

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

**CRI-2013-092-11602
[2015] NZHC 2325**

THE QUEEN

v

**HUI ZHANG
DESMOND LOKE
DESMOND SHARP
MICHAEL JEFFREY NEEMS
LULU ZHANG
GUO CHEN**

Hearing: 24 September 2015

Appearances: B Northwood and Z Johnston for Crown
R Mansfield and NW Dobbs for H Zhang
T Cooper for Chen
R Reed and M Wharepouri for L Zhang
J Clearwater for Neems
D Niven and H Leabourn for Sharp
G Newell for Loke

Sentence: 24 September 2015

SENTENCING NOTES OF TOOGOOD J

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Introduction

[1] Hui Zhang, Lulu Zhang, Guo Pei Chen, Desmond Sharp, Desmond Loke and Jeffrey Michael Neems: you appear for sentence after being found guilty by a jury of various charges relating to your participation in a criminal group which was responsible for the importation and supply of pseudoephedrine and, in the case of two of you, the manufacture of methamphetamine.

Facts

[2] In October 2012, at the Ports of Auckland, Police and Customs officers intercepted a water filter, said to have come from Longgan District in China, which was consigned to an address in East Tamaki, Auckland. On examination of the cylinder, a total of 39 bags of pink and yellow granules in the form of a cold and flu remedy, ContacNT, containing around 90 kilograms of the Class B controlled drug pseudoephedrine, were revealed. It was later discovered that your fingerprints, Mr Zhang, were on two of the plastic bags containing the drug. The jury acquitted you of being a party to that importation but I shall have more to say about it later.

[3] In August 2013, the Organised & Financial Crime Agency New Zealand (“OFCANZ”) commenced an investigation, known as Operation Gem, into the activities of a syndicate of associates suspected to be involved in the importation, supply and distribution of class A and class B drugs, namely methamphetamine and pseudoephedrine.

[4] The Police, with the assistance of Customs, had been monitoring the importation of ContacNT within consignments that had arrived from China.

[5] On 11 May 2013, a container that originated from Guangzhou, China, arrived in the Ports of Auckland. The importation declaration for the container recorded that it contained bags of breadcrumbs, branded “breader bags”. In reality, the container contained a large shipment of ContacNT.

[6] From 13 August 2013 until 4 December 2013, pursuant to interception warrants issued by this Court, OFCANZ staff monitored and intercepted your communications, along with the communications of a number of associates.

[7] On 22 October 2013, the Police executed a search warrant at 138 Aviemore Drive in Highland Park, Auckland. In the property, the Police located 89 empty packets of “breader bags” containing remnants of pink and yellow granules. These bags had arrived in New Zealand through the importation on 11 May 2013. Using the information obtained from that search the Police estimated that the May importation involved a total amount of 152.7 kg of ContacNT.

[8] In the jargon used by those who are engaged in trading pseudoephedrine, transactions are conducted by reference to the term “set”. A “set” is 1000 ContacNT capsules weighing 223 milligrams and containing 90 milligrams of pseudoephedrine. The evidence at trial indicated that a set of pseudoephedrine was priced at around \$8,000. The amount of ContacNT recovered after the execution of the search warrant at the Aviemore Drive property was the equivalent of 46 sets, worth approximately \$370,000. That would make the value of the pseudoephedrine in the May 2013 importation around \$5.48 million.¹

[9] On 15 December 2013, a container that also originated from Guangzhou, China, arrived at the Ports of Auckland. The container was destined for the Jin Hai Wan Sauna Centre of which you, Mr Zhang, were the director. The declaration listed the contents as “seasoner and cooking utensils”. Upon arrival the container was searched by Customs officers and 160 packets of “breader” containing ContacNT were recovered. The packets were identical to those recovered at the Aviemore Drive property. The total weight of ContacNT seized from that shipment was 235 kg, containing pseudoephedrine valued at \$8.43 million.²

[10] Throughout the course of the investigation, the Police observed a number of supply transactions involving Mr Zhang, Ms Zhang, Mr Chen, Mr Sharp and Mr Neems. You each played a part in what was, overall, an extensive and highly

¹ 152.7 kg of ContacNT produces the equivalent of 685 sets.

² 235kg of ContacNT produces the equivalent of 1054 sets.

lucrative pseudoephedrine distribution network and you now face sentencing after being convicted of charges which reflect the roles you played and the extent of your involvement.

[11] Having imported the pseudoephedrine in May 2013, Hui Zhang managed its storage and distribution, at times playing a hands-on role in supplying the controlled drug to customers. Orders for ContacNT/pseudoephedrine were placed with Mr Zhang using codes, and he would then use coded language to arrange for an associate, Ziyang Ma,³ to collect the drugs from the Highland Park storage and deliver them to Mr Zhang, Ms Zhang or another associate, Peggy Li,⁴ at the inner city restaurant Mr Zhang owned. They in turn delivered the drugs to Mr Chen and Mr Sharp to be on-sold for a profit, and received the payments on Mr Zhang's behalf. On one occasion, Mr Neems was observed collecting 22 sets of pseudoephedrine from an unknown man who had received it from Mr Sharp.

[12] Mr Sharp and Mr Loke: you used some of the product to manufacture methamphetamine. Both of you were convicted of manufacturing methamphetamine, as well as the possession of precursors, materials and utensils for its manufacture. Mr Loke was found to be in possession of 112 grams of methamphetamine.

[13] The role that each of you played in the operation is vitally important to the sentences that I will impose on you.⁵ This was clearly a major commercial operation at every level, driven by greed and without concern for the destructive effect of the pernicious end-product, methamphetamine, on the end user and on the community.

Approach to sentencing

[14] In sentencing each of you today, I follow the standard approach⁶ which requires me to set the starting points for your sentences by looking at the nature and

³ Mr Ma was sentenced by Venning J in *R v Ma* [2015] NZHC 976.

⁴ Ms Li pleaded guilty and was sentenced by Andrews J in *R v Li* [2014] NZHC 2610.

⁵ *R v Wallace and Christie* [1999] 3 NZLR 159 (CA) at [25].

⁶ Set out in *R v Taueki* [2005] 3 NZLR 372 (CA).

extent of your offending, with reference to similar cases and the sentences handed to your co-offenders.

[15] For methamphetamine offences, this exercise is based on a guideline judgment which sets out appropriate sentencing bands ranked according to the amount of the drug involved.⁷

[16] In 2011, pseudoephedrine was re-classified from a Class C controlled drug to a Class B controlled drug. As a result, I am required to apply the sentencing bands outlined in a decision of the Court of Appeal to determine each of your starting points for the pseudoephedrine offences.⁸ Unlike the approach to methamphetamine offending, the sentencing bands for pseudoephedrine are not ranked according to the quantity of the drug involved. Rather, they are ranked according to the size and scale of the drug operation itself,⁹ and the role of the offender in the offending plays a particularly important role in assessing in which sentencing band the offender fits.¹⁰

[17] After fixing starting points which reflect the circumstances of your particular offending, I must then consider whether there is anything in your personal circumstances that would justify adjustments to those starting points – either mitigating factors which might reduce the sentence, or aggravating factors that might increase it.

