

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA200/2025
[2026] NZCA 437**

BETWEEN	ULAKAI FAKAOSILEA Appellant
AND	THE KING Respondent

Hearing:	27 May 2026
Court:	Thomas, Palmer and Lang JJ
Counsel:	T M Cooper KC and K A J Russell for Appellant B J Thompson for Respondent
Judgment:	15 September 2026 at 10.00 am

JUDGMENT OF THE COURT

The appeal is dismissed.

REASONS OF THE COURT

(Given by Thomas J)

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Introduction

[1] In 2018, Ulakai Fakaosilea was convicted for his role in the then largest known importation of methamphetamine into New Zealand, 501 kilograms.¹ He was sentenced to 22 years and nine months’ imprisonment with a minimum period of imprisonment (MPI) of eight years and nine months.² By 2022, several years into his sentence, Mr Fakaosilea used a mobile phone in prison to arrange two sales of large amounts of methamphetamine and was also in possession of a kilogram of methamphetamine for supply. In June 2023, Mr Fakaosilea, again from prison and again using a mobile phone, orchestrated the importation of a further 198.2 kilograms

¹ *R v Fakaosilea* [2018] NZHC 3362 [2018 sentencing decision] at [11].

² At [47]–[48]. Mr Fakaosilea was also convicted and sentenced on one charge of participation in an organised criminal group, receiving a concurrent sentence of five years’ imprisonment.

of methamphetamine into New Zealand. He pleaded guilty. The High Court Judge sentencing Mr Fakaosilea considered it “beyond argument” that the 2022 and 2023 offending lay “within the gravest category of drugs cases” and sentenced Mr Fakaosilea to life imprisonment with a non-parole period of 10 years.³ Mr Fakaosilea appeals, contending that the sentence is manifestly excessive and a finite sentence should have been imposed, particularly given Mr Fakaosilea’s guilty pleas and personal circumstances.⁴

[2] We address the appeal by considering the following issues:

- (a) Was the starting point of life imprisonment an error?
- (b) Should Mr Fakaosilea’s guilty pleas have reduced the starting point of life imprisonment to a finite sentence?
- (c) Did Mr Fakaosilea’s other personal mitigating factors, including prospects of rehabilitation, make a life sentence inappropriate?
- (d) Standing back, was a sentence of life imprisonment appropriate?

2018 sentencing for the 90 Mile Beach offending

[3] We begin by briefly discussing Mr Fakaosilea’s offending in 2016 and his subsequent sentencing.

[4] In June 2016, some 501 kilograms of methamphetamine were imported into New Zealand via a boat that landed on 90 Mile Beach. Mr Fakaosilea was among the offenders involved in the importation.

[5] Mr Fakaosilea and one of his co-offenders, Mr Iusitini, were sentenced by Moore J on 17 December 2018 for their roles in the importation of that

³ *R v F* [2025] NZHC 651 [sentencing decision under appeal] at [26] and [30]. Mr Fakaosilea’s name was suppressed at the time of the High Court sentencing decision, but counsel confirmed at the hearing before us that his suppression has since lapsed.

⁴ Mr Fakaosilea’s appeal was originally heard by a Divisional Court, but the Court concluded the matters raised were of sufficient importance for the appeal to be heard by a Permanent Court, so the appeal was reheard.

methamphetamine and for their participation in an organised criminal group. They had pleaded guilty to those charges.⁵ A central question before the Judge was whether life imprisonment should be imposed.⁶

[6] At the outset, the Judge referred to the purposes and principles of sentencing, noting that the need to deter others was an important purpose in sentencing for drug-related offences.⁷ He said the offending required a stern sentencing response, and that he needed to have particular regard to the need for accountability for the harm caused to the community, denunciation and protection of the community.⁸ The Judge also recognised the need for parity, noting four co-offenders had already been sentenced.⁹

[7] The sentences for the co-offenders ranged from 12 years' imprisonment in respect of Mr M to 25 years and seven months' imprisonment with an MPI of 10 years for Mr Iusitini.¹⁰ Mr Iusitini played an important leadership role at various points in the operation, including coordinating efforts from overseas.¹¹ The Judge took a 32 year starting point, considering his offending more serious than Mr Fakaosilea's. This was mirrored for two other offenders, Mr Wan and Mr Tuilotolava, for whom starting points of 32 years' imprisonment were also taken.¹² In indicating a finite starting point for Mr Wan, Lang J found that pleading guilty, coupled with Mr Wan's lack of prior convictions, was sufficient to render a sentence of life imprisonment inappropriate. Downs J had followed suit in adopting a starting point for Mr Tuilotolava, with reference to the principle of parity.¹³

⁵ At [1].

⁶ At [2].

⁷ At [4]–[5].

⁸ At [6]–[7].

⁹ At [8], citing: *R v M* [2016] NZHC 2881; *R v Fonua* [2017] NZHC 718; *R v Fonua* [2017] NZHC 1193; *R v Wan* [2017] NZHC 1255; and *R v Tuilotolava* [2017] NZHC 2621.

¹⁰ *R v M*, above n 9, at [24]; and 2018 sentencing decision, above n 1, at [60]. After Mr Fakaosilea's sentencing, Selaima Fakaosilea (Mr Fakaosilea's sister) was sentenced to 12 years and six months' imprisonment (cumulative on an existing sentence of 14 years and six months' imprisonment) with an MPI of seven years and Stevie Cullen was sentenced to 27 years' imprisonment with an MPI of nine years: *Cullen v R* [2019] NZHC 2088 at [86], [130] and [136]. On appeal, Ms Fakaosilea's sentence was reduced to nine years and six months' imprisonment with an MPI of five years and four months: *Fakaosilea v R* [2021] NZCA 401 at [105]–[106].

¹¹ 2018 sentencing decision, above n 1, at [56].

¹² At [57].

¹³ At [53].

[8] As to Mr Fakaosilea, the Judge accepted there was no clear indication Mr Fakaosilea was involved from the early stages of what he described as a very significant and sophisticated commercial operation.¹⁴ Rather, Mr Fakaosilea was involved in the weeks leading up to the day the drugs were imported.¹⁵ Within three days of Mr Fakaosilea's entry to New Zealand in 2016 following deportation from Australia, Mr Fakaosilea had become involved in the offending.¹⁶ Notably he was part of the team which helped unload the boat and was involved in hiding the drugs.¹⁷ The Judge rejected the suggestion that Mr Fakaosilea was "a mere mule".¹⁸

[9] The offending clearly fell within the uppermost end of band four of *R v Fatu*, which suggests a sentencing range of 12 years to life imprisonment for the importation of very large commercial quantities of methamphetamine (500 grams or more).¹⁹ Referring to s 8(c) of the Sentencing Act 2002, the Judge said he was required by law to impose the maximum penalty if the offending was within the most serious cases for which the penalty of life imprisonment is prescribed, unless circumstances relating to the offender make that inappropriate.²⁰

[10] The Judge adopted a preliminary starting point of life imprisonment and then considered whether it should be reduced to a finite sentence in light of Mr Fakaosilea's particular role, parity and Mr Fakaosilea's wider personal circumstances.²¹

[11] The Judge found Mr Fakaosilea's culpability was slightly less than a co-offender who had a starting point of 30 years' imprisonment, Mr Fonua.²² He referred to character references from Mr Fakaosilea's sister in law, Mr Fakaosilea's former minister and a close friend of Mr Fakaosilea, suggesting that Mr Fakaosilea had "[fallen] in with the wrong crowd" but retained strong family and community support.²³

¹⁴ At [12]–[13].

¹⁵ At [13].

¹⁶ At [16].

¹⁷ At [18].

¹⁸ At [19].

¹⁹ *R v Fatu* [2006] 2 NZLR 72 (CA) at [36(d)].

²⁰ 2018 sentencing decision, above n 1, at [31].

²¹ At [33].

²² At [35] and [38].

²³ At [39].

[12] Noting Mr Fakaosilea’s 13 convictions out of Australia, the Judge said the present offending was simply in a different league. He said, however, that Mr Fakaosilea showed positive rehabilitative prospects and, in the circumstances, life imprisonment was not appropriate.²⁴ He therefore adopted what he described as a slightly reduced starting point of 29 years, allowing a further six months for personal factors, especially rehabilitative prospects.²⁵ Given the strength of the prosecution case, a full guilty plea discount was not available but the Judge noted Mr Fakaosilea had spared the prosecution and judicial system the burden of a long, complicated and expensive trial and that he had pleaded guilty after instructing new counsel. A 20 per cent reduction was warranted, resulting in a final sentence of 22 years and nine months’ imprisonment and, in line with Mr Fonua, an MPI of eight years and nine months.²⁶ Relevantly, the Judge said as follows:

[50] You now have a long road ahead of you. The sentence I have imposed is a long one but it need not be crushing. I hope you will use your time in prison usefully and reflect on what you have done, undertake courses for self-improvement because, it seems, you have the insight and positive potential to change.

2025 sentencing

[13] Mr Fakaosilea appeared before Downs J on 27 March 2025 for sentence on five charges: one charge of supplying methamphetamine; two charges of possessing methamphetamine for supply; one charge of importing methamphetamine; and one charge of participating in an organised criminal group. The offending occurred while Mr Fakaosilea was serving his sentence of 22 years and nine months’ imprisonment imposed in 2018 for the 90 Mile Beach offending.

[14] The Judge began by discussing the facts. In August 2022, Mr Fakaosilea used a mobile phone to arrange, from within prison, the sale of a kilogram of methamphetamine for \$160,000 and, in a separate transaction, the sale of a further five ounces of methamphetamine for \$25,000. Both transactions were covered by a single charge of supplying methamphetamine.²⁷ Later that month, Mr Fakaosilea

²⁴ At [40].

²⁵ At [41]–[42].

²⁶ At [44]–[45].

²⁷ Sentencing decision under appeal, above n 3, at [6]

possessed a kilogram of methamphetamine for supply (in the sense, we presume, of having control over it but not physical custody).²⁸

[15] Then, in June 2023, a container arrived at the Ports of Auckland. In it were four threshers (pieces of agricultural equipment) apparently having arrived from Dubai.²⁹ Examination revealed “a sophisticated concealment of controlled drugs” inside each thresher, totalling 198.2 kilograms of methamphetamine with 80 per cent purity.³⁰ Data obtained from Mr Fakaosilea’s phone showed that, as well as importing the methamphetamine, he was in control of it for the purpose of supply to others.³¹ The charge of participating in an organised criminal group was directed at the broader conspiracy to import and deal in methamphetamine, in Mr Fakaosilea’s case from prison.³²

[16] The Crown contended life imprisonment was warranted or, failing that, a global starting point of between 30 and 31 years’ imprisonment, whereas Ms Cooper KC,³³ who appeared for Mr Fakaosilea, submitted a finite sentence was appropriate with a global starting point of around 28 years’ imprisonment.³⁴

[17] The Judge identified three aggravating factors. First, the amount of methamphetamine falling within the most serious band in the case law.³⁵ Secondly, the leading role Mr Fakaosilea played in the offending.³⁶ The third aggravating factor, described by the Judge as “grave”, was that Mr Fakaosilea did all of this relatively early into a long sentence for what was then the largest importation of methamphetamine into New Zealand.³⁷

²⁸ At [7].

²⁹ At [8].

³⁰ At [8].

³¹ At [9].

³² At [10].

³³ Ms Cooper KC is now a District Court Judge.

³⁴ Sentencing decision under appeal, above n 3, at [17].

³⁵ At [12], citing: *Zhang v R* [2019] NZCA 507, [2019] 3 NZLR 648; and *Berkland v R* [2022] NZSC 143, [2022] 1 NZLR 509.

³⁶ Sentencing decision under appeal, above n 3, at [13]–[15].

³⁷ At [16].

[18] The Judge foreshadowed that he would be taking a starting point of life imprisonment.³⁸ He then addressed mitigating factors.

[19] Although Mr Fakaosilea was charged on 28 September 2023, he pleaded guilty on 24 October 2024. It was apparently accepted by the Crown that the guilty pleas would warrant a full reduction. The Judge noted he had been given limited information in this regard but assumed that Mr Fakaosilea should receive full credit for the guilty pleas.³⁹

[20] There were comprehensive cultural and pre-sentence reports. Mr Fakaosilea was 35 years old when sentenced. He had had a stable family life but his father appeared to have been an alcoholic and violent. Mr Fakaosilea used alcohol, cannabis and other intoxicants from a young age and was sent to prison at age 17 for committing an aggravated robbery.⁴⁰ His criminal history in Australia was “not insignificant”, resulting in his deportation to New Zealand whereupon he joined the Comanchero MC, of which he was a senior member.⁴¹ Mr Fakaosilea had not tried to leave the gang and did not intend to. He has two children.⁴²

[21] By the time of sentence, Mr Fakaosilea had been in prison for eight and a half years. His Australian based family continued to visit him. Character references made it clear he continued to have support.⁴³

[22] The Judge accepted that Mr Fakaosilea’s background provided some explanation for why he joined the gang. He accepted it contributed causatively to his decision to do so and to Mr Fakaosilea’s general criminal lifestyle. The Judge was not, however, persuaded that Mr Fakaosilea’s background really explained his dealing in very large amounts of methamphetamine from within prison. But in any event, he said any causative contribution, should it exist, must give way to other sentencing

³⁸ At [17].

