

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 125/2022
[2023] NZSC 48

BETWEEN RODNEY GEORGE MARTEL
 Applicant

AND THE KING
 Respondent

Court: O'Regan, Williams and Kós JJ

Counsel: M J Dyhrberg KC and H G de Groot for Applicant
 Z R Johnston for Respondent

Judgment: 5 May 2023

JUDGMENT OF THE COURT

The application for an extension of time to apply for leave to appeal is dismissed.

REASONS

[1] The applicant pleaded guilty and was sentenced to 18 and a half years for the importation of restricted drugs into New Zealand.¹ He seeks leave to appeal against a decision of the Court of Appeal dismissing his appeal against sentence.² As this application is over four years out of time, he also seeks an extension of time to bring the application.

Background

[2] The applicant was sentenced for importing 5.683 kilograms of methamphetamine, 7.7 litres of GBL, 31 grams of cocaine, 31 grams of MDMA

¹ *R v Martel* [2017] NZHC 1878 (Palmer J) [Sentencing notes].

² *Martel v R* [2018] NZCA 305 (French, Venning and Katz JJ).

powder and 1,986 tablets of MDMA in 37 packages over a period of 10 months. A search warrant executed on his hotel room found a fraudulently obtained passport, a rifle, drug dealing equipment and cash.

Lower Courts decisions

Sentencing in the High Court

[3] The methamphetamine importation was treated as the lead offending, and as the sentencing occurred before the Court of Appeal's decision in *Zhang v R*,³ the applicant was sentenced in the High Court based on the principles in *R v Fatu*.⁴ The applicant fell within band four of *Fatu*, in which the relevant starting point was between 12 years and life imprisonment. The Judge found that the applicant had a central role which was "pivotal".⁵ His role, combined with the very large quantity of drugs, led to a starting point of 20 years imprisonment.

[4] The Judge then uplifted the sentence by six months to reflect previous convictions for manufacturing, possessing and supplying methamphetamine.

[5] The Judge gave the applicant a 10 per cent discount for the guilty plea which was entered on the first day of the trial. An MPI of 50 per cent was imposed.

Court of Appeal

[6] The applicant's unsuccessful appeal to the Court of Appeal was also considered in accordance with the *Fatu* guidelines. His grounds of appeal were that the Judge adopted a starting point that was too high and failed to give sufficient discount for his remorse and guilty plea. He did not challenge the MPI.

[7] The Court of Appeal held that the High Court Judge correctly set the starting point which reflected the volume of drugs, duration of offending and the applicant's senior role in the operation. The Court also found that the discounts given (or not given) for remorse and the guilty plea were appropriate.

³ *Zhang v R* [2019] NZCA 507, [2019] 3 NZLR 648.

⁴ *R v Fatu* [2006] 2 NZLR 72 (CA).

⁵ Sentencing notes, above n 1, at [18].

The application to this Court

[8] The applicant submits that his sentence is manifestly unjust and disproportionate to the seriousness of his offending. His grounds of appeal are: first, the Courts below erred in their consideration of personal mitigating factors, particularly in disregarding the applicant's substance addiction; second, the MPI was not justified and should not have been imposed; and third, leave should be granted because the applicant's trial counsel advanced his first appeal against sentence on misconceived grounds. The applicant does not seek to apply the revised guidelines from *Zhang*.⁶

[9] The application for leave to appeal is four years out of time. The applicant argues that an extension should be granted because he was not aware of the option to appeal to this Court until late 2021, and then personal circumstances delayed the filing of this application.

Our assessment

[10] We acknowledge that addiction is relevant to commercial drug sentencing,⁷ and that MPIs must not be imposed mechanistically.⁸ But in this case the sentence and MPI reflected the leading role the applicant had in the operation. It is such that we do not see any risk of miscarriage of justice if leave is not granted.⁹

Result

[11] As there are no basis for leave to be granted, there is no point in granting an extension of time to seek leave.

⁶ *Zhang*, above n 3, has now been amended by *Berkland v R* [2022] NZSC 143, [2022] 1 NZLR 509. The two judgments sit together as the guidelines for methamphetamine offending.

⁷ *Berkland*, above n 6, at [128].

⁸ *Zhang*, above n 3, at [169].

⁹ Senior Courts Act 2016, s 74(2)(b).

[12] The application for an extension of time to apply for leave to appeal is dismissed.

Solicitors:
Crown Law Office, Wellington for Respondent