[18] I must also consider the principles and purposes of sentencing.¹¹ It is well recognised that the primary purpose of sentencing those convicted of dealing commercially in controlled drugs is the deterrence of others minded to engage in similar activity.¹² There is also the need to hold each of you accountable for the harm done to the community by your offending; to promote in you a sense of responsibility for, and acknowledgement of, the harm caused by the manufacture, supply and use of methamphetamine which is the inevitable end product of

⁷ *R v Fatu* [2006] 2 NZLR 72 (CA).

⁸ *R v Wang* [2014] NZCA 409.

⁹ *R v Wallace and Christie*, above n 5, at [30]-[32].

¹⁰ *R v Wang*, above n 8, at [22].

¹¹ Sentencing Act 2002, ss 7 and 8.

¹² *R v Terewi* [1999] 3 NZLR 62 (CA) at [13].

pseudoephedrine dealing;¹³ and to denounce your conduct. I do not disregard entirely the sentencing purpose of assisting in your rehabilitation and reintegration, to the extent that that may be appropriate in each case.

[19] I will address each of you in turn, discussing the offending of which you were found guilty, your personal circumstances, and the factors which I have considered in determining the sentences to be imposed. When I have been through that discussion, which will take some time, I will impose the appropriate sentences on each of you in turn. I realise that you may be interested only in your own position but you were all in this together, in one way or another, and it is right that each of you should hear everything that is said about your crimes.

Hui Zhang

Charges

[20] Hui Zhang: at trial, you were found guilty of two charges of importing pseudoephedrine and one charge of possession of pseudoephedrine for supply. You are also to be sentenced on 33 charges of supplying pseudoephedrine, for which you entered guilty pleas on the morning the trial was due to commence. This offending involved a total of at least 247 sets, or 55 kg of ContacNT.

Pseudoephedrine importation

[21] I take the two importations to be the lead offences in your case, and turn to consider the starting point that should be imposed for the importation convictions.

[22] The first importation charge relates to a shipment of ContacNT that arrived in Auckland on 11 May 2013. The importation was not intercepted by NZ customs, so the quantum of ContacNT must be estimated. I accept the Crown's estimate, based on the empty breather bags and the 46 sets of ContacNT granules found in the search at Aviemore Drive in October 2013, that the May 2013 importation would have had involved an approximate total of 152 kg of ContacNT.

¹³ *R v Gaylor* HC Hamilton H25487, 14 October 2004 at [4].

[23] The second charge relates to the December 2013 importation. That importation was intercepted by NZ Customs and found to contain 160 “breeder” packets. The total weight of ContacNT granules as weighed by ESR was 235 kg, and the importation included a further 14.8 kg of ephedrine.

[24] I consider the aggravating features of the importation offending to be these:

- (a) You were properly convicted of importing around 390kg of ContacNT (equivalent to 1,739 sets) in total, containing the Class B controlled drug pseudoephedrine. Your counsel acknowledges that this is the largest quantity of pseudoephedrine for which any importer into New Zealand has been sentenced.
- (b) The direct profit to you is unknown, but it will have been substantial as that quantity of ContacNT has a street value of approximately \$14 million. Furthermore, the quantity of pseudoephedrine involved is capable of producing between 78 kg to 116 kg of methamphetamine having a street value of between \$78 million and \$116 million.
- (c) You were found guilty of two separate importations that occurred seven months apart, each of which was very large in volume.
- (d) There was a high level of sophistication in this operation. The ContacNT granules were packaged into heat sealed “breeder” bags, and imported under the guise of “condiments”. You were part of a significant organised criminal operation and I do not doubt that you used your experience and connections as a successful exporter of seafood, milk powder and wine to China, and as an importer of Chinese products, to facilitate the offending.

[25] Mr Zhang, there is some dispute between the Crown and your counsel, Mr Mansfield, as to the role you played in the operation. Mr Mansfield submits that another person was the principal offender in respect of the importations and that you were a secondary party to the importation of the drugs into New Zealand, not the

“prime mover”. Further, Mr Mansfield invites the Court to conclude that you were identified and then utilised by the principal offenders for the purpose of facilitating the importation of controlled drugs because you ran a successful restaurant and import and export businesses, which could be used as a cover. There is no evidence before the Court to support either of those propositions and, having heard the evidence at trial over more than six weeks, I reject them.

[26] Mr Mansfield also submits that the present offending was far too sophisticated a system for one person, or for someone with otherwise no experience or connections to organise or facilitate. I have no doubt that you had help, but it is not disputed that you established from nothing and then ran successful restaurant, sauna/massage and export/import businesses after settling in New Zealand. The tone and content of your conversations with your associates and your behaviour towards them, as monitored by the Police, satisfy me that you managed the legitimate businesses, and your pseudoephedrine importation and distribution businesses, in an extremely controlling and dictatorial manner. I accept the Crown’s submission that there is no evidence of your being answerable to anybody in New Zealand for the two importations.

[27] Although you must have had assistance in China, at least and probably also in New Zealand, the documentary and intercepted evidence satisfies me beyond doubt that you played a principal role in the May 2013 and December 2013 importations. Your several trips to China at relevant times and the content of the intercepted conversations make it abundantly clear that you were an instigator of, and deeply involved in, the December offending. I infer, as the jury must have inferred, that you played the same role in the earlier May importation which had a number of similar characteristics linking you to the offending. I do not know why the jury found you not guilty of the October 2012 importation, despite your fingerprints being found on packets containing ContacNT hidden in the cylinder, but it may be that the jurors were not sure that you did any more than merely handle the packets, at some unknown time prior to their being packed in China, while you were visiting the country. The jury was instructed that the Crown had to prove its case on that charge beyond reasonable doubt. There was no interception evidence from around the time

of that importation, nor any evidence of any dealing in pseudoephedrine by you between October 2012 and the May 2013 importation.

[28] I agree with counsel for the Crown that the jury's verdict on Charge 22, where it found you guilty of possession for supply of the pseudoephedrine at Aviemore Drive, indicates that you gained control of the product from the May importation once it arrived in New Zealand and that you maintained that control at "arms length".

[29] In his written submissions, Mr Mansfield invites me to infer from your being found guilty of supplying only 293 sets of the 1,739 that were imported on the two occasions, from the absence of evidence that you obtained profits from having supplied the full quantity of the drugs imported, that you were a relatively minor player who received only a "fixed fee" for your involvement. I think counsel has misled himself by relying on the proportion of imported "sets" or equivalent represented by your dealing as only a "mere fraction" of the total drugs involved in the two importations. The authorities seized the equivalent of 1,054 sets from the December 2013 importation you arranged; it was never available to go onto the market. Second, you had possession of the 46 sets found at the Aviemore Drive property in October 2013. That means that you were directly connected to 339 sets out of the equivalent of 685 sets imported in May 2013: that is half of them, worth around \$2.7 million. And I do not doubt that the Police were unable to identify every supplying offence you committed. Your involvement in distributing the pseudoephedrine from the May importation was substantial.

