

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 126/2024
[2025] NZSC 26

BETWEEN JIANZHONG CHENG
Applicant

AND THE KING
Respondent

Court: Ellen France, Kós and Miller JJ
Counsel: A Wei, R Rodrigues and Y Sun for Applicant
I S Auld for Respondent
Judgment: 3 April 2025

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

Introduction

[1] Jianzhong Cheng, the applicant, pleaded guilty to 18 charges of drug offending. He was sentenced to nine years and six months' imprisonment.¹ He unsuccessfully appealed against sentence to the Court of Appeal and now seeks leave to appeal to this Court.²

Background

[2] The charges reflected the applicant's involvement in the importation of at least

¹ *R v Cheng* [2024] NZDC 3635 (Judge Gibson) [Sentencing notes].
² *Cheng v R* [2024] NZCA 598 (Hinton, Brewer and Osborne JJ) [CA judgment].

13.055 kilograms of ephedrine over six separate occasions;³ 5.826 kilograms of pseudoephedrine on one occasion; and 3.91 kilograms of ketamine over two separate occasions. In addition, the applicant was involved in the supply of drugs. In particular, he was in possession of 956.7 grams of methamphetamine for the purpose of supply; supplied some 100 grams of methamphetamine over two separate occasions; had 3.936 kilograms of ephedrine for the purpose of supply; and supplied 9.64 kilograms of ephedrine over five separate occasions. The incidents giving rise to the charges took place over a period of about a year.

[3] Both the sentencing Judge and the Court of Appeal described the applicant as “effectively” a “middleman” between a Ms Wei, a more senior member of the group involved in importation and supply, and the manufacturers of the methamphetamine.⁴ In this context, the Court of Appeal said this:⁵

[Mr Cheng] received packages, unpacked them, took photographs and videos of the process, and sent those to Ms Wei. He was an integral part of the subsequent supply operation, supplying ephedrine to methamphetamine manufacturers and methamphetamine to customers under instructions from Ms Wei.

[4] In sentencing the applicant, the Judge took the methamphetamine offending (Class A) as the lead offences. As the offending involved under two kilograms it fell within Band Four of *Zhang v R*.⁶ The Judge was satisfied Mr Cheng’s role fell somewhere between “lesser” and “significant” in terms of the *Zhang* analysis.⁷ The Judge set the starting point for this part of the offending at nine years’ imprisonment. The Judge then addressed starting points for the ephedrine and pseudoephedrine offending, referring to three other cases involving Class B drugs.⁸ An uplift was adopted, reflecting both the ephedrine and pseudoephedrine offending and the ketamine (Class C) offending, of six years, taking into account totality factors.

³ Like the Court of Appeal, we have adopted the figure used by counsel for both parties.

⁴ Sentencing notes, above n 1, at [2]; and CA judgment, above n 2, at [5].

⁵ CA judgment, above n 2, at [5].

⁶ *Zhang v R* [2019] NZCA 507, [2019] 3 NZLR 648.

⁷ Sentencing notes, above n 1, at [13].

⁸ See *R v Wallace* [1999] 3 NZLR 159 (CA); *Keino v R* [2019] NZCA 457; and *R v Al-Obidi* [2022] NZHC 1274.

[5] As the Court of Appeal said:⁹

[11] The Judge then considered personal mitigating factors and allowed:

- (a) 20 per cent for guilty pleas;
- (b) 10 per cent for time spent on electronically monitored (EM) bail from July 2021, with effectively a 24-hour curfew;
- (c) no credit for matters of personal background identified in a report under s 27 of the Sentencing Act 2002 ...; and
- (d) five per cent for previous good character.

[6] On this basis the Judge reached an end sentence of nine years and nine months' imprisonment. That figure was further reduced to nine years and six months' imprisonment on account of "some small difficulty" the applicant may experience in prison.¹⁰ This was a reference to Mr Cheng's limited English.