³⁹ At [19].

⁴⁰ At [20]–[21].

⁴¹ At [21].

⁴² At [21].

⁴³ At [22].

imperatives, saying that the offending was far too serious for background to continue to have any real purchase as a mitigating feature.⁴⁴

[23] The Judge referred to a letter Mr Fakaosilea wrote to him, saying he was seeking to attend rehabilitative programmes and that his “morals and values” were in the right place.⁴⁵ The Judge disagreed. He noted Mr Fakaosilea’s comment that he was committed to change but pointed out that was what he had also said to Moore J when he was being sentenced for the 90 Mile Beach offending.⁴⁶ Moore J had recorded Mr Fakaosilea’s good prospects of rehabilitation.⁴⁷ Downs J observed that, within five years of the sentence, the present offending was committed.⁴⁸

[24] It followed that the only mitigating features of significance were the guilty pleas and, less significantly, Mr Fakaosilea’s age.⁴⁹

[25] The Judge noted that only a handful of people had received life imprisonment for dealing in controlled drugs and even fewer for dealing in methamphetamine. However, he considered it was beyond argument that Mr Fakaosilea’s offending lay within the gravest category of drug cases.⁵⁰

[26] The Judge said that, while Mr Fakaosilea’s age and guilty pleas favoured a determinate sentence, everything else about the case favoured life imprisonment. He said the focus had to be on denunciation, deterrence of others and community protection, and any other focus would send the wrong signal, including to prisoners contemplating dealing drugs from prison on behalf of gangs.⁵¹

[27] The Judge then turned to address Ms Cooper’s submission that only a finite sentence would recognise Mr Fakaosilea’s guilty pleas and a life sentence would disincentivise those who might otherwise plead guilty to very serious drug charges. While describing it as a reasonable point, the Judge said the answer was that the guilty

⁴⁴ At [23].

⁴⁵ At [24].

⁴⁶ At [24].

⁴⁷ At [24], citing 2018 sentencing decision, above n 1, at [42].

⁴⁸ Sentencing decision under appeal, above n 3, at [24].

⁴⁹ At [25].

⁵⁰ At [26], citing Sentencing Act 2002, s 8(c).

⁵¹ Sentencing decision under appeal, above n 3, at [28].

pleas were relevant to the risk assessment the New Zealand Parole Board (Parole Board) would have to undertake, which was a task it would have irrespective of whether the sentence were determinate or otherwise.⁵² Another answer, he said, was that the offending was “extraordinarily serious” and it was difficult to imagine “a graver case”.⁵³

[28] Mr Fakaosilea was sentenced to life imprisonment on each of the methamphetamine charges, with a non-parole period by operation of law of 10 years’ imprisonment.⁵⁴ He was sentenced to the maximum penalty of 10 years’ imprisonment for participation in an organised criminal group.⁵⁵

The appeal

[29] While Mr Fakaosilea accepts that his sentence will be a severe one, he contends that the life sentence (and MPI) imposed is manifestly excessive.⁵⁶ Ms Cooper made six submissions in support of that proposition.

[30] First, the Judge erred by concluding that a life sentence was the least restrictive sentence appropriate,⁵⁷ and accordingly erred in holding that s 8(c) rather than s 8(d) of the Sentencing Act 2002 applied.

[31] Secondly, the Judge was wrong to think it unnecessary to conduct an analysis of the relative seriousness of Mr Fakaosilea’s offending compared to that in other cases. Ms Cooper stressed that Mr Fakaosilea was entitled to a sentence consistent with those given to “similar offenders committing similar offences in similar circumstances”,⁵⁸ and there were no reasons given as to why his case was considered more serious than those where lengthy finite sentences were imposed.

⁵² At [29].

⁵³ At [29].

⁵⁴ At [30].

⁵⁵ At [30].

⁵⁶ The submissions for Mr Fakaosilea refer to the “MPI”, but no MPI was imposed. Rather, there is a 10 year non-parole period by operation of law: Parole Act 2002, s 84(3).

⁵⁷ Sentencing Act 2002, s 8(g).

⁵⁸ Section 8(e).

[32] Thirdly, the Judge erred in declining to apply the proviso to ss 8(c) or (d), namely that the maximum penalty (or near to it) must be imposed “unless circumstances relating to the offender make that inappropriate”. The circumstances, in her submission, were that Mr Fakaosilea entered early guilty pleas and that his adult life had been shaped by “marked social and economic deprivation”.

[33] Fourthly, by declining what should have been a 25 per cent credit for the guilty pleas, the Judge both created an incentive for the most serious alleged offenders to take their chances at trial (with resulting cost and uncertainty of outcome) and limited defence lawyers’ ability reliably to advise clients about the weight a court will give to their guilty pleas.

[34] Fifthly, a total finite sentence of around 32 years (reflecting both the 90 Mile Beach offending and the current offending) should have been imposed, in which case Mr Fakaosilea would be 61 years old by its expiry. In Ms Cooper’s submission, no principle of sentencing would be insufficiently vindicated by a finite sentence of that length.

[35] Sixthly, if a life sentence is imposed, the MPI should be reduced. We interpose that the answer to this submission is that the non-parole period for a drug offending life sentence is 10 years by operation of law.⁵⁹ No MPI has been imposed in respect of Mr Fakaosilea, so there is no MPI to reduce.

[36] We will address the issues as set out in [2] above but, before doing so issue, set out the key statutory provisions relevant to Mr Fakaosilea’s sentence.

⁵⁹ Parole Act, s 84(3).

Relevant statutory provisions

Sentencing Act 2002

[37] The principles of sentencing are front and centre in this appeal. At the time of sentencing, they were:⁶⁰

8 Principles of sentencing or otherwise dealing with offenders

In sentencing or otherwise dealing with an offender the court—

- (a) must take into account the gravity of the offending in the particular case, including the degree of culpability of the offender; and
- (b) must take into account the seriousness of the type of offence in comparison with other types of offences, as indicated by the maximum penalties prescribed for the offences; and
- (c) *must impose the maximum penalty prescribed for the offence if the offending is within the most serious of cases for which that penalty is prescribed, unless circumstances relating to the offender make that inappropriate; and*
- (d) *must impose a penalty near to the maximum prescribed for the offence if the offending is near to the most serious of cases for which that penalty is prescribed, unless circumstances relating to the offender make that inappropriate; and*
- (e) must take into account the general desirability of consistency with appropriate sentencing levels and other means of dealing with offenders in respect of similar offenders committing similar offences in similar circumstances; and
- (f) must take into account any information provided to the court concerning the effect of the offending on the victim; and
- (g) must impose the least restrictive outcome that is appropriate in the circumstances, in accordance with the hierarchy of sentences and orders set out in section 10A; and
- (h) must take into account any particular circumstances of the offender that mean that a sentence or other means of dealing with the offender that would otherwise be appropriate would, in the particular instance, be disproportionately severe; and
- (i) must take into account the offender's personal, family, whanau, community, and cultural background in imposing a

⁶⁰ Emphasis added. Since Mr Fakaosilea was sentenced on 27 March 2025, s 8 of the Sentencing Act 2002 has since been amended by s 5 of the Sentencing (Reinstating Three Strikes) Amendment Act 2024 and s 5 of the Sentencing (Reform) Amendment Act 2025. Throughout this judgment, we refer to the version of s 8 that applied at the time of sentencing.

sentence or other means of dealing with the offender with a partly or wholly rehabilitative purpose; and

- (j) must take into account any outcomes of restorative justice processes that have occurred, or that the court is satisfied are likely to occur, in relation to the particular case (including, without limitation, anything referred to in section 10).

[38] Section 9 sets out aggravating and mitigating factors which the court must take into account. Particularly relevant to Mr Fakaosilea are the mandatory aggravating factors of offending while still subject to sentence and that the offender was, at the time of offending, a participant in an organised criminal group.⁶¹ In mitigation, however, the court must take into account “whether and when the offender pleaded guilty”.⁶²

Parole Act 2002

[39] The Parole Act 2002 deals with non-parole periods. It provides that the non-parole period of a long-term determinate sentence is one-third of the length of sentence unless an MPI has been imposed, or the sentence is a long-term notional single sentence (in which case the non-parole period is obtained by adding together the non-parole periods of every sentence making up that notional sentence).⁶³

[40] If life imprisonment is imposed for an offence other than murder, the non-parole period is a determinate 10 years and there is no power to increase or decrease that period.⁶⁴ Section 86 of the Sentencing Act 2002 gives the court the power to impose an MPI on determinate sentences only and even then only up to a maximum of 10 years.⁶⁵

Was the starting point of life imprisonment an error?

[41] Ms Cooper raised two issues about the starting point. First, that the Judge wrongly assessed Mr Fakaosilea’s role in comparison to one of his co-defendants,

⁶¹ Sentencing Act 2002, s 9(1)(c) and (hb).

⁶² Section 9(2)(b).

⁶³ Parole Act, s 84(1)–(2) and (4).

⁶⁴ Section 84(3); and see *Shailer v R* [2017] NZCA 38, [2017] 2 NZLR 629 at [4] and [75].

⁶⁵ Section 103 of the Sentencing Act 2002 is limited to sentencing for murder.

Mr Safi. Secondly, that the Judge erred in considering the offending fell within s 8(c), having declined to discuss the other cases to which he was referred.⁶⁶

Mr Fakaosilea's role

[42] The Judge said that Mr Fakaosilea and Mr Safi (who was also in prison) gave instructions to a group of men who were not in prison. Mr Safi had already been sentenced in the District Court, where a starting point of 24 years' imprisonment was taken.⁶⁷ Downs J did not accept that Mr Fakaosilea played a similar role to that of Mr Safi, saying that Mr Fakaosilea occupied a more senior role in the Comanchero MC, describing him as a "very senior member".⁶⁸ He noted that the summary of facts to which Mr Fakaosilea pleaded guilty recorded Mr Safi as "clearly subservient" to him within the prison environment.⁶⁹ Mr Fakaosilea had accepted in his pre-sentence report interview that he was "the main organiser, 100 percent".⁷⁰ The Judge concluded that Mr Fakaosilea played a leading role (and a more senior role than Mr Safi), including as the critical link with the exporter of the drugs.⁷¹

[43] In Ms Cooper's submission, Mr Fakaosilea and Mr Safi "worked hand-in-glove over the critical period of the import" and had different roles which involved broadly comparable culpability. She said that, but for each of them, the offence would not have been committed, noting that it was Mr Safi who provided the group chat the address to which the drugs were to be delivered, enlisted various other participants and sent instructions, working closely with Mr Fakaosilea. She contended that the Judge wrongly placed weight on Mr Fakaosilea's seniority in the gang hierarchy, emphasising that what is relevant is the role in the *offending*, not who is notionally senior at a gang meeting.

[44] We do not accept that the Judge erred in this regard. When sentencing Mr Safi, Judge Glubb in the District Court noted that, while Mr Safi was instrumental in passing on information in the group chat, the message history "made it clear that Mr Fakaosilea

⁶⁶ See sentencing decision under appeal, above n 3, at [26].

⁶⁷ At [13].

⁶⁸ At [14].

⁶⁹ At [14].

⁷⁰ At [14].

⁷¹ At [15].

was the primary director”.⁷² The summary of facts to which Mr Fakaosilea pleaded guilty referred to him as being the conduit between those who exported the methamphetamine to New Zealand and other members in his group with whom he corresponded. Mr Fakaosilea’s role within the gang is clearly relevant to the assessment of the role he played in the offending, with his clear leadership role relative to Mr Safi being emphasised by the summary of facts describing Mr Safi as “clearly subservient” to Mr Fakaosilea and performing menial tasks on his behalf in prison. Notably, Mr Fakaosilea himself told the pre-sentence report writer that he was the main organiser.

Does s 8(c) of the Sentencing Act 2002 apply?

[45] Ms Cooper’s second objection to the starting point related to the Judge’s conclusion that it was “beyond argument” that s 8(c) of the Sentencing Act 2002 prevailed over s 8(d). Ms Cooper submitted that, for Mr Fakaosilea to receive a life sentence, it was necessary first for the Judge to determine that his offending was more serious than that of others who nearly received a life sentence (s 8(d)) and as serious or more serious than that of those who did receive a life sentence (s 8(c)). In Ms Cooper’s submission, in the cases of *R v Leung*, *R v Wong*, *R v Valent*, *R v [R]* and *Chen v R*, which we discuss below, the offending took place over lengthy periods, involved multiple importations and was sufficiently sophisticated to evade detection for months or years.⁷³ She noted that in *R v Leung*, *R v Wong* and *R v Valent*, the lead offenders dealt in greater quantities of drugs.⁷⁴

[46] Ms Cooper conceded that Mr Fakaosilea’s participation in the offending while in prison plainly aggravated the offending to a substantial degree but noted defendants in *R v Wong*, *Chen v R* and *R v Leung* travelled from across the world to offend in New Zealand.⁷⁵ Finally on this point, Ms Cooper submitted that Mr Safi’s starting

⁷² *R v Safi* [2024] NZDC 30124 at [12].