[30] Since you did not give evidence at the trial and you have not provided any sworn evidence for sentencing purposes, I reject as unproved counsel's assertions from the Bar. The evidence which is available to prove your astute management of a major drug-dealing enterprise leads to the inference that you have managed so far to conceal all of your earnings. Mr Northwood refers to evidence which may suggest that a lot of it went to gambling at the Casino. I infer, however, from the degree of control you maintained over both importation and distribution of the drugs that you made huge personal profits.

[31] I have considered Court of Appeal’s discussion of the offending bands and the authorities provided to me by the Crown.¹⁴ I am satisfied that, because you were an instigator or a “prime mover” in sophisticated importations which increased the stock of pseudoephedrine in this country by a massive amount, the starting point for each of the two importations should be close to the maximum penalty of 14 years. Accordingly, I fix a starting point of 13 years’ imprisonment for each of the two importation charges but concurrent with each other; that assessment includes an uplift on account of your being involved in more than one offence.

Pseudoephedrine possession and supply

[32] I now turn to consider the starting point that I should impose for the offences involving the supply, or possession for supply, of pseudoephedrine which span the period from June 2013 to December 2013. You admitted having made 33 sales, involving a total of at least 247 sets. At \$8,000 per set, this represents sale proceeds of over \$2.3 million. You were also found guilty of possession for supply of an additional 46 sets which, had they not been seized, you would have sold for another \$370,000.

[33] I assess your culpability to be at the highest end of the spectrum, due to your role as a “prime mover” and the quantum of pseudoephedrine involved, and also because your pseudoephedrine dealing was clearly on a huge commercial scale. The sale of 247 sets calls for a starting point close to the maximum penalty of 14 years’ imprisonment. But while I agree with the Crown that importing and distributing controlled drugs are discrete acts, I accept also that the drugs you imported in May 2013 were the same drugs you had in your possession and that you supplied to others. That degree of overlap and adherence to the totality principle requires a reduction in the starting point for the supplying charges which I fix at eight years’ imprisonment on each charge, to be served concurrently.

[34] You pleaded guilty to supplying the drugs to others. Given that the pleas were indicated shortly before the trial was due to commence and that the Crown had

¹⁴ *R v Wang*, above n 8; *R v Wen* [2014] NZHC 2085; *R v Tran* [2015] NZHC 1545; *R v Ulele* [2014] NZHC 2239.

a strong case against you on those charges, I give you a discount of 20 per cent, or 19 months. This reduces your end sentence on each of the supply charges to six years and five months' imprisonment.

[35] On the charge of possession for supply I have regard to the substantial quantity of pseudoephedrine in your possession at Aviemore Drive, but I recognise the overlap with the importing charge for May 2013. I consider a sentence of seven years' imprisonment to be appropriate to mark that offending, to be served concurrently with the supplying offences.

[36] In assessing an overall starting point I have had regard to the sentence imposed against Mr Tran by Venning J, and referred to by Mr Mansfield in his submissions. Mr Tran pleaded guilty to importing 250 kgs of ContacNT and he was also convicted of dealing on a lesser scale. In that case Venning J took a starting point overall of 18 years' imprisonment.

[37] To reflect the nature and seriousness of all of your offending I take into account the Tran starting point, and I assess an appropriate total end sentence, including the allowance for your plea discount, to be one of 20 years' imprisonment.¹⁵ That is a long sentence for pseudoephedrine dealing; it is at a level which exceeds many sentences for dealing in methamphetamine for which the maximum penalty is life imprisonment. But the massive scale of your offending has no precedent – you were a prime mover in the introduction into New Zealand of around 390 kg of ContacNT containing approximately 156 kg of pseudoephedrine, seriously undermining the authorities' efforts to keep that drug out of this country. Assuming a purity of about 60 percent on extraction,¹⁶ that volume was capable of producing around 95kg of methamphetamine, worth \$95 million at street level. The misery and harm likely to result from such quantities of a pernicious and highly destructive drug is incalculable.

¹⁵ This end sentence point compares appropriately with the sentence imposed by Venning J in *R v Tran*, above n 14, where 250 kg of ContacNT was imported and there was dealing on a lesser scale than in this case. In *Tran*, a starting point of 18 years' imprisonment was adopted, but discounts were then applied for guilty pleas on all charges and particular personal circumstances.

¹⁶ See *R v Fatu*, above n 7, at [28] where the Court of Appeal said that "... the maximum purity of methamphetamine as sold on the street is 80 per cent. In practice, the purity of methamphetamine which is sold as "P" is usually in the range of 70 per cent – 80 per cent and almost always over 60 per cent."

Personal circumstances

[38] Mr Zhang, you are 45 years old. You are Chinese by ethnicity and were born and raised in Fujian, China. You are the only child of parents who are currently living in China and who despair of never seeing you again. You became a permanent resident in New Zealand in 2005 and have subsequently attained New Zealand citizenship.

[39] At the time of your arrest you were in a committed de facto relationship and you have a 2½ year old son with your partner. You also have two children from a previous marriage. You obtained a chef qualification after graduating from a university in Shanghai, China. You have always worked in the food industry and you have operated several restaurants and food businesses. You bought your current restaurant in the Auckland CBD in 2011.

[40] You say that your offending was a result of having invested too much money too quickly in a number of different businesses, resulting in your not being able to make ends meet. You say that due to being in desperate need for money, you took the risk to make some “quick cash” in order to maintain your restaurant business. That explanation grossly understates the nature and scope of your offending, Mr Zhang, and I do not accept it. You were not simply engaged in some relatively minor scheme to make a quick amount of cash. The offending I have described was on an unprecedented scale, resulting in the stock of pseudoephedrine in New Zealand being increased by a huge amount. You were driven by greed, not caring about the misery and ruin created by the end product of your enterprise.

[41] I have read the medical report indicating that you suffer from a neck injury which has a significant effect on your everyday life. Prior to your arrest, you were advised that surgery was the only option to properly mitigate the pain from which you have been suffering. No doubt the prison authorities will have regard to the matters contained in the report when managing your activities and addressing your medical condition. That misfortune is one that you would have suffered whether in prison or not and there is no evidence before me that your imprisonment will be made any harsher by it.

[42] I have read the letters from the members of your family. I do not doubt the sincerity of the grief expressed by your parents and on behalf of your children at the prospect of being separated from you for a long time. They are the victims of your offending as much as many others and I am sympathetic to their plight, but the sole responsibility for that lies with you.

[43] I am not prepared to allow you a sentencing discount for your personal circumstances. The Supreme Court has held that personal circumstances can be taken into account if they contributed in some way to the offending, or on purely compassionate grounds.¹⁷ Neither of those grounds is made out in the present case.

[44] Mr Zhang, the combined effect of the sentences that I impose on you must in the end represent the total culpability of both importing and possessing/supplying the drugs. The total effective end sentence will be one of 20 years' imprisonment.

Minimum period of imprisonment

[45] The Crown says that a minimum period of imprisonment should be imposed for the purposes of accountability and deterrence. The Court of Appeal has confirmed that in cases of very serious drug offending it will almost be invariable that the criteria for a minimum period of imprisonment, particularly the need for deterrence and denunciation, will be made out.¹⁸ That is certainly the case here. I will impose a minimum period of imprisonment of 10 years.