The proposed appeal

[7] On the proposed appeal, the applicant wants to raise a number of points, as follows:

- (a) Clarification of the definition of "middleman", and that this should not capture the applicant given the absence of any degree of autonomy or decision-making.
- (b) The Court of Appeal was wrong to treat him as having had "an awareness and understanding of the scale of the operation" given his knowledge was limited to the drugs and cash he handled.¹¹
- (c) He should have got the full 25 per cent discount for his guilty pleas like his two co-defendants, and that the lesser discount he received raises issues of fairness and parity.

⁹ Footnotes omitted.

¹⁰ Sentencing notes, above n 1, at [18].

¹¹ CA judgment, above n 2, at [16].

(d) This Court needs to give guidance on sentencing discounts for language difficulties.

(e) The approach to the relevance of matters raised in the s 27 report, by focusing on causal connection to the offending, was too narrow.

[8] These arguments would largely reprise the arguments made in the Court of Appeal. Essentially, the Court considered that, while the uplift was a little “stern”, the end sentence was not out of range.¹² The Court noted the offending was motivated by financial difficulties. The applicant was not a drug user. He was aware that it was drugs he was transporting.

[9] In terms of the credit for guilty pleas, the Court considered that the Judge would have been aware of the timing of those pleas and was entitled having regard to that, and the circumstances of the sentence indication, to set the credit as he did.¹³

[10] As to the point relating to difficulties in prison, the Court concluded there was no error in the Judge’s approach to this factor. The Court accepted that given the starting point, the credit for this aspect appeared “very modest”.¹⁴ But, the Court said, the sentencing Judge appropriately took into account the information in the s 27 report which showed that Mr Cheng had resided in New Zealand since 2005. While he had “poor language skills” the report identified he had worked in a variety of roles which by their nature required at least conversational English.¹⁵ Against this background, the Court concluded that the decision to provide only a very modest credit for the possibility there might be “some small difficulty” for Mr Cheng in relation to his English was appropriate.

[11] As to the s 27 report, the Court of Appeal noted this identified the applicant as being well brought up and as having had some difficulty through the COVID-19 pandemic. He had experienced financial difficulties because of loss of income and

¹² At [18].

¹³ Mr Cheng was charged in June 2021, pleaded not guilty and awaited trial. He was initially to have a sentence indication hearing in September 2023 but that was adjourned to November 2023. He declined the sentence indication but pleaded guilty.

¹⁴ CA judgment, above n 2, at [35].

¹⁵ At [35].

having an overseas debt. The Court of Appeal referred to this Court’s judgment in *Berkland v R*.¹⁶ The Court of Appeal noted that the offender’s background may affect the extent of agency but, on the basis of the s 27 report, the Court saw no error in the Judge’s conclusion. The Court noted that the applicant’s background “was not one of pervasive and persistent social disadvantage which meaningfully affected his agency”.¹⁷ Nor did his reluctance to seek assistance from his parents or view of Ms Wei as his “rescuer” materially cut across his agency in his decision to become involved in the offending.¹⁸

[12] The matters the applicant wishes to raise on analysis are essentially a challenge to the factual assessments made in the Courts below in determining the appropriate sentence. For example, the use of the term “middleman” was a convenient short-hand for where the Courts below considered the applicant fell in terms of the “lesser” to “significant” categories in *Zhang* in the context of rejecting his argument that he was just a “catcher”.¹⁹ We do not see this assessment or the resolution, in the context of this case, of the other matters raised by the applicant as giving rise to questions of general or public importance.²⁰ Nor does anything raised by the applicant call into question the assessment of the Court of Appeal of these matters. There is accordingly no appearance of a miscarriage of justice.²¹ The criteria for leave to appeal are not met.

Result

[13] The application for leave to appeal is dismissed.

Solicitors:

Te Tari Ture o te Karauna | Crown Law Office, Wellington for Respondent

¹⁶ *Berkland v R* [2022] NZSC 143, [2022] 1 NZLR 509.

¹⁷ CA judgment, above n 2, at [30].

¹⁸ At [28].

¹⁹ *Zhang*, above n 6.

²⁰ Senior Courts Act 2016, s 74(2)(a).

²¹ Section 74(2)(b).