⁷³ *R v Leung* [2019] NZHC 3299 at [10]–[12], [17]–[19], [43] and [46]–[48]; *R v Wong* [2020] NZHC 1654 at [17]–[19], [23]–[25] and [42]; *R v Valent* [2023] NZHC 1432 at [8]–[10], [14]–[16] and [23]; *R v [R]* [2020] NZHC 2257 at [3] and [8]; and *Chen v R* [2009] NZCA 445, [2010] 2 NZLR 158 at [8], [15]–[17], [181] and [183].

⁷⁴ *R v Leung*, above n 73, at [47]; *R v Wong*, above n 73, at [44]; and *R v Valent*, above n 73, at [2]–[3] and [19].

⁷⁵ *R v Wong*, above n 73, at [25] and [72]; *Chen v R*, above n 73, at [5], [31] and [211] (Mr Chen and Mr Fung only); and *R v Leung*, above n 73, at [15]–[16], [21] and [23]–[26].

point of 24 years should “exercise considerable gravitational force” on the selection of an appropriate starting point for Mr Fakaosilea. To the extent any differentiation was justified, it should be limited by their functionally similar roles, each of which was critical to the enterprise and which required close collaboration between them.

[47] The Crown’s position was that the Judge made no error in classifying the offending as within the most serious of cases of its kind, such that the presumption was the maximum penalty would apply.

Discussion

[48] We turn first to analyse the approach taken both by this Court and the High Court to serious drug offending.

Relevant cases

[49] We have identified and considered a number of cases where offenders were sentenced for serious drug offending. The table appended to this judgment as Appendix 1 sets out the essential components of, and bases for, the sentences imposed in those cases.⁷⁶ We have already discussed the 90 Mile Beach offending sentences in the context of discussing Mr Fakaosilea’s sentence for that offending.⁷⁷ It is worth recording some additional observations, focusing especially on the cases referred to by Ms Cooper.

[50] This Court in *Chen v R* said that the sentencing principles in s 8(a)–(d) of the Sentencing Act 2002 required the maximum penalty where the evidence pointed to large-scale importation and sale of methamphetamine:⁷⁸

[183] These principles require this Court to convey the message that large-scale importation and sale of methamphetamine into and in New Zealand will attract the stern maximum penalty which Parliament has set for such offending. Mr Chen embarked on the large-scale operation employing successive consignments, seen by him and his co-offenders to warrant use of elaborate preparations and shipping containers. There can be no excuse for the earlier transactions any more than for their successors.

⁷⁶ We have mostly omitted offenders who were sentenced to less than 20 years’ imprisonment from the table.

⁷⁷ See above at [7].

⁷⁸ *Chen v R*, above n 73.

[51] Mr Chen was sentenced to life imprisonment for the importation of 96 kilograms of methamphetamine and 154 kilograms of pseudoephedrine.

[52] *Chen v R* was shortly followed by this Court's decision in *Rhodes v R* in 2009. Mr Rhodes was the person in charge of and who directed what was then considered a major drug manufacturing and supply ring. He was responsible for the manufacture of approximately 1.4 kilograms of methamphetamine and had supplied, or offered to supply, in excess of 365 grams.⁷⁹ Notably, his prior offending included sentences totalling 14 and a half years' imprisonment in Australia for serious drug offending. He was deported to New Zealand after serving part of those sentences.⁸⁰ In respect of Mr Rhodes' appeal against his sentence of life imprisonment, this Court said:

[92] Albert Rhodes has to be dealt with as falling within the most serious of cases. The substantial manufacture occurred over a period of time in a determined and professional manner. The further equipment and materials discovered are consistent only with an ongoing enterprise. There was a highly orchestrated supply arrangement following the manufacture.

[93] All of his offending was markedly aggravated because it was committed while Albert Rhodes was on bail for drug related offending and occurred before the expiry of the terms which had been imposed upon him in Australia and in respect of which he was on early release.

[94] The facts spoke for themselves. Significant finite terms of imprisonment had done nothing to deter him and as Winkelmann J said, he was "a menace to society".

[95] We have no hesitation in concluding that the approach adopted was totally within discretion and in fact anything less would have been an inadequate response to this man's total offending.

[53] In declining Mr Rhodes' application for leave to appeal, the Supreme Court gave a single paragraph judgment:⁸¹

[1] The proposed appeal is against a sentence of life imprisonment imposed for manufacturing methamphetamine and other serious drug offending (32 counts). The applicant wishes to argue that there is an inconsistency with another Court of Appeal case⁸² (in which this Court refused leave) because the persons in the other case, who also received life imprisonment, had dealt in larger amounts of drugs. But, as counsel for the Crown responds, that is a fallacious argument if, as the Court of Appeal concluded and we agree, the applicant's activities were serious enough to

⁷⁹ *Rhodes v R* [2009] NZCA 486 at [87].

⁸⁰ At [88].

⁸¹ *Rhodes v R* [2010] NZSC 22.

⁸² *Pan v R* [2010] NZSC 4.

merit life imprisonment. The fact that someone else's offending was worse is beside the point.

[54] This emphasises the point that s 8(c) of the Sentencing Act 2002 is engaged by the class of offending that “is within the most serious of cases for which that penalty is prescribed”, not merely the single most serious instance of a certain type of offending that is conceivable or on record.⁸³

[55] At the time of sentencing in *R v Leung* in 2019, the amount of methamphetamine imported, 267 kilograms, was amongst the largest importations of methamphetamine into New Zealand.⁸⁴ After referring to *Chen v R* and *Rhodes v R*, Moore J concluded that he would not go so far as to say that Mr Leung's conduct was within the most serious of its kind warranting the imposition of the statutory maximum.⁸⁵ While he was satisfied Mr Leung was plainly a senior figure in the operation, he was not the mastermind. A starting point of 30 years' imprisonment was taken.⁸⁶

[56] Moore J was also the sentencing Judge in *R v Wong*, which concerned a co-defendant of Mr Leung. Mr Wong pleaded guilty on the first morning of the trial.⁸⁷ Alluding to *Rhodes v R* and *Chen v R*, Moore J noted that life imprisonment had only been imposed for methamphetamine-related offending on two previous occasions and in circumstances which he regarded as quite different from those relating to Mr Wong. He also noted that sentences of life imprisonment were not imposed in respect of any of the defendants connected to the 90 Mile Beach offending.⁸⁸ Regarding Mr Wong's role as above that of Mr Leung, he adopted a starting point of 31 years' imprisonment.⁸⁹

[57] The case of *R v [R]* has been cited a number of times.⁹⁰ It contains a discussion of the imposition of life imprisonment for serious drug offending. Powell J undertook

⁸³ See also *R v Beri* [1987] 1 NZLR 46 (CA) at 48.

⁸⁴ *R v Leung*, above n 73, at [47].

⁸⁵ At [56]–[59].

⁸⁶ At [59].

⁸⁷ *R v Wong*, above n 73, at [3].

⁸⁸ At [51].

⁸⁹ At [55]–[56].

⁹⁰ *R v [R]*, above n 73.

an analysis of a number of cases, including several of those discussed above, in the context of considering the Crown’s submission that a starting point of life imprisonment was appropriate for the defendant, whose counsel submitted that a finite sentence was appropriate.⁹¹

[58] Powell J observed that it was difficult to see any justification for adopting a starting point for finite sentences over 30 years’ imprisonment rather than specifying a sentence of life imprisonment.⁹² He said life is not reserved only for the most serious of cases because “[l]ogic and history tell us that there will always be a bigger importation in the future”,⁹³ and then said:⁹⁴

On the contrary, a life sentence in cases other than murder would appear to represent a wide band of imprisonment, with the relative seriousness of individual cases regulated by minimum periods of imprisonment, noting that the release date of an offender is ultimately determined by the parole board. Normally, a prisoner is eligible for parole after serving one third of a sentence of over two years imprisonment. Where life imprisonment is ordered other than for murder, a minimum period of imprisonment of 10 years is imposed unless the Court orders otherwise. This suggests that the threshold for life imprisonment is around 30 years and there appears no policy reason why life imprisonment should not be imposed as opposed to the imposition of longer finite sentences in excess of 30 years.

[59] We interpose to record that this Court has previously rejected the notion that life imprisonment is equivalent to a 30 year finite sentence.⁹⁵ We do agree, however, that there must come a point where the considerations justifying a particularly high finite starting point would effectively justify life imprisonment as the starting point instead. While that might seem an unattractive proposition, particularly when the offender is young, matters such as age are, of course, relevant at the second stage of the s 8(c) inquiry. That is, when the maximum penalty of life imprisonment has been taken as the starting point, age is relevant to assessing whether circumstances relating to the offender nevertheless make a life sentence inappropriate.

⁹¹ At [18]–[23].

⁹² At [20].

⁹³ At [20], quoting *Chen v R*, above n 73, at [187].

⁹⁴ *R v [R]*, above n 73, at [20] (footnotes omitted).

⁹⁵ See *Shailer v R*, above n 64, at [80].

[60] A starting point of life imprisonment was adopted for the defendant in *R v [R]*, with Powell J considering the offending most similar to that of Mr Rhodes and Mr Chen.⁹⁶

[61] The recent decision of *R v Daveron* is also of some interest, in particular because Mr Daveron's participation in the importation of 35.254 kilograms of methamphetamine, as well as other drugs, was mostly carried out from prison, where Mr Daveron was as a result of an attempted murder charge.⁹⁷ Boldt J commented that, even if the scale of the commercial drug importing enterprise Mr Daveron ran from prison warranted only a very high finite starting point, the fact the offending occurred in prison deserved an uplift large enough to take the starting point up to life imprisonment.⁹⁸

Our assessment

[62] Part of the task of a sentencing judge is to strive for consistency in the sentences of similar offenders committing similar offences in similar circumstances,⁹⁹ but obviously no two cases are identical. We have already confirmed our agreement with the Judge's assessment that Mr Fakaosilea played a leading role in the offending. We cannot accept that the fact the offenders in *R v Wong*, *Chen v R* and *R v Leung* travelled to New Zealand for the offending is on par with the fact Mr Fakaosilea offended while in prison, in terms of aggravation.¹⁰⁰ The fact Mr Fakaosilea was in prison for what was, at the time it occurred back in 2016, the largest known methamphetamine importation into New Zealand, is an aggravating factor of the utmost seriousness.¹⁰¹ The offender in *R v Daveron* also offended while serving a sentence of imprisonment and life was taken as the starting point.¹⁰² Mr Daveron played a leading role in the importation of around 35 kilograms of methamphetamine in contrast to Mr Fakaosilea's leading role in the importation of around 200 kilograms. Furthermore

⁹⁶ *R v [R]*, above n 73, at [20] and [23].

⁹⁷ *R v Daveron* [2026] NZHC 737 at [7], [12] and [48]. Mr Daveron was remanded in custody a few months after he began importing methamphetamine but, by the time of his sentencing, he had been sentenced to nine years and four months' imprisonment after being convicted at trial.

⁹⁸ At [34].

⁹⁹ Sentencing Act 2002, s 8(e).

¹⁰⁰ *R v Wong*, above n 73, at [25] and [72]; *Chen v R*, above n 73, at [5], [31] and [211] (Mr Chen and Mr Fung only); and *R v Leung*, above n 73, at [15]–[16], [21] and [23]–[26].

¹⁰¹ 2018 sentencing decision, above n 1, at [11].

¹⁰² *R v Daveron*, above n 97, at [34].

and importantly, Mr Daveron was not serving a sentence in relation to the importation of extremely large amounts of methamphetamine.

[63] While the quantities involved in Mr Fakaosilea’s offending were slightly less than those for Messrs Leung and Wong, Mr Fakaosilea had a much clearer senior leading role than either of those offenders.¹⁰³ Mr Fakaosilea provided directions to the team, had close links to the overseas source and apparently an expectation of substantial financial gain (as evidenced by his instructions to ensure minimal wastage, as that would affect the payment received). By his own admission to the pre-sentence report writer, he was the main organiser. Further, Mr Fakaosilea’s offending was sophisticated, involving the concealment of methamphetamine within agricultural equipment and encrypted communications made, within prison, using contraband mobile phones.

[64] As this Court explained in *Shailer v R*:¹⁰⁴

[64] ... [The maximum penalty] has always been available for the “worst class of cases encountered in practice”.¹⁰⁵ That approach was then reinforced with mandatory effect by the enactment of s 8(c) in 2002. At the time of enactment the then Justice Minister described the purpose of the Bill as to “[leave] no doubt at all, in the judicial mind, that when you have the worst type of offending in any category the maximum sentence will then be applied”.¹⁰⁶

[65] Mr Fakaosilea’s leading role, the amount of methamphetamine he imported and the fact he offended while serving a lengthy sentence for methamphetamine importation meant s 8(c) of the Sentencing Act 2002 applied rather than s 8(d), requiring the maximum penalty unless the personal circumstances of Mr Fakaosilea made that inappropriate.