Lulu Zhang

Charges

[46] Lulu Zhang: you were found guilty by the jury and appear for sentencing for six charges of supplying pseudoephedrine between September 2013 and November 2013. The total amount you supplied is at least 40 sets. That means that the amount of ContacNT you supplied was worth a total of \$320,000, and contained

¹⁷ *R v Jardim* [2008] NZSC 69, [2008] 3 NZLR 612 at [14].

¹⁸ *R v Anslow* CA182/05, 18 November 2005; *R v Aram* [2007] NZCA 328; *R v Wong* [2009] NZCA 332.

approximately 3.6 kg of pseudoephedrine, capable of producing between \$1.8 - \$2.7 million worth of methamphetamine.

Starting point

[47] You were the restaurant manager of Mr Zhang's restaurant. Your role in the offending was to be a fetcher and carrier. Mr Chen and, on one occasion, Mr Lim would ring you at the restaurant to place an order for pseudoephedrine. You would then go down to the car park outside the restaurant, pick up a package containing the drugs from Mr Ma and deliver it in turn to the customer who would return later with the money which was paid over to Mr Zhang.

[48] I accept that you were drawn into this offending by your relationship with Mr Zhang. He was both your employer and your lover, or former lover. The evidence indicates to me that, in both respects, he was manipulative and controlling. It is interesting to me that another Judge in sentencing another employee of Mr Zhang independently formed the same conclusion. You were under Mr Zhang's spell and naïve, at least initially. I accept, and by their verdicts I infer that the jury also accepted, that you may have believed Mr Zhang when he first explained to you at the end of August that while he was in China you would be assisting him in a money lending business involving Mr Chen.

[49] But the verdicts also mean that, although you were at first deceived into delivering pseudoephedrine unwittingly, the jury was sure that, by 10 September 2013, after the first four transactions, you had become aware that you were, in fact, involved in supplying controlled drugs. Although you could have, and should have, refused to participate once you knew the true nature of Mr Zhang's business, you continued to act on his behalf. I accept that there were pressures which must have determined your choice not to do what would have been the right thing. It is clear to me, from the tone and content of the intercepted telephone conversation you had with Mr Zhang on 26 August 2013, that Mr Zhang would have been angry with you and bullying if you had refused to continue to follow his directions about the pick-ups and deliveries. It is probable, in my view, that you would have had to end both your personal and your employment relationship with

Mr Zhang, and it is likely also that your husband would have been out of a job. In a real sense, but not one that provides a defence, you were trapped. As it was, you continued to deliver the drugs for him as he instructed only until he returned to the country a few days later, and then only three more times when he was out of the country in late October.

[50] I accept also that there is no evidence that you received any benefit from your offending; that you did it for nothing is consistent with Mr Zhang's manipulative dominance over you.

[51] The Crown submits that the appropriate starting point for the totality of this offending is in the region of six years' imprisonment. It says that this starting point is consistent with the role of a similar offender whom I sentenced last year following his conviction on supplying a similar quantity of ContacNT, also on six occasions.¹⁹ I accept the submissions of Ms Reed and Mr Wharepouri, however, that you played a significantly less blameworthy role in the present operation than the defendant did in the other case.²⁰

[52] Your counsel submit that I need to assess your culpability by considering the drug operation as a whole and your particular role compared to the other defendants. In considering the appropriate starting point, they say I should apply a parity principle²¹ and that, in particular, I need to compare your role and culpability to that of Peggy Li, another of Mr Zhang's employees who also developed a personal relationship with him.

¹⁹ The Crown says the starting point is consistent with that of Filimea Sililoto in *R v Afakasi* [2014] NZHC 1907 at [40] and following. Sililoto was part of a wider group that was engaging in "commercial activity on a major scale". His role was as a courier on six occasions, for a total of 47 sets of ContacNT. The starting point was seven years' imprisonment.

²⁰ I accept Ms Reed's analysis that, although Mr Sililoto delivered similar quantities of pseudoephedrine, he was more culpable because he received modest benefits from his offending; he was actively involved in the distribution of the drug; he was in close contact with the leaders of the group; he assisted them in producing pseudoephedrine; and was well integrated in the wider group. Mr Sililoto had direct knowledge of, and thus was an informed and willing participant in, the drug dealing ring. See *R v Afakasi*, above n 19, at [42] and [46].

²¹ *R v Morris* [1991] 3 NZLR 641 (CA); *R v Kohey* CA345/02, 11 March 2003; *MacFarlane v R* [2012] NZCA 317.

[53] Ms Li was sentenced by Andrews J on 23 October 2014²² after she pleaded guilty to supplying 115 sets of pseudoephedrine in 16 separate transactions between June and October 2013. Justice Andrews imposed a starting point of seven years' six months for Ms Li. Your counsel say that you are less culpable than that offender for the following reasons:

- (a) You supplied considerably fewer sets of ContacNT than Ms Li in only six transactions over a shorter period of time.
- (b) You did not receive any financial benefit from your role in the operation. You did not travel with Mr Zhang and you did not receive any allowance. By contrast, Ms Li received between \$1,500 and \$2,000 per month and went to China with Mr Zhang.
- (c) You were involved in supplying pseudoephedrine under Mr Zhang's strict instructions and you followed them to the letter. You picked up the packages and delivered them for him as directed. You were only given Mr Zhang's phone to use for the dealing when he was out of the country. In comparison, Ms Li had a knowledge and understanding of the business: she knew the price of each set; she knew all the drug contacts; she frequented the VIP room of the Sky City Casino where it appears important contacts were made; she set up and transacted deals of her own initiative without any direct instruction from Mr Zhang; and she collected and retained money and sets of pseudoephedrine. Ms Li also held a separate drug phone to communicate with Mr Zhang and the others involved.
- (d) There was evidence also of Ms Li acting with some initiative to set up the importation of ephedrine. Ms Li, therefore, was more akin to a business partner of Mr Zhang, whereas you are better categorised as a subordinate acting only as instructed and only when needed.

²² *R v Li* [2014] NZHC 2610.

[54] I agree with your counsel's analysis and accept that you should be treated more leniently than Ms Li. Accordingly, I take a starting point of five years' imprisonment to reflect the seriousness of your offending and your culpability.

Personal circumstances

[55] Ms Zhang, you are 33 years old and you are of Chinese descent. You were raised by your parents in Mainland China. You say you lived a sheltered childhood which has contributed to your trusting everybody and having no cause to doubt people.

[56] You have lived in New Zealand since 2003. Upon your arrival, you completed a one year travel and tourism course in Christchurch and since then you have been hard-working and productive. You married here and have two daughters, one of whom is two years old and the younger only four months old. You have no previous convictions and I have no doubt that you would have remained a law-abiding member of the community had it not been for Mr Zhang's destructive influence.

[57] Since being remanded in custody when you were convicted, you have had to make a painful personal decision affecting your family and I understand that your children will be taken to China to live with your mother while you serve your sentence. I accept that separation from your children, one of whom is only a baby, will make imprisonment a particularly harsh experience for you.

