

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 23/2023
[2023] NZSC 59

BETWEEN SHANE THOMPSON
Applicant
AND THE KING
Respondent

Court: Winkelmann CJ, O'Regan and Ellen France JJ
Counsel: E J Forster for Applicant
M J Lillico for Respondent
Judgment: 17 May 2023

JUDGMENT OF THE COURT

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

REASONS

Introduction

[1] Mr Thompson pleaded guilty to a representative charge of supplying 4.2 kilograms of methamphetamine and one charge of possessing 2.6 kilograms of methamphetamine for supply. He was sentenced in the District Court to 13 years' imprisonment, with a minimum period of imprisonment (MPI) of six years and six months.¹ Mr Thompson appealed unsuccessfully to the Court of Appeal against the imposition of the MPI.² He now seeks an extension of time to apply for leave to appeal from the decision of the Court of Appeal upholding the MPI.

¹ *R v Thompson* [2018] NZDC 11394 (Judge Rea).

² *Zhang v R* [2019] NZCA 507, [2019] 3 NZLR 648 (Kós P, French, Miller, Brown and Clifford JJ) [CA judgment].

Background

[2] The background is set out in the Court of Appeal judgment.³ For present purposes it is sufficient to say there was no dispute at sentencing that Mr Thompson was the main offender in what was described as “an extensive methamphetamine distributing network” in the Hawke’s Bay.⁴ The Court of Appeal noted that the sentencing Judge referred to Mr Thompson “as being in business in a very sophisticated and complex way” and that he “was involved in supplying methamphetamine at both wholesale and retail level” over a relatively long period of time.⁵

[3] The sentencing Judge had set a starting point of 18 years’ imprisonment, placing the offending within band four of *R v Fatu*.⁶ From that starting point, there was a six-month discount for time spent on electronically monitored bail, along with an agreed three-month discount for the forfeiture of certain vehicles. The Judge also gave a discount of 25 per cent for Mr Thompson’s guilty pleas. The resulting sentence of 13 years’ imprisonment was imposed concurrently on each charge. The MPI of six years and six months equated to 50 per cent of the sentence imposed.

[4] In dismissing the sentence appeal, the Court of Appeal accepted the submission for Mr Thompson that there should have been “a more particular analysis” of the application of the factors in s 86 of the Sentencing Act 2002 (dealing with the imposition of an MPI) to the facts of Mr Thompson’s case.⁷ The Court continued:

[278] ... We note Mr Thompson’s acceptance of responsibility, his family support, and the fact he was assessed as being at a low risk of reoffending are factors which ... tend against imposition of a minimum period of imprisonment. They are factors which arguably diminish the community protection consideration in s 86(2)(d).

[279] However, we consider the imposition of a 50 per cent minimum period of imprisonment was nonetheless appropriate in this instance. We agree with the Crown that accountability and denunciation assume particular importance in this case, such that s 86(2) is engaged. Mr Thompson established and led a very substantial operation of methamphetamine distribution and was engaged in the offending over a relatively long period of time (almost one year). We

³ At [267]–[268].

⁴ At [267].

⁵ At [267].

⁶ *R v Fatu* [2006] 2 NZLR 72 (CA).

⁷ CA judgment, above n 2, at [278].

do not accept that the absence of addiction tells against the imposition of a minimum period of imprisonment; rather we agree with the Crown that it makes Mr Thompson's offending more serious and calls for greater accountability. Mr Thompson's willingness to accept responsibility for his actions, commendable as it is, does not detract from this analysis. To some extent it is recognised in the discount awarded for his early guilty plea, and we do not consider a separate discount for remorse is warranted.

[280] While Mr Phelps submitted it would be unlikely that Mr Thompson would receive parole after the minimum one third period, this is a matter for the Parole Board. We do not consider it appropriate for the Court to speculate as to Mr Thompson's likely release date. The statutory test is clear. We are satisfied that the minimum period of imprisonment that is otherwise applicable would not be sufficient to hold Mr Thompson accountable for the harm done to the community, denounce his conduct, and deter other persons from committing the same or a similar offence. ...

The proposed appeal

[5] On the proposed appeal, Mr Thompson seeks to challenge the weight accorded to his personal circumstances and how those factors might affect the term of the MPI imposed, consistently with ss 7 and 8 of the Sentencing Act.⁸ He also wishes to argue that the imposition of an MPI erodes the guilty plea discount regime in *Hessell v R*.⁹ He says that these matters raise questions of general or public importance.¹⁰

[6] The proposed appeal would ultimately turn on a factual assessment of the impact of Mr Thompson's circumstances on the term of the MPI. We do not see that assessment as raising questions of general or public importance but, rather, reflecting the particular combination of facts in Mr Thompson's case.¹¹ The Court of Appeal expressly recognised his circumstances required closer consideration but, having undertaken the necessary consideration, determined that the term of the MPI imposed was appropriate. Nothing raised by the applicant calls into question that

⁸ We record Mr Forster filed a further memorandum of 28 April 2023 about the applicant's circumstances.

⁹ *Hessell v R* [2010] NZSC 135, [2011] 1 NZLR 607.

¹⁰ Senior Courts Act 2016, s 74(2)(a).

¹¹ For this reason, while the approach to guilty pleas in *Hessell v R*, above n 9, to the calculation of length of an MPI may raise a question of general or public importance, the present case is not an appropriate vehicle for considering that issue: see also *Taylor v R* [2023] NZSC 15 at [7].

assessment. We see no appearance of a miscarriage of justice in the approach adopted to this case.¹²

[7] Given that the proposed appeal does not meet the criteria for leave to appeal, we decline to grant an extension of time.

Result

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

Solicitors:
Crown Law Office, Wellington for Respondent

¹² Senior Courts Act, s 74(2)(b).