[66] We do not therefore consider the Judge erred in taking a starting point of life imprisonment.

¹⁰³ *Leung v R*, above n 73, at [53], [55] and [59]; and *Wong v R*, above n 73, at [55].

¹⁰⁴ *Shailer v R*, above n 64.

¹⁰⁵ *R v Beri*, above n 83, at 48.

¹⁰⁶ (17 April 2002) 599 NZPD 15593.

[67] Ms Cooper submitted that, even if a starting point of life imprisonment were appropriate, Mr Fakaosilea’s guilty pleas and personal circumstances meant the maximum sentence was inappropriate. We turn now to consider the impact of those issues on a starting point of life imprisonment.

Should Mr Fakaosilea’s guilty pleas have reduced the starting point of life imprisonment to a finite sentence?

Background

[68] By way of background, Ms Cooper informed us that, while the first charge notice was filed in March 2024, disclosure was ongoing through the first half of 2024 and in July Mr Fakaosilea requested a sentence indication on two occasions. Both of those requests were refused. Mr Fakaosilea indicated he would nevertheless plead guilty to an amended charge notice. Four charges were withdrawn.¹⁰⁷ Ms Cooper characterised that as the Crown recognising the public interest in resolving criminal proceedings. She did not seek to suggest that they were withdrawn because of evidential insufficiency. Although Mr Fakaosilea originally faced nine charges, he pleaded guilty to five.

[69] As the Crown proposed to seek a sentence of life imprisonment, Mr Fakaosilea’s sentencing was transferred to the High Court.¹⁰⁸

[70] It seems that ten of Mr Fakaosilea’s co-defendants have now pleaded guilty and been sentenced. Notably, Mr Safi, whose role was described by a District Court Judge as “on the cusp of leading”, received a 20 per cent reduction for his guilty pleas made after a sentence indication and a 10 per cent reduction for background, remorse and efforts.¹⁰⁹ One of the other offenders, who was sentenced at the same time as

¹⁰⁷ Charge 4 alleging manufacture of one kilogram and five ounces of methamphetamine; Charge 6 alleging unlawful possession of a firearm; Charge 7 alleging manufacture of one kilogram of methamphetamine; and Charge 9 alleging conspiracy to import 2.4 kilograms of methamphetamine.

¹⁰⁸ Sentencing Act 2002, s 81B.

¹⁰⁹ *R v Safi*, above n 72, at [18] and [37]. Those reductions were applied to a 17 year figure (comprised of a 24 year starting point for the 199.2 kilogram importation offending, a three year uplift for other offending and a two year uplift to reflect prior methamphetamine offending for which he had already been sentenced, minus the 12 year starting point for that prior methamphetamine offending): at [30] and [37]. An uplift for offending on sentence and previous conviction history was applied, yielding an end sentence of 12 years and nine months’ imprisonment with an MPI of six years and four months: at [38]–[40].

Mr Safi, similarly received a 20 per cent reduction for guilty pleas, along with another 15 per cent for personal factors.¹¹⁰

[71] The Crown’s position at sentencing was that the only mitigating factor available to Mr Fakaosilea was his guilty pleas. However, when standing back and considering the gravity of his offending, that factor alone was insufficient to justify substituting a starting point of life imprisonment with a finite sentence.

New Zealand cases

[72] This Court’s 2009 decision in *Chen v R* discussed the then-current approach towards life sentences for serious drug offending. It emphasised the appropriateness of life sentences in cases of large-scale drug offending, saying it was consistent with the English and Australian approaches.¹¹¹ We discuss the approaches taken in Australia, England and Wales, and Canada below.

[73] In *R v [R]*, after Powell J took a starting point of life imprisonment for the defendant, he discussed how he should recognise personal mitigating factors.¹¹² Those relevant in the case of the defendant were prior good character, significant assistance to authorities and an early guilty pleas, in respect of which it was accepted by the Crown that the defendant was entitled to “a full discount”.¹¹³ The Judge said that, given he had adopted a starting point of life imprisonment, a mathematical calculation was not possible.¹¹⁴ He relied on this Court’s decision in *Shailer v R* for the proposition that recognition of personal mitigating factors could reduce a starting point of life imprisonment to a finite sentence.¹¹⁵ Rather than a mathematical calculation, he considered it necessary:¹¹⁶

... to step back and take a holistic view of the totality of the mitigating factors, including any discount for a guilty plea, and assess whether these factors are sufficient to warrant a reduction in the starting point from life imprisonment to a finite sentence.

¹¹⁰ At [36].

¹¹¹ *Chen v R*, above n 73, at [177]–[179].

¹¹² *R v [R]*, above n 73, at [23]–[29].

¹¹³ At [26]–[28].

¹¹⁴ At [25].

¹¹⁵ At [25], citing *Shailer v R*, above n 64.

¹¹⁶ *R v [R]*, above n 73, at [25].

[74] In *R v Daveron*, Boldt J declined to treat a starting point of life imprisonment as equivalent to a finite starting point of 30 years' imprisonment, instead converting it to a finite starting point of 21 years' imprisonment in recognition of Mr Daveron's guilty pleas.¹¹⁷ Having done so, he did not make any further reduction for Mr Daveron's guilty pleas, observing that the approach he had taken was "very much to [Mr Daveron's] advantage".¹¹⁸

[75] What is notable about the table of New Zealand cases included in Appendix 1 below is that, of the four offenders sentenced to life imprisonment for methamphetamine offending, not one had pleaded guilty.

[76] However, there is a New Zealand case where life imprisonment was imposed in respect of Class A drug offending despite the offender having pleaded guilty. In *R v Beri*, this Court upheld a sentence of life imprisonment for the possession for supply of 308 grams of heroin (in the context of a wider conspiracy to import and distribute over six kilograms of heroin), notwithstanding Mr Beri's guilty plea at an early stage.¹¹⁹ He was "very much more than a single opportunist" and had principal responsibility for the receipt, control and disposition of the heroin in New Zealand.¹²⁰ He had previously received a sentence of 13 years' imprisonment for importing heroin and was paroled on the strength of his exemplary behaviour in prison, but he committed the further offending within about nine months of his release on parole.¹²¹ Cooke P, who gave the reasons of the Court, explained that Mr Beri's history made it impossible to extend any leniency, describing him as "a menace to the community" in view of his propensity to commit heroin offending.¹²² Mr Beri's guilty plea did not derogate from that.¹²³ Rather, the Court regarded the safety of the public as an important factor and emphasised that the offending was worsened "because of the propensity revealed by repetition of the same kind of crime while on parole after the previous conviction and sentence".¹²⁴

¹¹⁷ *Daveron v R*, above n 97, at [38].

¹¹⁸ At [39].

¹¹⁹ *R v Beri*, above n 83, at 47 and 50.

¹²⁰ At 48.

¹²¹ At 47–48.

¹²² At 48.

¹²³ At 48.

¹²⁴ At 49–50.

[77] Given it was decided in 1986, we treat *R v Beri* with some caution as a precedent. It nevertheless lends support to the proposition that a guilty plea does not invariably preclude the imposition of life imprisonment in respect of serious drug offending, especially when that offending is committed while the offender is still subject to a sentence for prior serious drug offending.

[78] While it did not involve drug offending, this Court's decision in *Shailer v R* is also of some assistance to the issue of how to treat a guilty plea when a starting point of life has been taken (outside the context of murder).¹²⁵ The two defendants in that case appealed their sentences of 17 years' imprisonment with MPIs of nine years for their parts in the manslaughter and ill-treatment of a three year old child.¹²⁶ The High Court Judge had taken starting points of life imprisonment but concluded for the purposes of s 8(c) of the Sentencing Act 2002 that the offenders' circumstances meant it was inappropriate that the end sentences also be life imprisonment, the primary reason being their early guilty pleas.¹²⁷ The High Court concluded that the guilty pleas required recognition and the only way to do so was to impose a finite sentence rather than an indeterminate life sentence.¹²⁸

[79] On appeal, this Court was satisfied that the case was amongst the most serious cases of manslaughter, meaning the starting point of life imprisonment was appropriate.¹²⁹

[80] The Court then turned to consider the way the High Court had reduced the sentence to a finite one in respect of the offenders' personal mitigating circumstances, in particular the guilty pleas. Notably, the Court said:¹³⁰

[75] An indeterminate life sentence is not one which normally attracts discounts for personal mitigating circumstances or an early guilty plea. (Nor does it attract uplifts for personal aggravating circumstances). Life is life. In the case of a life sentence for murder, some such considerations may be taken into account in setting a minimum period of imprisonment under s 86 of the Sentencing Act 2002 — or not setting one at all. But there is no power to set

¹²⁵ *Shailer v R*, above n 64.

¹²⁶ At [1].

¹²⁷ *R v Shailer* [2016] NZHC 1414 at [48] and [60]–[63].

¹²⁸ At [61]–[63].

¹²⁹ *Shailer v R*, above n 64, at [69].

¹³⁰ Footnotes omitted.

a minimum period of imprisonment in the case of a life sentence other than for murder. In such a case the non-parole period is, by statute, simply 10 years.

[76] Section 102 of the Act, which deals with convictions for murder, permits a sentence other than life for that crime only if that sentence would be manifestly unjust in all the circumstances. No authorities were cited to us where the fact of an early guilty plea had triggered that exception. Nor have we been able to identify such a case. That contrasts with s 104, whereby an early guilty plea may affect the minimum period of imprisonment imposed. As this Court has observed, in the context of s 102:

It would be almost inconceivable that a guilty plea on its own could render life imprisonment “manifestly unjust”, although potentially a guilty plea, when combined with other factors, could render life imprisonment manifestly unjust.

Similarly, in *Malik v R* this Court said:

An offender who is convicted of murder must be sentenced to life imprisonment absent exceptional circumstances making that sentence manifestly unjust. Exceptions are rare; as this Court noted in *R v Williams*, the presumption of life for murder is strong, reflecting the sanctity accorded human life and the community’s abhorrence of the crime. Rare exceptions aside, the usual sentencing methodology in ss 7 to 10 of the Sentencing Act does not apply because the sentence is indefinite and mandatory, whatever the mitigating factors. No question arises, for example, of a discount being given for a guilty plea.

[81] The Court observed that the High Court Judge’s conclusion that the guilty pleas required recognition, and that the only way to do that was to substitute a finite sentence for an indeterminate life sentence, was a step the Judge was *not* bound to take.¹³¹ To take it lay within the Judge’s sentencing discretion but it was “a most lenient step”.¹³²

[82] The Court then addressed the deductions given by the High Court Judge. In the case of one defendant, a 20 per cent guilty plea discount was adopted, leading to a finite sentence of 17 years. That involved equating life to 21 years and three months.¹³³ The Court similarly viewed that as “distinctly lenient”,¹³⁴ and said the following:¹³⁵

[79] ... The highest finite maximum sentence short of life imprisonment prescribed in the Crimes Act 1961 is 20 years. In *Chen v R*, for example,

¹³¹ At [77].

¹³² At [77].

¹³³ At [78].

¹³⁴ At [79].

¹³⁵ Footnotes omitted.

substantial importers of methamphetamine and pseudoephedrine were re-sentenced by this Court on the Solicitor-General's appeal against finite terms of imprisonment. Those finite sentences were found to be manifestly inadequate. Life sentences were held to be within range, but terms of 25 years' imprisonment were substituted for the lesser determinate sentences imposed in the High Court. In *R v Thompson* this Court upheld a 25-year non-parole period (the finite 30-year sentence not being challenged). Finite sentences of 20 years have been upheld by this Court in several cases involving manufacture and supply of methamphetamine.

[80] We do not intend to attempt to do what Parliament has not seen fit to do and equivilise life and finite sentences. For that reason, we do not adopt Mr Horsley's suggestion that life imprisonment represents a finite sentence of 30 years, given that parole eligibility is usually triggered at one-third of time served (and there is an automatic 10 year non-parole period in the case of this life sentence).

[83] Notably, the Court specifically declined to endorse the suggestion that life imprisonment represents a finite sentence of 30 years. It concluded that, had a starting point of life not been adopted, a finite period of 25 years could not be faulted (as a starting point).¹³⁶

Overseas jurisdictions

[84] We have examined when life imprisonment is imposed for drug offending in overseas jurisdictions, focusing in particular on the relevance of whether the offender pleaded guilty.

Australia

[85] The High Court of Australia provided guidance on the imposition of maximum penalties in *Veen v The Queen (No 2)*, saying "the maximum penalty prescribed for an offence is intended for cases falling within the worst category of cases for which that penalty is prescribed".¹³⁷ This "worst category" concept is analogous to the concept of "the most serious of cases" in 8(c) of the Sentencing Act 2002.¹³⁸

[86] This Court's judgment in *Chen v R* annexed a table, being a schedule of Australian life sentence cases.¹³⁹ Relevantly, seven of those cases (some involving

¹³⁶ At [80]–[81].