[58] I accept also that you are genuinely remorseful for having succumbed to Mr Zhang's influence to become involved in drug-dealing, not simply because of the consequences for you, but because of your contribution to the harm such activity causes to others. You have completed a brief Drug Support Programme to help you understand that harm. I consider there is little risk that you will re-offend in any way.

[59] The Crown emphasises that in sentencing those convicted of dealing commercially in controlled drugs, the personal circumstances of the offender must be

subordinate to the importance of deterrence and ought to be attributed little significance.²³ But that is not invariably the case; personal circumstances can be taken to account if they contributed in some way to the offending, or on purely compassionate grounds.²⁴ I am satisfied that yours is one of those relatively rare cases in which both factors justify a sentence which is more lenient than the nature of your offending would otherwise require:

- (a) You were naïve and in a vulnerable position as the employee of a manipulative and domineering man and as someone who was, or had been, in a romantic relationship with him.²⁵
- (b) You were deceived into assisting with the distribution of controlled drugs, unaware at first of the true nature of the activity.
- (c) When you did learn what was really going on, you were more or less trapped.
- (d) The absence of any personal benefit from your involvement demonstrates that you were exploited by your employer.
- (e) Your role in the distribution was very minor; you added nothing of value to the overall enterprise except to the extent that you assisted Mr Zhang to continue his dealing while he was overseas. Those transactions could have occurred with the drugs being delivered to the restaurant and picked up from the restaurant without your involvement at all.
- (f) You would not have become involved in offending of any kind if it were not for Mr Zhang's manipulation of you.²⁶

²³ *R v Jardem*, above n 17, at [12]. See also *R v Wang*, above n 8, at [28].

²⁴ *R v Jardem*, above n 17, at [12] and [14].

²⁵ See *R v Wharewaka* HC Auckland, CRI 2004-092-4373, 28 April 2005 for a similar case.

²⁶ Andrews J allowed a discount to Ms Zhang's co-offender, Peggy Li, for the same reason: *R v Li*, above n 4.

- (g) Finally, your children are at a vulnerable age. While I do not doubt that your mother will provide proper care for them pending your release, compassion calls for a more lenient response to your offending than would otherwise be justifiable.

[60] On the application of ordinary sentencing principles, it is necessary to impose the least restrictive outcome which is appropriate in the circumstances.²⁷ Your case is one of the few of this kind in which deterrence and punishment should yield to the recognition of mitigating personal circumstances relevant both to your offending and to the consequences of your convictions for others and you.

[61] Accordingly, I discount the starting point by 30 per cent or 18 months, resulting in an end sentence of three years six months' imprisonment.

Guo Pei Chen

Charges

[62] Guo Pei Chen: the offences of supplying pseudoephedrine and possessing it for supply on which you were found guilty were committed between August and November 2013. You were involved in 13 transactions involving a total of at least 125 sets, or 27.9 kg of ContacNT (that is, 11.25 kg pseudoephedrine) over a three-month period. This amount of ContacNT has a street value of approximately \$1,000,000.

Starting point

[63] Your role in the offending was that you received the ContacNT directly from Mr Zhang or from Ms Zhang and further distributed it into the community for profit. In essence, you were a wholesale distributor. There is no evidence that you were acting under the instructions of anybody else and you appear to have had your own customer base. The amount of pseudoephedrine that you supplied is capable of producing \$5.6 million to \$8 million worth of methamphetamine. You explained to

²⁷ Sentencing Act 2006, s 8(g).

the writer of your pre-sentence report that you saw the offending as an opportunity to make quick cash and failed to consider the legal consequences. Equally, you failed to consider the effect on others of what you were doing.

[64] The Court of Appeal has indicated where offending in respect of class B controlled drugs involves commercial activity on a major scale, as this was, the starting point before any allowance for mitigating factors for the principal offender will be in excess of eight years' imprisonment.²⁸

[65] Ms Cooper argues that I should adopt a starting point lower than eight years' imprisonment on the basis that, even though you were involved in commercial activity on a major scale, you were not a principal offender. Counsel says that you were just a distributor, not an instigator, mastermind, prime mover or controller. She says that of the co-offenders from Operation Gem who have been sentenced, the role that you played was closest to that of Peggy Li. As I have said, Ms Li assisted Mr Zhang in supplying ContacNT to his customers on 16 occasions by delivering the drugs and collecting money. Although she supplied fewer sets than you (115 sets) Ms Cooper says that she did so over a four-month period, which was longer than your period of activity. Justice Andrews picked a starting point of seven years six months' imprisonment for Ms Li.²⁹

[66] The Crown disagrees with those propositions, and says that the starting point must exceed that adopted for Ms Li, in the range of eight years six months' to nine years' imprisonment. The Crown argues that you are more culpable than Ms Li, given that she was primarily operating under the supervision and control of Mr Zhang, and there are no indications that you worked under the supervision or control of others. I have already remarked that Justice Andrews was satisfied that Mr Zhang was manipulative and controlling regarding Ms Li. I agree with the Crown's proposition. Unlike Ms Li, you were making your own money out of the operation; you had your own customers; and no one was coercing you into behaving in that way.

²⁸ *R v Wallace & Christie*, above n 5, at [30].

²⁹ *R v Li*, above n 4.

[67] Both counsel have referred me to a Court of Appeal decision that deals with offending in a similar amount of ContacNT to yours. The defendant in that case was a low level “catcher” who was working on the instructions of another. He was charged with possession of 35 kilograms of ContacNT for supply. The Court of Appeal said the starting point should have been *at least* eight years’ imprisonment³⁰ because the defendant, although being a low level operator, played a crucial role in introducing a huge amount of a class B controlled drug to the market. In my view, despite having a smaller quantity of ContacNT, you are far more culpable than that defendant; you were out on your own as a wholesaler to make a profit.

[68] Accordingly, I impose a start point of nine years’ imprisonment for your offending.

Personal circumstances

[69] Mr Chen, you are Chinese by ethnicity. You were born and raised in Guangdong Province, China, but you came to New Zealand with your father and younger sister in 1992. Your father passed away at the end of 2010. Your mother is elderly and is currently living with your ex-wife and younger sister. You have two children from your ex-wife who are currently 14 and 16 years old. You have a child aged six with your current partner who lives in China. Since arriving in New Zealand in 1992, you have always worked in the food industry operating takeaway stores and restaurants.

[70] You have a relevant conviction for possession of methamphetamine in 2010. You were sentenced on this charge in April 2013 to community work and supervision, but I accept Ms Cooper’s submission that, since the previous conviction does not relate to a drug dealing offence, no uplift to the starting point in this case is required to recognise that earlier conviction.

[71] The Crown notes that the present offending occurred while you were subject to that earlier sentence but since you had addiction problems I do not see that as a significant aggravating factor. I am aware, however, that prior to trial you were on

³⁰ *R v Wang*, above n 8.

electronically monitored bail with a curfew. You adhered to those bail conditions, without incident, for a period of 15 months. I discount your sentence by six months to take account of your compliance with restrictive bail conditions.

