In this context I am guided by other sentencing decisions that have arisen out of the same police operation. In particular, I note that in the case of a Mr Fry, a Judge who provided a sentencing indication selected a starting point of seven and a half years imprisonment.⁴ Mr Fry operated in much the same way as Mr Boreham. He carried approximately 240 grams of methamphetamine on 18 separate occasions.

[13] Mr Boreham's offending must obviously attract a higher starting point because he carried 80 grams more methamphetamine than did Mr Fry. On the other hand, I accept that Mr Boreham did so principally it would appear because of his misguided loyalty to Mr Vernon. Taking those factors into account, I consider a starting point of eight and a half years imprisonment is appropriate in relation to all of the charges.

Aggravating factors

[14] Mr Boreham has no previous convictions, so there is no question of any uplift to reflect aggravating factors personal to him.

Mitigating factors

[15] At this stage I am able to indicate discounts in respect of two personal factors that warrant recognition. The first of these is that, as I have already indicated, Mr Boreham has no previous convictions. At the age of 33 years he is entitled to credit

⁴ *R v Fry* [2016] NZHC 407.

for that fact. I propose to apply a discount of around ten per cent, or ten months, to reflect that factor. This would reduce the starting point to seven years eight months imprisonment before taking into account guilty pleas.

[16] The guilty pleas in the present case were not entered at the first opportunity. I accept, however, that there may have been several complicating factors in this context. One of them is that Mr Boreham's counsel needed to negotiate with the Crown regarding several important issues before seeking a sentence indication. The second is that Mr Boreham's counsel advises me that Mr Boreham has had difficulty coming to grips with the situation in which he now finds himself.

[17] I am prepared to make an allowance of one year ten months to reflect guilty pleas. This is slightly less than the 25 per cent sought by Mr Edgar, but more than the discount that the Crown contends is appropriate.

Sentence indication

[18] This means that I indicate an end sentence of five years ten months imprisonment. There may be room for a further small discount to reflect factors such as remorse, but I cannot make any decision in relation to those until I receive a pre-sentence report.

[19] I note also that the Crown does not seek a minimum term of imprisonment. People who become involved in serious drug-related offending are generally at risk of a minimum term of imprisonment. This reflects the fact that offending at this end of the scale generally triggers all of the criteria necessary to justify a minimum term being imposed.

Duration of indication

[20] The sentence indication will remain open until Friday 22 July 2016. Mr Edgar should file a memorandum no later than 5 pm on that date to advise the Court and the Crown whether Mr Boreham is prepared to accept the sentence indication that has been offered. If he accepts the offer, it is likely that I will direct him to

appear at criminal callover on Wednesday 27 July 2016 at 9 am so that he can be arraigned.

Lang J

Solicitors:
Crown Solicitor, Auckland