¹³⁷ *Veen v The Queen (No 2)* (1988) 164 CLR 465 at 478.

¹³⁸ See *Shailer v R*, above n 64, at [64].

¹³⁹ *Chen v R*, above n 73, at 173–180.

more than one defendant) involved life imprisonment for importations of large quantities of cocaine and heroin being upheld on appeal in respect of a defendant who pleaded guilty. Importantly, the guilty pleas appear to have been relevant to the minimum term that was imposed — the minimum terms ranging from 18 to 30 years. For example, in the Australian case of *Wangsaimas v The Queen*, which involved the importation of 89.1 kilograms of heroin, at the time the largest quantity of heroin detected upon importation into Australia, all three offenders pleaded guilty and received life sentences without the possibility of parole.¹⁴⁰ On appeal, the sentences of life imprisonment were upheld but non-parole periods of between 22 and 25 years were imposed.¹⁴¹ The guilty pleas were regarded as one of several factors relevant to the fixing of a non-parole period.¹⁴²

[87] We have appended a table of more recent Australian cases involving life sentences for drug offending as Appendix 2. For example, in *Barbaro v R*, Mr Barbaro’s sentence of life imprisonment with a non-parole period of 30 years’ imprisonment was upheld by the Court of Appeal division of the Supreme Court of Victoria.¹⁴³ The offending involved approximately 1.5 tonnes of MDMA and 99.9 kilograms of cocaine.¹⁴⁴ Other offending (conspiring to import a commercial quantity of pseudoephedrine and dealing with proceeds of crime) was also taken into account.¹⁴⁵ Mr Barbaro pleaded guilty and the prosecutor acknowledged that was of “enormously substantial” utilitarian benefit.¹⁴⁶ However, the sentencing Judge did not consider the plea was demonstrative of much remorse.¹⁴⁷ The sentencing Judge nevertheless indicated that, had he not pleaded guilty, Mr Barbaro would have been sentenced to life imprisonment without the possibility of parole.¹⁴⁸

¹⁴⁰ *Wangsaimas v The Queen* (1996) 6 NTLR 14 (NTCCA) at 15 and 39.

¹⁴¹ At 38 and 43.

¹⁴² At 42.

¹⁴³ *Barbaro v R* [2012] VSCA 288.

¹⁴⁴ *DPP v Barbaro* [2012] VSC 47 at [13], [32] and [41].

¹⁴⁵ At [45].

¹⁴⁶ *Barbaro v R*, above n 143, at [50].

¹⁴⁷ *DPP v Barbaro*, above n 144, at [97].

¹⁴⁸ At [108].

[88] In addition to the cases in Appendix 2, there are also several Australian cases where it was indicated that life imprisonment would have been imposed but for the presence of mitigating factors that included the offender having pleaded guilty.¹⁴⁹

[89] The sentencing framework in Australia (and the various Australian states) is different from New Zealand's, in particular in respect of the non-parole periods when life imprisonment is imposed, being considerably higher than the 10 years imposed by operation of law here.¹⁵⁰ Nevertheless, overall, these cases illustrate the range of circumstances (in particular, the different combinations of quantity, role, aggravating features and mitigating features) that can lead to life imprisonment being imposed for large-scale drug offending in Australia. The presence of even relatively significant mitigating features, including a guilty plea, is not necessarily sufficient to take a case out of the "worst category" in respect of which life imprisonment is appropriate. When a guilty plea does result in a finite sentence being imposed instead of a sentence of life imprisonment, there tend to be other mitigating features (such as prior good character or remorse) that are also present.

England and Wales

[90] In England and Wales, the maximum penalty for supplying, offering to supply or possessing with intent to supply Class A controlled drugs is life imprisonment. Nevertheless, there appear to be no cases in which a sentence of life imprisonment has in fact been imposed for large-scale drug offending. The highest sentencing band set by the Sentencing Council for England and Wales (Class A, leading role and category 1) has a range of 12–16 years' custody.¹⁵¹ However, the Sentencing Council's guidelines also say that:¹⁵²

¹⁴⁹ See for example: *R v Jackson* [2003] QCA 31 at [12]; *Walsh v R* [2006] NSWCCA 406 at [31]; *R v Drury* [2006] NSWDC 47 at [6]; and *R v Mokbel* [2012] VSC 255 at [95].

¹⁵⁰ Parole Act, s 84(3).

¹⁵¹ Sentencing Council for England and Wales *Supplying or offering to supply a controlled drug/ Possession of a controlled drug with intent to supply it to another* (1 April 2021) <sentencingcouncil.org.uk>.

¹⁵² The indicative quantity for category 1 is not prescribed for methamphetamine, but it is five kilograms for cocaine. The guidelines say that where a drug does not have a prescribed quantity, sentencers should expect to be provided with expert evidence to assist in equating the drug's quantity with the prescribed quantities for other drugs, in terms of the harm caused. Based on the expert evidence considered by this Court in *Cavallo v R* [2022] NZCA 276, cocaine powder is somewhat less harmful than methamphetamine: at [62(c)]. On that basis, less than five kilograms of methamphetamine would be sufficient to bring methamphetamine supply offending into

Where the operation is on the most serious and commercial scale, involving a quantity of drugs significantly higher than category 1, sentences of 20 years and above may be appropriate, depending on the offender's role.

[91] As to the highest sentences that are imposed in practice, in *R v Parry*, the Court of Appeal of England and Wales summarised its earlier observations in the cocaine supply case *Cuni v R* as follows:¹⁵³

First, in the regime before the publication of the guideline there was in general a ceiling on sentences of around 30 years save in cases involving really extraordinary figures such as imports of between 2,000 and 3,000 kgs.

Secondly, for very significant commercial offending there is bound to be a degree of bunching between 20 and 30 years since the scope to differentiate for amounts and roles is compressed.

Thirdly, for very serious offences, factors which might otherwise mitigate sentence, such as remorse or the impact of the sentence on children, are less important.

[92] When the maximum penalty permitted by statute is life imprisonment, it seems the question in England and Wales is not whether the case is “within the most serious of cases”,¹⁵⁴ or the “worst category”,¹⁵⁵ such that the maximum penalty should be imposed. Rather, in relation to a number of offences (mostly violent and sexual offences), there are specific provisions of the Sentencing Act 2020 (UK) that apply.¹⁵⁶ In relation to other offences, including drug supply offences, the question is whether a “discretionary life sentence” should be imposed as a matter of common law.¹⁵⁷

[93] In *R v Ahmed*, the Court of Appeal of England and Wales traversed the various authorities on the test for whether a discretionary life sentence should be imposed.¹⁵⁸ Most importantly, in that Court's earlier decision in *Attorney General's Reference (No 32 of 1996) (Whittaker)*, Lord Bingham CJ described a two-limbed test as follows:¹⁵⁹

category 1. The quantity of methamphetamine in this case, approximately 200 kilograms, is therefore significantly higher than category 1.

¹⁵³ *R v Parry* [2024] EWCA Crim 1017, citing *Cuni v R* [2018] EWCA Crim 600, [2018] 2 Cr App R (S) 18.

¹⁵⁴ Sentencing Act 2002, s 8(c).

¹⁵⁵ *Veen v The Queen (No 2)*, above n 137, at 478.

¹⁵⁶ See for example Sentencing Act 2020 (UK), ss 258–259, 272–275, 283–285A and 307.

¹⁵⁷ See *R v Ahmed* [2021] EWCA Crim 1786 at [47]–[52]. Sentencing Act 2020 (UK), s 272(2)(a) codifies this for offenders aged at least 18 but under 21.

¹⁵⁸ *R v Ahmed*, above n 157, at [53]–[66].

¹⁵⁹ *Attorney General's Reference (No 32 of 1996) (Whittaker)* [1997] 1 Cr App R (S) 261 (CA) at 264.

It appears to this Court that the conditions may be put under two heads. The first is that the offender should have been convicted of a very serious offence. If he (or she) has not, then there can be no question of imposing a life sentence. But the second condition is that there should be good grounds for believing that the offender may remain a serious danger to the public for a period which cannot be reliably estimated at the date of sentence. By “serious danger” the Court has in mind particularly serious offences of violence and serious offences of a sexual nature. The grounds which may found such a belief will often relate to the mental condition of the offender.

[94] Relevantly given the facts of the present case, the Court in *R v Ahmed* also said:¹⁶⁰

[67] ... It is not necessary therefore for this appeal to consider the question of the availability of a life sentence in other cases where the danger the public of serious violent or sexual offences may be absent, but there are other strong reasons for imposing a life sentence. This might include cases where a person serving a very long determinate sentence for very major offences of importation of cocaine continued to manage that business from the prison cell by the use of contraband communication devices. We express no view on that type of case at all, and mention it only to make that clear.

[95] When a discretionary life sentence is imposed, the minimum term is not fixed by statute but is instead determined by the sentencing court, with the starting point usually being two-thirds of the notional determinate sentence.¹⁶¹

[96] Drawing the threads together, it appears the absence of life imprisonment sentences in England and Wales for drug offending reflects a particular focus on the risk of future violent and sexual offending when determining whether a life sentence should be imposed. That focus is reflected in both the Sentencing Act 2020 (UK) and in the formulation of the test for a discretionary life sentence in *Attorney General’s Reference (No 32 of 1996) (Whittaker)*. However, the question of whether a life imprisonment sentence might be appropriate in a drug case with facts akin to those of the present case has been expressly left open. The usefulness of the approach in England and Wales is nevertheless limited given a “discretionary life sentence” in England and Wales is more akin to the concept of preventive detention in New Zealand.¹⁶²

¹⁶⁰ *R v Ahmed*, above n 157.

¹⁶¹ See Sentencing Act 2020 (UK), ss 321 and 323.

¹⁶² Sentencing Act 2002, ss 87–89.

Canada

[97] The statutory scheme in Canada appears to be the most comparable to New Zealand's statutory scheme. Trafficking, possessing for the purposes of trafficking, importing, exporting or producing Schedule I substances has a maximum penalty of life imprisonment.¹⁶³ When life imprisonment is imposed, the parole ineligibility period is seven years unless an order is made increasing it to 10 years.¹⁶⁴ It appears seven and 10 years are the only two possible parole ineligibility periods when life imprisonment is imposed.

[98] It is rare for life imprisonment to be imposed for drug offending in Canada. In *R v Malanca*, Mr Malanca had been convicted by a jury of importing 270 kilograms of cocaine.¹⁶⁵ The aggravating factors were that he was the overall boss in the conspiracy and motivated solely by greed. However, he was a first-time offender and in his late twenties when he committed the offences.¹⁶⁶ He was sentenced to life imprisonment but the Ontario Court of Appeal reduced his sentence to a determinate sentence of 19 years' imprisonment on appeal.¹⁶⁷ Emphasis was placed on Mr Malanca being a youthful first offender, such that individual deterrence and rehabilitation should have been the paramount objectives. The life sentence was described as crushing, leaving little room for the appellant's rehabilitation.¹⁶⁸

[99] *R v Buffone* provides a contrasting example.¹⁶⁹ Messrs Buffone and Kompon were middle-aged, sophisticated businessman who ran a successful, legitimate business, but committed the offences purely for greed. They stood at the head of the sophisticated criminal organisation which: imported and distributed some two tonnes of cocaine into Canada; had established trade routes and three large, remote commercial warehouses; used secure lines of communication and a fleet of company vehicles; employed meticulous record keeping; and drew from a reservoir of shell companies, false identities, and fraudulent documents to lend legitimacy to their

¹⁶³ Controlled Drugs and Substances Act SC 1996 c 19, ss 5(3)(a), 6(3)(a) and 7(2)(a).

¹⁶⁴ Corrections and Conditional Release Act SC 1992 c 20, s 120(2); and Criminal Code RSC 1985 c C-46, s 743.6.

¹⁶⁵ *R v Malanca* (2007) 88 OR (3d) 570 (ONCA) at [2].

¹⁶⁶ At [45]–[46].

¹⁶⁷ At [62]–[63].

¹⁶⁸ At [59]–[60].

¹⁶⁹ *R v Buffone* 2021 ONCA 825, (2021) 159 OR (3d) 401.

operations.¹⁷⁰ They were found guilty at trial.¹⁷¹ Notwithstanding their lack of criminal records of significance and their enjoyment of family and community support, the Ontario Court of Appeal substituted determinate sentences with sentences of life imprisonment on appeal.¹⁷² The parole ineligibility period was fixed at seven years by operation of law.¹⁷³

[100] *R v Buffone* shows that a life sentence can be imposed for drug offending in Canada even though worse offending (for example, if Messrs Buffone and Kompon had continued to operate their drug enterprise from prison) is realistically conceivable. Conversely, *R v Malanca* shows how even very serious drug offending might not necessarily result in a “crushing” life sentence being imposed on a youthful first-time offender, given the importance of rehabilitation.