[72] Ms Cooper has provided me with several letters prepared by family members and friends who know you outside the context of drug offending. They speak of your good character; that you command their respect; that you have borne the burden of responsibility to your family following your father's passing; and that you had your life in order until you were almost 40 years' old. But good character holds little weight in relation to drug offending of this kind³¹ and personal circumstances are relegated in importance to the need to deter dealing in drugs with their potential harm to the vulnerable. You must hold yourself accountable for the harmful effects of your imprisonment on your children and other family. Unlike the case of Ms Zhang, I do not consider that a further discount for you is warranted.

[73] The total effective end sentence, therefore, will be one of eight years and six months' imprisonment.

Minimum period of imprisonment

[74] Given the scale of your offending, and the fact that you have previous relevant convictions, the Crown submits that I may wish to conclude that a minimum period of imprisonment is warranted for you for the purpose of personal deterrence and accountability.

[75] I have considered your pre-sentence report. Ms Cooper emphasises that the pre-sentence report acknowledges that:

- (a) You have identified the contributing factors of your offending.
- (b) You have an overall low risk assessment and your risk of posing harm to the community is assessed as low.

³¹ *R v Wang* [2009] NZCA 118 at [28]; *R v Anslow*, above n 18, at [30]; *R v Aram*, above n 18, at [78].

- (c) Since arriving in New Zealand in 1992, you have been employed in the food industry.
- (d) You do not blame your co-offenders and you take full responsibility for your actions.
- (e) You say you saw an opportunity to make quick cash, but now you recognise the serious impact this offending has on the community as a whole.
- (f) You are willing to undertake further counselling programmes to address your drug use. I note that because of your low risk assessment, you are ineligible for the departmental programmes which are run in the community.

[76] Despite these favourable aspects of the pre-sentence report and the helpful submissions of Ms Cooper, I have regard to the primary purposes of sentencing for this type of commercial dealing, which are to hold you accountable for the harm done to the community and particularly to act as a deterrent to others.

[77] Accordingly, I will impose a minimum period of 50 per cent of your end sentence; that is, four years three months' imprisonment.

Desmond Riley Lingard Sharp

Charges

[78] Desmond Riley Lingard Sharp: prior to trial you pleaded guilty to a total of 12 charges. They were four charges of supplying pseudoephedrine and eight charges of possession of pseudoephedrine for supply. You were also found guilty by the jury on one charge of manufacturing methamphetamine and three charges of having in your possession precursors, equipment and materials for the manufacture of methamphetamine. The maximum penalty for manufacturing methamphetamine is life imprisonment.

The pseudoephedrine charges

[79] The pseudoephedrine offending occurred between August 2013 to October 2013, involving those 12 transactions and a total of 83 sets of ContacNT. This amount weighed 18.5 kg and contained approximately 7.5 kg of pseudoephedrine. It had a street value of \$664,000.

[80] The Crown's case was that you on-sold some of the pseudoephedrine and used some of it to manufacture methamphetamine with Mr Loke at your home in Gracechurch Drive, Flat Bush. The pseudoephedrine you handled is capable of producing \$3.7 million to \$5.6 million worth of methamphetamine. On that basis, the Crown submits that this offending, if viewed in isolation, warrants a starting point in the region of seven to eight years' imprisonment.

[81] Mr Niven submits that a starting point of seven years' imprisonment is appropriate in the light of the start point of seven years six months' for Ms Li,³² who offended over a longer period and sold a greater number of sets, and the start point of six years six months' imprisonment for Mr Wu,³³ who supplied fewer sets.

[82] I agree and impose a starting point of seven years' imprisonment.

[83] Mr Sharp, you are entitled to a discount for your guilty pleas to the pseudoephedrine dealing charges, which the Crown submits should not exceed 20 per cent because the pleas were entered on the morning the trial was due to commence. I am mindful of the fact that there had been negotiations earlier than that over your plea. A 20 per cent discount would result in an end sentence on those charges in the region of imprisonment for five years and seven months and I accept that proposition.

Manufacture of methamphetamine

[84] You are being sentenced on the basis that 112 grams of methamphetamine was found at the address where you were manufacturing methamphetamine and that

³² *R v Li*, above n 4.

³³ *R v Wu* [2015] NZHC 1733.

amount was the product of your manufacture. I note, of course, that you were not charged with possession of those drugs but I am satisfied that they were produced in the manufacturing process of which you were found guilty.

[85] The manufacturing in this case falls squarely into band two of the Court of Appeal's guideline decision in which it held that where the offender manufactures up to 250 grams of methamphetamine, a starting point between four years and 11 years' imprisonment should be imposed.³⁴ That is a wide range, reflecting the variety of circumstances in which such offending can occur.

[86] Before I determine the starting point, I need consider the aggravating features of your offending:

- (a) You were involved in a significant and sophisticated methamphetamine set-up.
- (b) The use and supply of methamphetamine creates enormous social harm.
- (c) I infer from the presence of methamphetamine on wall swabs and elsewhere in the house; the presence of waste liquids and used equipment; and the abundance of unused equipment, that manufacture had occurred more than once and that you intended that it would occur in the future.
- (d) You were involved in the manufacture of methamphetamine for commercial profit. The Police found \$82,000 stashed in two safes at the property. I understand that \$28,000 of that amount is said to have belonged to you. Mr Niven says that this is the amount of money you made dealing pseudoephedrine. Nevertheless, given the sophistication of the set up, the fact that there was more than one manufacture, and that Mr Loke also had money in a safe on the property, I do not doubt that you had a profit motive.

³⁴ *R v Fatu*, above n 7, at [43].

- (e) Your children resided in the house where you manufactured methamphetamine. Swabs confirmed the presence of methamphetamine on the walls of the children's bedroom and even on a cot. There was a real and substantial risk of harm posed to the children living at that address.

[87] Mr Niven says that the evidence suggests that you were not involved in the chemical processes and you were concerned about the low yields from the work that was undertaken by others to extract pseudoephedrine. This means, Mr Niven says, that you were a secondary party and you should be sentenced on the basis of providing your home for the manufacture of a controlled drug. He says you were not actually present and involved in the process of manufacture or supplying the necessary chemical ingredients.

[88] Given the large quantity of pseudoephedrine you handled; that the clandestine laboratory was in your home; the sophistication and scale of that laboratory; and the presence of your fingerprints on equipment used in the process of extracting pseudoephedrine and manufacturing methamphetamine, I do not accept that your role was limited to providing a covert location. I am satisfied that while you may not have been the cook, you provided active assistance to the manufacturing process, and the fact that you were interested in the yield from the extraction of pseudoephedrine demonstrates that you had an interest in the outcome when it came to manufacturing the methamphetamine.

[89] The Crown says that the manufacturing charge itself justifies a starting point of around seven years six months' imprisonment, with a 12-month uplift for the possession of a significant quantity of precursors, equipment and materials. I agree with Mr Niven, however, that to a large extent the possession of this material is inherent in the manufacturing charge,³⁵ but to the extent that future offending was indicated I take that into account in fixing a starting point of seven years six months on the charge of manufacturing methamphetamine.

³⁵ *U(CA236/2010) v R* [2011] NZCA 107 at [24]-[25]; *Hopwood v R* [2011] NZCA 352 at [15]-[16].

