

SAY TSUONG LU

v

THE QUEEN

Court: Elias CJ, Blanchard and William Young JJ

Counsel: JJ Brandts-Giesen for Applicant
K A L Bicknell for Crown

Judgment: 10 August 2011

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The proposed appeal is against dismissal by the Court of Appeal of an appeal against sentence.¹ It concerns a minimum term of imprisonment (seven years) imposed in relation to a 12 year sentence which itself is not now challenged. The offence was supply of methamphetamine. The percentage of the sentence ordered to be served without parole is said to be out of line with comparable cases and to involve double counting of aggravating features, but the former is not really demonstrated and the revisiting of such features is inevitable in the separate exercise of fixing of an MPI, as the sentencing court is concerned that the point of eligibility

¹ *Lu v R* [2011] NZCA 151.

for actual release does not arrive until the period of incarceration adequately reflects the criminality.

[2] The second proposed ground is disparity with the sentence of a co-offender who received eight years with no MPI. However, the difference is explained by the fact that the present applicant was a supplier and the co-offender simply a “mule” who was motivated by her addiction and received little of the profits. She had also pleaded guilty – unlike the applicant who was found guilty.

[3] No issue of public or general importance arises and there is no appearance of any miscarriage of justice.

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