[101] However, in neither of those cases did the offenders plead guilty. Therefore, neither case sheds particular light on the availability of life imprisonment when there is a guilty plea.

Policy considerations

[102] We turn now to the policy behind giving credit in sentencing for a guilty plea. The following passage from the Supreme Court judgment in *Hessell v R* sets out that policy:¹⁷⁴

[45] In the administration of criminal justice, courts give credit in sentencing for a guilty plea principally for policy reasons. The policy expressed in s 9(b) reflects the benefits that a guilty plea delivers to the administration of justice and to those who otherwise must participate in the trial process. Avoiding the need for a trial saves the government costs associated with the judiciary and providing prosecution and defence services (the latter most often through legal aid). There are also savings in fees paid to witnesses and jurors and in costs associated with the use of court facilities. Another benefit is the reduction in the back-log of trials. The number and length of criminal trials has increased, with consequent delays in persons charged facing trial. This impedes the effective operation of the system in the interests of justice. As well as such savings in public expenditure and demands on state resources, the social utility of guilty pleas includes benefits for

¹⁷⁰ At [8] and [51]–[52].

¹⁷¹ At [2].

¹⁷² At [41] and [57].

¹⁷³ At [53], citing Corrections and Conditional Release Act, s 120(2).

¹⁷⁴ *Hessell v R* [2010] NZSC 135, [2011] 1 NZLR 607 (footnote omitted).

witnesses and, in particular, victims who are spared the stress of giving evidence in the adversarial context of a criminal trial. A guilty plea often also assists victims and their families through its acknowledgment of responsibility for the offending. Even very late pleas will usually generate some of these systemic and social benefits. These considerations are based on expediency and social utility but are of importance to the effective operation of the criminal justice system. In consequence, it is now generally recognised that providing encouragement for guilty persons to admit their guilt is a necessary incident of criminal justice.

[103] Ms Cooper maintained that the backlog of trials has only worsened since the time of *Hessell v R* and backlogs carry with them tangible risks — fading memories, complainants less willing to cooperate and victims left without closure or redress. In her submission, the avoidance of lengthy drug trials is a paradigm example of an outcome which affording credit for guilty pleas was designed to achieve. She referred to what she described as the unfortunate reality of many cases involving organised criminal groups which is that if a senior figure is determined to go to trial, those lower in the hierarchy feel pressure to do likewise. By this she was suggesting that refusing credit to a senior gang member for a guilty plea might well have ramifications for others charged with the same offending.

[104] Ms Cooper submitted that a strong case is not the only reason for defendants to plead guilty. Her concern is that, in the next case in which very serious drug offending is alleged, the defendant will lack any reassurance that a guilty plea would be in their self-interest.

[105] In Mr Thompson's submission, for the Crown, it cannot be the case that a guilty plea automatically precludes the imposition of the maximum penalty of life imprisonment provided for in the Misuse of Drugs Act 1975 for Class A drug offending. He suggested a sentencing judge must stand back and consider holistically whether any mitigating factors, including the guilty plea, are sufficient to warrant a reduction from life to a finite sentence.¹⁷⁵ While s 9(2)(b) of the Sentencing Act 2002 requires the court to take into account a guilty plea at sentencing, that does not mean a discount will necessarily, or we would add inevitably, follow.

¹⁷⁵ Referring to the approach taken by Powell J in *R v [R]*, above n 73.

[106] One final matter to note on the topic of recognition of guilty pleas is that the reintroduced Three Strikes regime provides for lower minimum sentences when the defendant pleads guilty.¹⁷⁶ Therefore, even in the context of serious repeat offending, Parliament clearly contemplates that a defendant should potentially receive a lower sentence if they plead guilty. This was explained by the Associate Minister of Justice, the Hon Nicole McKee, in moving that the Sentencing (Reinstating Three Strikes) Amendment Bill be read a first time:¹⁷⁷

For both murder and non-murder offences, there is a limited reduction in the sentence available for a guilty plea. This is to help reduce court delays and avoid victims having to go through unnecessary trials.

Discussion

[107] In the context of large-scale drug offending, there will normally be no identified victims of the offending who benefit by the plea. The principal benefits are resource savings and the elimination of litigation risk.

[108] However, in the circumstances of offending such as Mr Fakaosilea's, resource savings are not a powerful consideration in light of the need for the denunciation, deterrence and, most significantly, public protection, that a life sentence provides. Where an offender serving a prison sentence for large-scale drug offending plays a leading role in further large-scale drug offending, those considerations will typically outweigh the harm, in terms of resource expenditure, of reducing an offender's incentive to plead guilty.

[109] As to the elimination of litigation risk, Ms Cooper referred to the circumstantial nature of the Crown case against Mr Fakaosilea, contending there was at least some risk that Mr Fakaosilea would not have been found guilty at trial. In respect of the two charges relating to 2022, the Crown case was that Mr Fakaosilea had sent messages to his brother from prison using an encrypted messaging application, Threema. The offending was revealed when Mr Fakaosilea's brother was found with a phone on his person in prison. The June 2023 importation was also evidenced by Threema messages. According to Ms Cooper, three different Threema accounts were

¹⁷⁶ See Sentencing Act 2002, ss 86P(2), 86R(2) and 86S(2).

¹⁷⁷ (26 June 2024) 776 NZPD 4259.

used and the Crown case was that Mr Fakaosilea was the user behind all of them. She claimed there were issues regarding attribution.

[110] However, the summary of facts explained that CCTV analysis established that communications made using Mr Fakaosilea's alleged Threema handle coincided with the times at which Mr Fakaosilea was secreted inside a cell, away from CCTV cameras. Significantly, the day before and the day of the thresher machine deliver, Mr Safi and Mr Fakaosilea were together in the same cell, with the door closed for extended periods. Further, Ms Cooper conceded that propensity evidence in respect of the 90 Mile Beach offending would have been admissible at trial.

[111] It follows that we do not consider that Mr Fakaosilea's guilty pleas were particularly significant in terms of eliminating litigation risk.

[112] In any event, incentives to encourage offenders who are facing a real prospect of a life sentence to plead guilty, even if their guilty plea will not necessarily prevent a life sentence from being imposed, do exist. For example, a guilty plea will likely carry considerable weight when the Parole Board is considering whether release of an offender poses an undue risk. Ms Cooper accepted that an ingredient of the Parole Board's assessment of risk is likely to be the offender's acceptance of responsibility but said a guilty plea is not necessary to prove such acceptance. That may be so, but it is certainly compelling evidence of it. In the context of an offender who will be serving either a lengthy finite sentence of imprisonment or life imprisonment, a heightened prospect of early release from prison might well be viewed as a more significant incentive than a very long but finite, rather than indeterminate, sentence.

[113] There is also the point that the Crown will sometimes agree to withdraw some of the charges a defendant faces, despite considering there to be sufficient evidence to prove those charges, on the basis that will enable resolution of the remaining charges. Though we do not place any significant weight on this point, we note that appears to be what has happened in this case.¹⁷⁸

¹⁷⁸ See above at [68].

[114] All that is not to say that, where a starting point of life imprisonment is taken, a guilty plea cannot tip the scales in favour of imposing a finite sentence. We accept that it is not a total answer that the Parole Board, years in the future and in the context of applying a different, risk-focused test, will place significant positive weight on a guilty plea. We also accept, of course, that a guilty plea is a recognised mitigating feature which must be taken into account.¹⁷⁹ Nevertheless, in the context of large-scale drug offending orchestrated by a mature defendant already serving a sentence of imprisonment for previous large-scale drug offending, we consider the significance of a guilty plea is relatively constrained.

[115] When he pleaded guilty, Mr Fakaosilea could not be sure what impact that plea would have on his sentencing (or how the Parole Board would regard the plea in future). Offenders can often receive certainty by seeking a sentence indication but in this case the District Court, understandably, refused to provide one. The position in which Mr Fakaosilea found himself was as a result of the seriousness of his offending. Some of the understandings that might apply to less serious offending, such as that a guilty plea will necessarily result in a lower sentence, will not necessarily apply when offending is at the level of magnitude involved in Mr Fakaosilea's case and, therefore, s 8(c) of the Sentencing Act 2002 applies (in a context where the maximum penalty is life imprisonment).¹⁸⁰

[116] In Ms Cooper's submission, the Judge's reliance on the "extraordinarily serious" nature of the offending did not justify curtailing, still less entirely removing, the guilty plea discount. She pointed out that the gravity of the offending is captured in the starting point. Ms Cooper suggested that even in serious murder cases, a guilty plea discount remains available, although accepted in some cases it is of reduced effect. We note that a guilty plea will often be of reduced effect in respect of cases which fall under s 104 of the Sentencing Act 2002 (whereby an MPI of 17 years is required for murders involving specified circumstances, unless imposing such an MPI would be manifestly unjust). In those cases, an offender faces a high hurdle to show that it would be manifestly unjust not to allow them a credit which would reduce that

¹⁷⁹ Sentencing Act 2002, s 9(2)(b).

¹⁸⁰ See *Shailer v R*, above n 64, at [77].

17 year MPI and a guilty plea on its own is not enough.¹⁸¹ In addition, we note that preventive detention is often imposed notwithstanding the defendant having pleaded guilty.¹⁸²

[117] The issue is whether a guilty plea will almost invariably, as Ms Cooper effectively suggested, result in a finite sentence as opposed to a sentence of life imprisonment. Ms Cooper did accept that there could be cases where a life sentence would be appropriate notwithstanding a guilty plea. Using Mr Fakaosilea's case as an example, she appeared to accept that, had Mr Fakaosilea received rehabilitation for the factors that contributed to the 90 Mile Beach offending but nevertheless offended again from prison, that could be such a case. In saying that, however, she also referred to other contributing factors such as socio-economic ones and their causative contribution to offending. Drawing her remarks together, it would appear that a life sentence following a guilty plea in the context of offending like Mr Fakaosilea's would be warranted only if the offender had not suffered any socio-economic deprivation and, had addiction issues made a causative contribution to the offending, received (or at least had a real opportunity to receive) full rehabilitative treatment prior to the reoffending.

[118] In our view, that approach is inconsistent with s 8(c) of the Sentencing Act 2002 as it gives disproportionate weight to the circumstances of the offender as against offending which is clearly within the most serious of cases for which the penalty of life imprisonment is prescribed.

[119] We emphasise that each sentencing concerns the individual facts, requiring assessment of both the seriousness of the offending and the personal circumstances of the offender. A guilty plea of course makes a difference and is recognised by a deduction from the starting point in most cases. That deduction is not, however, invariable where the starting point is life imprisonment. Expressed another way, recognition of a guilty plea might still not be enough to reduce the starting point to a finite sentence.

¹⁸¹ *R v Williams* [2005] 2 NZLR 506 (CA) at [73].

¹⁸² See for example: *Iwikau v R* [2016] NZCA 423; and *Stroobant v R* [2018] NZCA 10.

[120] We are satisfied the seriousness of Mr Fakaosilea’s offending requires the maximum penalty of life imprisonment despite his guilty pleas. Once a starting point of life imprisonment has been arrived at for offending, in the sense that the offending falls within s 8(c) and the prescribed maximum penalty for the offending is life imprisonment, the second stage of sentencing requires determination of whether “circumstances relating to the offender” make life imprisonment “inappropriate”. The significance of mitigating circumstances relating to the offender will need evaluation in light of the purposes and principles of sentencing. Even “within the most serious of cases”, particular cases will require the denunciation, community protection and/or deterrence that only a sentence of life imprisonment can provide. In such cases, even significant mitigating circumstances relating to the offender, such as a timely guilty plea, may still prove insufficient to displace the starting point. As we elaborate on below,¹⁸³ we consider the present case to be just such a case.

Did Mr Fakaosilea’s other personal mitigating factors, including prospects of rehabilitation, make a life sentence inappropriate?

[121] Ms Cooper argued forcefully that Mr Fakaosilea’s lack of access to rehabilitation should have been taken into account and counted towards a finite sentence, and the fact he had not received any rehabilitation weighed against a sentence of life imprisonment.

[122] Ms Cooper contended that Mr Fakaosilea’s early life was impoverished, involving early exposure to alcohol and drugs, which in turn facilitated antisocial associations. He left school at 14 and was imprisoned by 17, where he received greater exposure to gang members and culture. He was deported from Australia to New Zealand under s 501 of the Migration Act 1958 (Cth) in 2016, aged 26, despite a lack of connection to New Zealand where he had not lived since he was five years old. Ms Cooper suggested the pressures on young men in prison to join a gang should not be underestimated, especially where they provide ready access to drugs.

[123] While acknowledging Mr Fakaosilea’s agency, she submitted that his background made it more likely he would end up before the courts. She suggested

¹⁸³ See below at [144]–[147].

that, had the offending been less serious, a 15 or 20 per cent discount might be sought but suggested 10 per cent would be appropriate in this case.