Overall starting point

[90] The Crown submits that the pseudoephedrine and the methamphetamine offending is separate, but complementary. Whether sentences are imposed on a cumulative or concurrent basis, totality considerations prevail. The Crown and your counsel submit that the appropriate starting point for the totality of your offending is around 10 years six months imprisonment.³⁶ The Crown is slightly higher than that but I adopt the view taken by Mr Niven, that 10 years six months' imprisonment is appropriate. The result is best achieved by treating the charge of manufacturing methamphetamine as the lead offence and adding an uplift to reflect the overall offending.

[91] I must also impose sentences on the other charges for which you have been found guilty. On the three charges of having equipment, material and precursors, I will impose concurrent sentences of three years' imprisonment.³⁷

Personal circumstances

[92] Mr Sharp, you are 46 years' old. You identify as being of both European and Ngapuhi descent. You have four children from two relationships. The children living with you were taken out of your custody by CYFS as a result of your offending.

[93] I will not be giving you a discount for previous good character, absence of relevant convictions, remorse and insight into your offending, although I accept that you have now come to realise the seriousness of the offending and that you have started to make progress towards rehabilitation. Such matters do not justify a discount in your circumstances where you were actively and deliberately involved in

³⁶ See *R v Afakasi & Ors*, above n 19, at [48]. This "totality starting point" can be compared to that adopted for *Filimaea Sililoto*. Mr Sililoto was involved in manufacturing less methamphetamine and supplied roughly half the amount of ContacNT as Mr Sharp. Mr Sililoto was convicted of producing pseudoephedrine, manufacturing methamphetamine (less than 56.7 grams), participation in an organised criminal group, as well as the supply of 47 sets of ContacNT (as a courier driver). The starting point for dealing was seven years' imprisonment, which was uplifted to take account of the remaining offending to a total of eight years' imprisonment. The sentence was reduced by six months for personal factors, and a 50 per cent minimum term was imposed.

³⁷ *Wilson v R* [2011] NZCA 197; *Tukuafu v R* [2015] NZCA 251.

commercial offending. I need to emphasise the importance of holding you accountable and deterring you and others from engaging in similar offending that causes such enormous harm to the vulnerable in the community.³⁸

[94] I do acknowledge that you were subject to electronically monitored bail with a 24-hour curfew from 14 March 2014 to 28 July 2015, which is a period of approximately 16 and a half months. I discount your overall sentence by nine months to reflect that. That results in an effective end sentence overall of nine years' nine months' imprisonment.

Minimum period of imprisonment

[95] The Crown submits that the Court should consider imposing a minimum period of imprisonment. The scale of your overall offending indicates that there is a particular need for deterrence and accountability. Your offending involved a large quantity of drugs and your greed put your own children's lives at risk. I consider that a minimum period of imprisonment of five years is necessary in these circumstances.

Desmond Loke

Charges

[96] Desmond Loke: the jury convicted you also of manufacturing methamphetamine and possessing the precursors, equipment and materials for the manufacture of methamphetamine. You were also found guilty of being in possession of 112 grams of methamphetamine found in a bedroom at the Gracechurch Drive address, undoubtedly the product of your manufacture. I adopt the manufacturing charge as the lead offence and consider that the same aggravating features are present as I have identified in relation to Mr Sharp.³⁹ I understand that \$54,000 of the money found in the safe belonged to you, demonstrating clearly, in my view, that this was not the only offending involving manufacture of methamphetamine.

³⁸ *R v Wallace and Christie*, above n 5, at [25].

³⁹ At [85].

[97] On the issue of the risk of harm posed to the children living at the address, Mr Newell argues that you never lived at the property and that you were not the father of the children who resided there, so you would have had little or no control over the presence of the children. The point, however, is that you manufactured a highly toxic and inflammable substance in an environment where children were put at risk of serious harm.

[98] The Crown argues that you are more culpable than Mr Sharp on the basis that you were also found guilty of a possession charge. I am inclined to agree with Mr Newell, however, that although you were found to have possession of the methamphetamine Mr Sharp and you had manufactured, this does not increase your culpability above his because possession of the product is a necessary consequence of the manufacture for which you were jointly responsible.

[99] I take a starting point of seven years six months' imprisonment for that offending.

The related offending

[100] I must also impose sentences on the other charges for which you have been found guilty. On the three charges of having equipment, material and precursors used in the production of methamphetamine, there is no reason to treat you differently from Mr Sharp and I will impose concurrent sentences of three years' imprisonment.⁴⁰

Personal circumstances

[101] Mr Loke, you are 39 years old. You are Malaysian Chinese by ethnicity and you moved to New Zealand with your family when you were 12 years old. Your parents' marriage was arranged and they separated in New Zealand. You do not have contact with your father, but you have a good relationship with your mother and step-father who now live in Australia. Your sister no longer talks to you because of

⁴⁰ *Wilson v R*, above n 37; *Tukuafu v R*, above n 37.

the offending. You have a 20-month old child with your ex-partner, who is only 21 years old. You have little family support.

[102] From the age of 13, you started to use various drugs socially. More recently you have started using P regularly and you have lost control of your drug habit. You lost friends, family and your partner as a result.

[103] But you have a diploma in marketing and previously, you have been self-employed in the computer industry, you have managed your own clothing shop and you have worked as a bar tender. At the time of your arrest you were unemployed.

[104] Mr Loke, you have a number of drug related convictions from 2002 to 2014, which the Crown submits justifies an uplift of your sentence. The most relevant convictions are for conspiring to manufacture a class B drug, conspiracy to supply class B drugs and possession for supply of methamphetamine, all of which were in June 2002. The most recent offences, committed in August 2014, were the possession of cannabis, possession of methamphetamine utensils and possession of a needle/syringe for cannabis. This occurred while you were on bail for Operation Gem. You were sentenced to one year of intensive supervision from 20 October 2014. Mr Newell accepts that an uplift is appropriate to reflect the need for greater personal deterrence. I uplift your sentence on the manufacturing charge by six months to reflect this.

[105] Mr Newell also seeks a discount to recognise the efforts you have made already to rehabilitate yourself and your domestic circumstances. Your rehabilitation efforts are commendable and I encourage you to continue with them, but they do not justify a discount from a proper sentence in a case such as this. While I have extended some leniency to Ms Zhang on account of her young children, the circumstances of her offending and yours are very different and I do not consider there is a proper basis to reduce your sentence because of your domestic circumstances. I agree, however, that the restrictive bail terms applied to you over a lengthy period require recognition and I reduce the end sentence by nine months on that account.

[106] That produces an overall end sentence of seven years and three months' imprisonment.

Minimum period of imprisonment

[107] The Crown submits that given the size of the methamphetamine lab and the fact that you have previous relevant convictions, means I should consider whether minimum period of imprisonment is warranted for the purposes of deterrence and accountability.

[108] The probation officer's report assesses you as presenting a high risk of re-offending and high risk of harm to others. It identifies that you have issues with drug addiction, and that you recently reoffended while you were in a live-in drug rehabilitation programme. You are described as displaying a series of entrenched beliefs supporting your drug issues, for instance, minimising and justifying it and disproportionately blaming others for your drug use. In those circumstances, I consider that the normal rule making you eligible for parole after serving one-third of your sentence is insufficient to hold you accountable for the harm that your offending has caused to the community and for the purpose of personal and general deterrence.⁴¹ Accordingly, I consider a minimum period of imprisonment of four years to be appropriate in your case.

