

IN THE SUPREME COURT OF NEW ZEALAND

SC 64/2013
[2013] NZSC 100

BETWEEN GUO WEI DENG
 Applicant

AND THE QUEEN
 Respondent

Court: Elias CJ, Glazebrook and Arnold JJ

Counsel: Applicant in Person
 M R Davie for Respondent

Judgment: 15 October 2013

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant, Mr Deng, and four others faced a jury trial on charges related to the importation into New Zealand of large quantities of methamphetamine. All were convicted of some offending. Mr Deng and another co-accused were convicted on one count of possession of methamphetamine for sale, the quantity of methamphetamine being over 90 kilograms. Courtney J sentenced Mr Deng to 17 years' imprisonment, with a minimum period of imprisonment (MPI) of eight years, six months.¹

[2] Mr Deng appealed against his conviction and sentence, as did others of the co-accused. The Solicitor-General sought leave to appeal against Mr Deng's sentence. On 30 September 2009, the Court of Appeal dismissed Mr Deng's appeal against conviction and allowed the Solicitor-General's appeal against sentence,

¹ *R v Chin* HC Auckland CRI-2006-004-10505, 10 December 2008.

substituting a sentence of 25 years' imprisonment, with an MPI of 10 years.² Mr Deng then sought and was granted several extensions of time to file an application for leave to appeal to this Court, but did not do so.³ Two of his co-accused did file applications for leave to appeal, but they were declined.⁴

[3] Sometime in 2012, Mr Deng filed an application for recall of the Court of Appeal's judgment. In essence, he argued that there were interpretation problems at trial⁵ and that his trial counsel failed to adduce certain evidence. The Court of Appeal rejected his application.⁶ Mr Deng now seeks leave to appeal to this Court, against both conviction and sentence. In relation to the conviction appeal, the grounds are essentially the same as those raised on the recall application. In relation to sentence, the ground is that the sentence imposed by the Court of Appeal was manifestly excessive given that he was "not a crucial player" in the wider arrangement for the importation of methamphetamine.

[4] Mr Deng's application is well out of time but as Mr Deng is acting for himself, we will address the application on its merits.

[5] In rejecting Mr Deng's recall application, the Court of Appeal noted that Mr Deng had not raised the grounds advanced in support of it in his appeal and that his allegations about the quality of the translation provided were supported only by his own affidavit evidence. The Court noted that Mr Deng was represented at trial by the late Mr Haigh QC, who was assisted by two Cantonese-speaking juniors. There was no evidence that the quality of translation had been raised with Mr Haigh in the course of the 11 week trial (although Mr Deng said that he had raised it with junior counsel), and there was no affidavit evidence before the Court from either of the junior counsel involved or from the interpreters. Nor had Mr Deng pointed to any aspect of the conduct of his defence that might have been affected by any

² *Chen v R* [2009] NZCA 445, [2010] 2 NZLR 158 at [203].

³ *Deng v R* [2012] NZCA 597 at [3] and [32].

⁴ *Pan v R* [2010] NZSC 4; and *Fan v R* [2011] NZSC 34.

⁵ At the time of his arrest, Mr Deng had been living in New Zealand for about 17 years, but says he associated mainly with Cantonese-speaking friends and associates: *Deng v R*, above n 3, at [11].

⁶ At [46].

inadequacies in translation.⁷ Mr Deng also argued that his counsel had conducted his defence inadequately in several respects, but the Court rejected those contentions. Finally, the Court briefly outlined the evidence against Mr Deng, which, on any view, demonstrated a strong Crown case.

[6] Against this background, we are not satisfied that it is necessary in the interests of justice that we hear and determine the proposed appeal against conviction. No point of general or public importance is raised, nor do we consider, given the matters highlighted by the Court of Appeal in its recall judgment, that there is a risk that a substantial miscarriage of justice has occurred. We record that we received a further affidavit from Mr Deng on 9 October 2013, in which he comments on the Crown's submissions. None of the points raised by Mr Deng affects our assessment.

[7] Turning to Mr Deng's proposed appeal against sentence, we note that the Court of Appeal increased Mr Deng's sentence because it identified an error of principle by the Judge and because it did not accept that Mr Deng had played a lesser role in the offending.⁸ The Court referred to Mr Deng's "high-level participation" and to the "very great" quantity of drugs involved.⁹ The Court considered that a sentence of life imprisonment would have been within range, but because this was a Solicitor-General's appeal, imposed a lesser term of 25 years' imprisonment, with an MPI of ten years.¹⁰

[8] The essential point on the proposed appeal is that the Court of Appeal was wrong to treat Mr Deng and his co-accused as being in broadly similar positions. However, the sentencing Judge considered that their culpability was of comparable gravity and the Court of Appeal agreed. We do not see any point of general or public importance in this, nor do we accept that there is any risk of a substantial miscarriage of justice.

⁷ See *Abdula v R* [2011] NZSC 130, [2012] 1 NZLR 534 at [43].

⁸ *Chen v R*, above n 2, at [197]–[202].

⁹ At [202].

¹⁰ At [203].

[9] Accordingly, the application for leave to appeal is dismissed.

Solicitors:
Crown Law Office, Wellington for Respondent