[124] In Ms Cooper's submission, to recognise to a reduced extent the mitigating circumstances in Mr Fakaosilea's case does not trespass on the capacity of the end sentence to vindicate the principles of deterrence, denunciation and community protection. She relied on this Court's observations in *Zhang v R* that such circumstances are to be weighed in the balance with the needs of deterrence, denunciation, accountability and public protection.¹⁸⁴

Discussion

[125] The majority of the Supreme Court in *Berkland v R* observed that:¹⁸⁵

[111] The causative contribution of background may also be displaced, in whole or in part, where the offending is particularly serious. Complex and orchestrated offending is likely to involve careful assessment of the risks of detection and therefore increased agency. The contribution of background to offending with this level of agency may therefore be significantly reduced or even negated and other sentencing goals ... may become more important. ...

[126] Those observations were relied on in the case of *R v Valent*.¹⁸⁶ Fitzgerald J described Mr Valent's offending as falling within the most serious of cases for which the penalty of imprisonment is prescribed.¹⁸⁷ He was a leading participant in the importation of significant quantities of methamphetamine and s 8(c) of the Sentencing Act 2002 applied.¹⁸⁸ She considered a sentence of life imprisonment was appropriate.¹⁸⁹ Fitzgerald J considered Mr Valent's letter to the Court, cultural report and two letters of reference but concluded there were no mitigating factors which caused her to step back from imposing a sentence of life imprisonment.¹⁹⁰ Notably, Mr Valent had not pleaded guilty.¹⁹¹ Fitzgerald J was not satisfied Mr Valent's background and upbringing provided a sufficiently causative contribution to warrant recognition. In any event, she suggested that any causative contribution would have

¹⁸⁴ *Zhang v R*, above n 35, at [133].

¹⁸⁵ *Berkland v R*, above n 35.

¹⁸⁶ *R v Valent*, above n 73, at [36]–[38].

¹⁸⁷ At [22]–[23].

¹⁸⁸ At [21]–[23].

¹⁸⁹ At [31].

¹⁹⁰ At [33]–[36].

¹⁹¹ At [1].

been displaced given the seriousness of the offending, as explained by the majority of the Supreme Court in *Berkland v R*.¹⁹²

[127] Mr Fakaosilea’s cultural report discussed his background. Mr Fakaosilea’s father was apparently a heavy drinker and physically violent, but it would appear his mother was always supportive of him and she was described in the pre-sentence report as a “very strong woman”. Mr Fakaosilea said his mother put him to work to help provide for the family and, at age eight, he was selling flowers on the roadside. Later, when he worked as a farm labourer, his mother took most of his earnings for the family account.

[128] Mr Fakaosilea is the second eldest of eight siblings. Ms Cooper emphasised that two of Mr Fakaosilea’s siblings are currently in prison on drug matters (his sister also being involved in the 90 Mile Beach offending). Five of his siblings have apparently managed to be offence-free (or at least free of serious offending).

[129] We view with some scepticism the comment in the cultural report that gang membership provided Mr Fakaosilea kin relationships and a place to fit in, things his biological family struggled to provide. Taking the content of the cultural report overall, he appears to come from a relatively supportive family. The report noted that Mr Fakaosilea is well supported emotionally by his family in Australia and he is visited every fortnight by at least one member of his family, who fly to see him. He speaks to them regularly on the phone.

[130] Mr Fakaosilea’s overseas convictions demonstrate extensive offending from the age of 17 and include convictions for robbery with violence, grievous bodily harm, numerous assaults or obstructions of police officers, wilful damage, contravention of directions, common assault and breach of a probation order. He has 13 convictions in Australia and spent time in custody in 2007, 2008, 2013 and 2014.

[131] Mr Fakaosilea’s history includes association in Australia with the Nomads Motorcycle Club and a high-ranking position within the Comanchero MC in

¹⁹² At [36], citing *Berkland v R*, above n 35, at [111].

New Zealand. The cultural report confirms that Mr Fakaosilea does not intend to leave the Comanchero MC gang at this point.

[132] Like the Judge, we view Mr Fakaosilea's background as going some way towards explaining Mr Fakaosilea's association with a gang and general criminal lifestyle but not warranting recognition as causatively contributing to offending at this level of seriousness.¹⁹³

[133] As to efforts to rehabilitate, Mr Fakaosilea told the pre-sentence report writer that the plan to import methamphetamine started when he was in custody at Spring Hill Corrections Facility where he was to engage with the Saili Matagi Programme.¹⁹⁴ For unknown reasons, Mr Fakaosilea was transferred to Rimutaka Prison and the plan had to be reorganised.

[134] The report writer noted that Mr Fakaosilea has continued to maintain his high-ranking position within the Comanchero MC, which elevated his risk assessment due to his ongoing ability to directly and indirectly influence criminal activities. He was assessed as a high risk of harm, including within the prison system.

[135] The pre-sentence report observed that Mr Fakaosilea's prison behaviour had shown he can present as compliant, enabling him to move down security classifications. The current offending occurred while Mr Fakaosilea was held in lower security conditions. The report writer said that therefore, "Mr Fakaosilea's apparent compliance and expressed motivation is not considered a reliable indicator of his risk of serious offending, or readiness to change".

[136] Therefore, it can be said with some confidence that Mr Fakaosilea does not, despite any protestations to the contrary, display any intention of rehabilitating or leaving gang life. Furthermore, it is not in dispute that particularly serious offending means that sentencing purposes such as deterrence, denunciation and community protection, are more powerfully engaged.¹⁹⁵

¹⁹³ Sentencing decision under appeal, above n 3, at [23].

¹⁹⁴ This is a rehabilitative programme.

¹⁹⁵ See *Berkland v R*, above n 35, at [111].

[137] Given that, we do not consider any personal mitigating factors that could be said to apply to Mr Fakaosilea (additional to his guilty pleas, which we have already considered) are to the level where an otherwise appropriate life sentence is inappropriate. Even if any such factors are considered in combination with Mr Fakaosilea having pleaded guilty, we are satisfied that, given the circumstances and seriousness of the offending, “circumstances relating to” Mr Fakaosilea do not make life imprisonment “inappropriate”.¹⁹⁶

Standing back, was a sentence of life imprisonment appropriate?

[138] As in any sentencing, there remains the need to step back and consider whether the proposed sentence meets the purposes and principles of sentencing.¹⁹⁷ Having addressed the starting point and whether or not allowances should be made for Mr Fakaosilea’s guilty pleas and other personal mitigating factors, we are still required to consider whether a life sentence is appropriate.

[139] We start by discussing what a life sentence means and the policy and purposes behind it.

What does a life sentence mean and what is its purpose?

[140] As discussed above, if life imprisonment is imposed in relation to drug offending, the non-parole period will be 10 years.¹⁹⁸ If a finite sentence in the vicinity of 30 years or more is imposed, the non-parole period will also be 10 years (or very close to 10 years’ imprisonment).¹⁹⁹ The key difference is that a sentence of life imprisonment never expires and theoretically the offender can be kept in prison for their entire life. If and when released, the offender will be subject to parole conditions and the possibility of being recalled to prison for the rest of their life.²⁰⁰

¹⁹⁶ Sentencing Act 2002, s 8(c).

¹⁹⁷ *Moses v R* [2020] NZCA 296, [2020] 3 NZLR 583 at [34] and [37], quoting *Hessell v R*, above n 174, at [77].

¹⁹⁸ Parole Act, s 84(3).

¹⁹⁹ Section 84(1)–(2); and Sentencing Act 2002, s 86.

²⁰⁰ If an offender is subject to a sentence of life imprisonment, the possibility of recall will always remain but it is possible for the New Zealand Parole Board to entirely discharge their parole conditions: Parole Act, ss 56 and 58. See the discussion in *Dickey v R* [2023] NZCA 2, [2023] 2 NZLR 405 at [184]–[189].

[141] In *R v Buffone*, the Ontario Court of Appeal discussed the practical implications, purposes and policy of life sentences in Canada in the context of large-scale drug offending as follows:²⁰¹

[55] ... Even though the conditions of incarceration are subject to change through a grant of parole, if life sentences are imposed, the respondents would remain under the strict control of the parole system and their liberty would be significantly curtailed for the full duration of those sentences. Thus, the deterrent and denunciatory purposes which animated the life sentences remain in force and the goal of specific deterrence is still advanced because they would remain supervised to the extent and degree necessary to prevent possible further crime, and since they would remain under the shadow of re-incarceration should they commit another crime. As well, the goal of denunciation would continue to operate because the respondents would still carry the societal stigma of being convicted offenders serving criminal sentences.

[56] Sentencing continues to be dictated by the fundamental principle of proportionality – the sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. The sheer quantity of cocaine imported, in conjunction with the respondents' roles and positions in the sophisticated criminal organization that masterminded the importation and trafficking of the cocaine, cries out for the maximum sentence of life imprisonment. A life sentence is proportionate to the gravity of the offences that the respondents committed and the degree of their responsibility. Life sentences are also necessary to adequately address the principles of denunciation and deterrence, to promote a sense of responsibility in the respondents and to convey the clear message to them, and others, that the "cost of doing business" of this sort is extremely high.

[142] A life sentence for drug offending, in comparison to a very lengthy finite sentence, engages several purposes of sentencing. It denounces the offender's offending as being the most severe of its kind and serves as a general deterrent to others who commit such offending by signalling that a lifelong supervision when and if released on parole (with the potential of recall to prison) will result. It protects the community from the offender by ensuring they will not be released if they are assessed as remaining an undue risk and means that, if and when the offender is released, they will be subject to parole conditions and the possibility of recall for the rest of their life. It serves as a specific deterrent to the offender in that it means that essentially the only pathway to release is satisfying the Parole Board that release would not pose an undue risk, which will be difficult if the offender has a pattern of reoffending while in prison. Relatedly, it potentially assists in rehabilitating the offender because it means the

²⁰¹ *R v Buffone*, above n 169 (citations omitted).

offender knows genuine efforts at rehabilitation will likely be necessary if they are ever to leave the confines of prison.

[143] That said, we recognise the potential negative impact on an offender of being faced with a sentence with no fixed release date and parole conditions remaining in place for the rest of the offender's life. That risk of a negative impact tends to be particularly acute in respect of young offenders.²⁰² The legislative requirement to impose a sentence that takes into account the gravity of the offending (including the offender's degree of culpability), and which is the least restrictive outcome that is appropriate in the circumstances, must also be kept in mind.²⁰³

Discussion

[144] To our knowledge, there have been no cases before New Zealand courts that contain the particular combination of aggravating factors that made Mr Fakaosilea's offending so serious. The quantity involved in the offending, together with Mr Fakaosilea's high level leading role, were both significant. But the most significant aspect of the offending was that it was committed from prison whilst Mr Fakaosilea was serving a lengthy term of imprisonment for the importation of over 501 kilograms of methamphetamine. Mr Fakaosilea was clearly not deterred by receiving a long finite sentence in 2018 for the 90 Mile Beach offending and instead used the opportunity of his imprisonment with fellow members of the Comanchero MC to offend further.

[145] We consider the sentencing Judge was correct to find that the sentencing principles of deterrence, denunciation and community protection required nothing short of a life sentence, notwithstanding Mr Fakaosilea's guilty pleas.²⁰⁴ While it will be a rare case where an offender pleads guilty and receives no tangible credit at sentencing for doing so, the Judge was entitled to find that this case was one of those where that was appropriate.

²⁰² See *Dickey v R*, above n 200, at [181].

²⁰³ Sentencing Act 2002, s 8(a) and (g).

²⁰⁴ Sentencing decision under appeal, above n 3, at [28]–[29].

[146] It is hard to argue against the degree of oversight Mr Fakaosilea needs, given the circumstances and seriousness of his offending. At age 32 at the time the current offending began, he does not have the indulgence of youth. Indeed it is difficult to consider what might be more serious drug offending. The amount of Class A drugs involved might be higher in future cases but the volumes in respect of both sets of Mr Fakaosilea's offending are, by today's standards, at the upper end. Prior to Mr Fakaosilea's 90 Mile Beach offending in 2016, the largest known importation of methamphetamine into New Zealand was merely 96 kilograms.²⁰⁵ Mr Fakaosilea has now played either a leading or trusted role in the importation of approximately 700 kilograms of methamphetamine.²⁰⁶

[147] Mr Fakaosilea offended when he was under extreme conditions of oversight by being in prison. A life sentence means Mr Fakaosilea will be subject to some form of oversight for the rest of his life. Bearing in mind the seriousness of the offending, that is appropriate. A life sentence is consistent with the purposes and principles of sentencing, as it meets the purposes of accountability, promotion of responsibility, denunciation, deterrence and protection of the community from the offender in response to extremely grave offending for which Mr Fakaosilea is highly culpable. Standing back and considering all the factors in this case together, we are satisfied the imposition of a life sentence was appropriate.

Result

[148] The appeal is dismissed.

Solicitors:

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

²⁰⁵ 2018 sentencing decision, above n 1, at [11].

²⁰⁶ Sentencing decision under appeal, above n 3, at [15]; and 2018 sentencing decision, above n 1, at [19].