Michael Jeffrey Neems

Charge

[109] Michael Jeffrey Neems: you were found guilty of possession of pseudoephedrine for supply in respect of one transaction involving 22 sets. This is nearly 5 kg of ContacNT which is just under 2 kg of pseudoephedrine.

[110] You were caught when Police surveillance tracked a package containing the drugs from Peggy Li to Desmond Sharp to an unidentified man who then provided it

⁴¹ Sentencing Act 2002, s 86.

to you. The ContacNT was found in a bag stashed in the foot well of the vehicle you were driving.

[111] Ms Li's evidence was that she sold the product on behalf of Mr Zhang to Mr Sharp for \$176,000. The pseudoephedrine would have produced well over \$1 million worth of methamphetamine had it not been intercepted. I will sentence you on the basis that you must have been involved in the transaction purely to earn money. It is a necessary consequence of the jury's verdict that you had the drugs in your possession for the purpose of supplying them to others.

Starting point

[112] The Crown submits that the appropriate starting point for your offence is in the region of four years' imprisonment. That is the same starting point adopted for two other offenders in similar circumstances.⁴² Both those offenders and you played an important part in the chain of supply of pseudoephedrine to those who would manufacture it into methamphetamine. The fact that in the other cases those offenders actually handed over the money for the drugs, in my view, does not minimise your culpability or increase theirs. They were, in my view, simply acting as couriers also, although the only difference being that they handled money as well.

[113] I consider the sentences imposed in that case to be closer in kind to your offending than the two cases relied upon by Mr Clearwater in arguing for a starting point of three years' imprisonment and I do not necessarily take a view that those sentences were appropriate.⁴³

[114] Accordingly, I take a starting point of four years' imprisonment in your case.

⁴² *R v Afakasi & Ors*, above n 19. A starting point of 4 years imprisonment was adopted for Justin Abel (at [107]), who was handed 4.4kg (20 sets) of ContacNT in exchange for \$160,000 in cash and then pulled over by the Police. A starting point of 4 years' imprisonment was also adopted for John Fetu (at [98]) who was convicted of two charges of possessing pseudoephedrine for supply. In total he received 15 sets (3.345kg) of ContacNT (1.35 kilograms of pseudoephedrine, having a potential yield of somewhere between 675 and just over one kilogram of methamphetamine).

⁴³ *R v Lee* [2015] NZHC 976; *R v Lam* [2015] NZHC 1713.

Personal circumstances

[115] Mr Neems, you are 61 years' old and are New Zealand European. You are a father to six children, nine grandchildren and three great-grandchildren. You report that none of your family are happy about your conviction. That should not surprise anybody. Until March 2014, you were a director of a café/bar business. It is currently going through liquidation proceedings. You have also been the recipient of an invalid's benefit following an injury you received from a motorcycle accident in 1999.

[116] I am aware of your medical issues and your counsel has said that your age and those issues should entitle you to a generous discount. Similar to the comments I made in relation to Mr Chen, however, I consider that your personal circumstances do not justify a discount in light of the need to deter you and others from engaging in similar offending that causes such harm to the vulnerable in the community.⁴⁴

[117] I note also that you have a number of drug related convictions, although they appear to relate to cannabis offending and are principally between 1978 and 1987. You also have a drug related conviction from 2003. I agree that an uplift for prior convictions is not required, given the length of time that has passed since these convictions.

[118] That means that the effective end sentence for you is one of four years' imprisonment.

Sentences

[119] I now turn to imposing the sentences on each of you.

⁴⁴ *R v Wallace and Christie*, above n 5, at [25].

Hui Zhang

[120] Mr Zhang, will you please stand:

- (a) On each of the charges of supplying pseudoephedrine, you are sentenced to six years and five months' imprisonment to be served concurrently with each other.
- (b) On the charge of possession of pseudoephedrine for supply, you are sentenced to seven years' imprisonment to be served concurrently with the supplying charges. On that charge you will serve a minimum period of four years' imprisonment.
- (c) On each charge of importing pseudoephedrine, you are sentenced to 13 years' imprisonment concurrently with each other and cumulatively upon the sentence of seven years on the charge of possession for supply. On those importing charges you will serve a minimum period of six years' imprisonment.

[121] The result is that the effective overall end sentence is one of 20 years' imprisonment, and you will serve a minimum period of 10 years' imprisonment.

[122] Stand down please.

Lulu Zhang

[123] Ms Zhang, please stand. On each charge of supplying pseudoephedrine, I sentence you to three years six months' imprisonment to be served concurrently.

[124] Stand down please.

Guo Pei Chen

[125] Mr Chen, please stand:

- (a) On the charges of possession of pseudoephedrine for supply, I sentence you to eight years and six months' imprisonment.
- (b) On the charges of supplying pseudoephedrine, I sentence you to eight years and six months' imprisonment.

[126] All sentences are to be served concurrently and on each charge you will serve a minimum period of four years and three months' imprisonment. The overall effective end sentence, therefore, is one of eight years and six months' imprisonment and you will serve a minimum period of four years and three months' imprisonment.

[127] Stand down.

[128] I should say to those of the prisoners who do not fully understand English, that I will make a transcript of my sentencing remarks available to you as soon after the sentencing is completed as possible, and I request the security officers not to take any of you back to prison until you have had an opportunity for the sentencing – particularly the sentences imposed – to be translated for you so that it is clear that you understand what has happened.

Desmond Riley Lingard Sharp

[129] Mr Sharp, would you please stand.

- (a) On the charges of possession of pseudoephedrine for supply, I sentence you to five years seven months' imprisonment.
- (b) On the charges of supplying pseudoephedrine, I sentence you to five years seven months' imprisonment.

- (c) On each of the three charges of being in possession of precursors, equipment and material for the production of methamphetamine, I sentence you to three years' imprisonment.
- (d) On the charge of manufacturing methamphetamine, I sentence you to nine years nine months' imprisonment and on that charge you will serve a minimum period of five years' imprisonment.

[130] All sentences are to be served concurrently. That means you are sentenced to an effective overall period of nine years nine months' imprisonment of which you will serve a minimum period of five years.

[131] Stand down.

Desmond Loke

[132] Mr Loke, please stand.

- (a) On the charge of manufacturing methamphetamine, I sentence you to seven years and three months' imprisonment and on that charge you will serve a minimum period of four years' imprisonment.
- (b) On the three charges of having equipment, material and precursors used in the production of methamphetamine, I sentence you to three years' imprisonment.
- (c) On the charge of possession of methamphetamine for supply, I sentence you to six years' imprisonment.

[133] All of the sentences are to be served concurrently. That means you are sentenced to an effective overall term of seven years and three months' imprisonment of which you will serve a minimum period of four years' imprisonment.

[134] Stand down.

Michael Jeffrey Neems

[135] Mr Neems, please stand.

[136] On the charge of possession of pseudoephedrine for supply, I sentence you to four years' imprisonment.

[137] Please stand down.

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Toogood J