Appendix 1 — New Zealand cases

Name	Amount	Role	Plea	Starting point	Aggr. factors	Reductions	Sentence	MPI imposed
<i>Chen v R</i>²⁰⁷								
Chen	Import 96 kg meth Import 154 kg pseudo (+ various other charges)	One of main actors — a crucial player	Not guilty	Life on lead offence			Life On S-G appeal, sentences on other charges also increased to life	
Pan	Import 96 kg meth Import 154 kg pseudo (+ various other charges)	Not a mastermind but a crucial player	Not guilty	Life on lead offence			Life On S-G appeal, sentences on other charges also increased to life	
Deng	Possession for sale 40 kg meth (expected amount, part of anticipated 95 kg)	Collecting and transporting meth. In contact with overseas organiser.	Not guilty	HC took SP of 17 years			On S-G appeal, increased from 17 years to 25 years	On S-G appeal, increased from 8 years 6 months to 10 years
Fan	Possession for sale 40 kg meth (expected amount, part of anticipated 95 kg)	Distributor. Position of responsibility. Similar to Deng.	Not guilty	HC took SP of 17 years	HC applied a 2 years 6 months uplift for selling charge and two firearms charges		On S-G appeal, increased from 19 years 6 months to 25 years	On S-G appeal, increased from 9 years 6 months to 10 years
Fung	Import and possession for sale 95 kg meth	Middle man crucial to the success of the plan. Similar to Deng and Fan.	Guilty at early stage	25 years		On appeal increased from 40% for prompt plea and assistance to 60%	Reduced on appeal from 15 to 10 years	
<i>Rhodes v R</i>²⁰⁸								
Albert Rhodes	Manufacture 1.4 kg meth Supplied, or offered to supply, > 365 g meth (+ various other charges)	In charge	Not guilty	Life	Prior 14 years 6 months drug sentence in Australia On bail and release conditions		Life	

²⁰⁷ *Chen v R* [2009] NZCA 445, [2010] 2 NZLR 158; and *R v Chen* HC Auckland CRI-2006-004-10505, 10 December 2008.

²⁰⁸ *Rhodes v R* [2009] NZCA 486.

Name	Amount	Role	Plea	Starting point	Aggr. factors	Reductions	Sentence	MPI imposed
Kissling	Manufacture 1.4 kg meth Supplied, or offered to supply, > 226 g meth (+ various other charges)	Trusted sidekick	Not guilty	16 years	3 year uplift to reflect the totality of the offending 1 year uplift for previous Australian drug convictions		20 years	9 years
<i>R v Leung</i>²⁰⁹ <i>R v Wong</i>²¹⁰								
Ricky Leung	Import 267 kg meth Possession for supply 157 kg meth (part of the 267 kg)	Senior but not mastermind	Not guilty	30 years		2 years 6 months for cultural isolation and rehabilitative prospects	27 years 6 months	9 years (possibly intended to be 10 years)
Li	Possession for supply 109 kg meth	Significant; operational and administrative tasks	Not guilty	23 years		2 years for cultural isolation, rehabilitative prospects	21 years	8 years
Wong	Possession for supply 157 kg meth (part of the 267 kg) Import 219 kg meth (part of the 267 kg)	Leading, above Ricky Leung; direct contact with mastermind	Guilty on morning of trial	31 years		~8% for age and personal circumstances 10% for guilty plea	25 years 6 months	8 years 6 months
Ninety Mile Beach offending								
Fonua ²¹¹	Import and possession for supply 501 kg meth Participating in an OCG	Trusted lieutenant	Guilty after sentence indication	30 years (life in the absence of guilty pleas)		25% for guilty plea 6 months for rehabilitative prospects	22 years	8 years 9 months
Wan ²¹²	Import 494 kg meth	Sea crew, met organisers in Hong Kong, role particularly important	Guilty	32 years		25% for guilty plea 1 year for foreign prisoner far from home	23 years	9 years 6 months
Tuilotolava ²¹³	Import 501 kg meth Participating in an OCG	Trusted lieutenant of Iusitini	Guilty	32 years (life but for parity with Wan)		25% guilty plea	24 years	10 years

²⁰⁹ *R v Leung* [2019] NZHC 3299.

²¹⁰ *R v Wong* [2020] NZHC 1654.

²¹¹ *R v Fonua* [2017] NZHC 1193.

²¹² *R v Wan* [2017] NZHC 1255.

²¹³ *R v Tuilotolava* [2017] NZHC 2621.

Name	Amount	Role	Plea	Starting point	Aggr. factors	Reductions	Sentence	MPI imposed
Ulakai Fakaosilea ²¹⁴	Import 501 kg meth Participating in an OCG	Trusted member present at the most critical point; slightly less culpable than Fonua	Guilty	29 years	13 Australian convictions including imprisonment	6 months for personal factors, rehabilitative prospects 20% for guilty plea	22 years 9 months	8 years 9 months
Iusitini ²¹⁵	Import 501 kg meth Participating in an OCG	Important and influential, co-ordinated remotely but not established as overall leader	Guilty	32 years	Attempted to flee NZ on 14 June 2016	20% for guilty plea	25 years 7 months	10 years
Cullen ²¹⁶	Import 501 kg meth Participating in an OCG	Trusted lieutenant like Fonua	Not guilty	30 years		2 years for personal factors 1 year for time on EM bail	27 years	9 years
Selaima Fakaosilea ²¹⁷	Import 501 kg meth Participating in an OCG	Between lesser and significant; slightly less than her brother	Not guilty	On appeal decreased from 28 years to 25 years	Organised criminal group offending (1 year uplift)	4 years for personal factors	Reduced on appeal from 12 years 6 months to 9 years 6 months (cumulative on existing sentence of 14 years 6 months)	Reduced on appeal from 7 years to 5 years 4 months
<i>R v [R]</i>²¹⁸ <i>R v Valent</i>²¹⁹								
[R]	Import, sale and possession for supply of meth and other drugs > 39.9 kg meth	Leading	Guilty	Life		60% for personal factors, significant assistance to authorities and guilty pleas	12 years	6 years
Valent	Import, manufacture, possession for supply and supply of meth and other drugs Considerably > 200 kg	Leading. At top of drug syndicate.	Not guilty	Life			Life	

²¹⁴ *R v Fakaosilea* [2018] NZHC 3362.

²¹⁵ *R v Fakaosilea* [2018] NZHC 3362.

²¹⁶ *Cullen v R* [2019] NZHC 2088.

²¹⁷ *Fakaosilea v R* [2021] NZCA 401.

²¹⁸ *R v [R]* [2020] NZHC 2257.

²¹⁹ *R v Valent* [2023] NZHC 1432.

Name	Amount	Role	Plea	Starting point	Aggr. factors	Reductions	Sentence	MPI imposed
<i>Cheung v R</i> ²²⁰	Import 176 kg meth	Significant	Guilty	25 years		25% for guilty plea 3 years for youth and rehabilitative prospects 5% for others matters	15 years 5 months	9 years but quashed on appeal
<i>R v Thai</i> ²²¹								
Thai	Possession for supply 469 kg meth Possession for supply 26.133 kg meth	Trusted lieutenant, not a leader	Guilty	33 years		5% for foreign national 5% for remorse 5% for rehabilitation 2.5% for cultural background 20% for guilty plea	20 years 6 months	
<i>Berkland v R</i> ²²²								
Harding	Manufacture ≥ 6.5 kg meth Further supply-related charges	Leading; “undisputed and unchallenged kingpin”	Guilty (late)	Decreased on appeal from 30 years to 22 years	Employed 11 others; high level of planning and premeditation	~5% for late guilty plea	21 years	10 years
<i>Cole v R</i> ²²³	Import and supply 451 kg meth	Top end of significant	Guilty	33 years	2 year uplift for sophisticated money laundering	20% for guilty plea 10% for rehabilitation and good rehabilitation prospects 5% for impact on children	22 years (rounded down from 22 years and 9 months)	10 years but set aside on appeal

²²⁰ *Cheung v R* [2021] NZCA 175, [2021] 3 NZLR 259.

²²¹ *R v Thai* [2021] NZHC 1006.

²²² *Berkland v R* [2022] NZSC 143, [2022] 1 NZLR 509.

²²³ *Cole v R* [2025] NZCA 355.

Name	Amount	Role	Plea	Starting point	Aggr. factors	Reductions	Sentence	MPI imposed
<i>Singh v R</i>²²⁴								
Singh	Import and possession for supply 628 to 741 kg meth Possession for supply 2.3 kg cocaine Import ephedrine	High end of significant	Guilty on Friday before trial	32 years	First known concealment of meth in a beverage	10% for background 5% for good character 5% for remorse and rehabilitation 10% for guilty plea	22 years	10 years
Kahlon	Possession for supply 628 to 741 kg meth (knew he was dealing in hundreds of kgs)	Low end of significant	Not guilty	26 years	2 year uplift for manslaughter of Aiden Sagala	10% for impact on children 5% for good character 5% for remorse and rehabilitation 5% for time on bail	21 years	10 years
<i>Daveron v R</i>²²⁵	Import 35.254 kg meth Import cocaine, pseudo, ephedrine, MDMA (smaller quantities)	Leading	Guilty after sentence indication on morning of trial	Life	Nearly all offending carried out while in custody on an attempted murder charge (no prior drug offending convictions)	Recognition of guilty plea reduced life to 21 years ~15% for addiction and personal factors	18 years 8 months	

²²⁴ *Singh v R* [2026] NZSC 73.

²²⁵ *R v Daveron* [2026] NZHC 737.

Appendix 2 — Australian life sentence cases

Case	Drug (quantity)	Details
<i>Handlen v R</i> ²²⁶	Cocaine (135.7 kg; purity 75.9 per cent) MDMA (22.363 kg) Methamphetamine (1.254 kg)	Mr Handlen was found guilty by a jury. Aged 42 at the time of sentence, he had a single juvenile offence (regarded as irrelevant) and had not shown any contrition for the offences. He was sentenced to life imprisonment with a minimum term of 22 years. Upholding the sentence, the Queensland Court of Appeal said a combination of factors, the most important of which was that Mr Handlen managed a commercial operation which conducted two importations and would have continued handling massive quantities of drugs if undetected, entitled the sentencing Judge to conclude that it was in the “worst category” in terms of <i>Veen v The Queen (No 2)</i> . Mr Paddison was also found guilty by a jury. Aged 31 at the time of sentence, he had no relevant criminal history and was addicted to heroin at the time of the offending. He had a less important role than Mr Handlen but it was nevertheless significant. 22 years’ imprisonment with a minimum term of 14 and a half years was upheld.
<i>Barbaro v R</i> ²²⁷	MDMA (1.5 tonnes) Cocaine (99.9 kg)	Mr Barbaro was aged 50 at the time of sentence. He pleaded guilty but the plea was not considered indicative of remorse. The Crown acknowledged an “enormously substantial” benefit of the plea. Other offending (conspiring to import a commercial quantity of pseudoephedrine and dealing with proceeds of crime) was taken into account. Life imprisonment with a minimum term of 30 years was upheld. Mr Zirilli also pleaded guilty but raised other mitigating factors, including his more limited role in the offending, the reasons for his involvement, his remorse, the absence of prior convictions, delay, his low risk of reoffending, his age (55 at the time of sentence) and his prospects of rehabilitation. 26 years’ imprisonment with a minimum term of 18 years was upheld.
<i>Geraghty v R</i> ²²⁸	Cocaine (1.11 tonnes)	Mr Geraghty, 66 when sentenced, was found guilty by a jury. He had a dominant and overarching role in coordinating the co-offenders. He had prior convictions relating to an importation of a commercial quantity of cocaine and offended on parole. Notwithstanding advanced age and health, he was sentenced to life imprisonment with a minimum term of 25 years having regard to the need for both specific and general deterrence. That sentence was upheld.
<i>Thompson v R</i> ²²⁹	Cocaine (1.11 tonnes)	Mr Thompson, 66 when sentenced, was found guilty by a jury. He was characterised as a “principal”, although Mr Geraghty’s role was “significantly above” him. He had prior convictions for drug importation and supply offences (including importation of 383 kg of cocaine) and was released on parole for that offending around 10 months before he entered into the conspiracy. It was difficult to give weight to his assertions of accepting responsibility. His risk of reoffending was nevertheless accepted to be low because of the advanced age he would reach upon his release. With reference to the need for specific and general deterrence, he was sentenced to life imprisonment with a minimum term of 22 years. That sentence was upheld.

²²⁶ *Handlen v R* [2010] QCA 371. The convictions were subsequently overturned in *Handlen v The Queen* [2011] HCA 51, (2011) 245 CLR 282.

²²⁷ *DPP v Barbaro* [2012] VSC 47; and *Barbaro v R* [2012] VSCA 288. In *Barbaro v R* [2014] HCA 2, (2014) 253 CLR 58, the appeal proceeded on the basis the sentences were not manifestly excessive and the sentences were upheld.

²²⁸ *Geraghty v R* [2023] NSWCCA 47.

²²⁹ *Thompson v R* [2023] NSWCCA 244.