



Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

15 MARCH 2021

MEDIA RELEASE

BERKLAND v R (SC 40/2020)

HARDING v R (SC 64/2020)

CASE HISTORY SYNOPSIS

This synopsis is provided to assist in understanding the history of the case and the issues to be heard by the Court. It does not represent the views of the panel that will hear the appeal in the Supreme Court. The synopsis does not comprise part of the reasons for the judgments of the Court of Appeal. Direct links to the judgments are included at the end of this synopsis.

Background

Mr Berkland and Mr Harding were convicted of unrelated drug dealing offences involving the sale of methamphetamine. In the High Court, Mr Berkland was sentenced to 13 years and three months' imprisonment, and Mr Harding was sentenced to 28 years and six months. Mr Berkland's appeal to the Court of Appeal against sentence was allowed and his sentence was reduced to 12 years and nine months. Mr Harding's appeal against sentence was dismissed.

Mr Berkland and Mr Harding both applied for leave to appeal to the Supreme Court against their sentences.

The issues and grounds on which leave was granted

The Supreme Court granted leave to both Mr Berkland and Mr Harding.

The approved question in *Berkland v R* is whether the Court of Appeal's decision was correct. The approved question in *Harding v R* is whether the Court of Appeal was correct to dismiss his appeal against sentence.



Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

While Mr Harding's offending was not related to Mr Berkland's, the appeals will be heard together because they both concern sentencing for dealing methamphetamine and the proper application of the principles set out in *Zhang v R* [2019] NZCA 507, [2019] 3 NZLR 648. *Zhang v R* was a Court of Appeal sentencing guideline judgment for methamphetamine offending.

Despite the general grounds on which leave was granted for both appeals, the focus of the appeals will be on three issues:

- (a) the weight to be placed on the offender's role in the offending in setting the sentence starting point;
- (b) the link required (whether causal or contributory) between the offending and the offender's addiction or history of deprivation, in setting personal mitigation discounts; and
- (c) the imposition of minimum periods of imprisonment.

The appeals are not intended to be a wholesale re-litigation of *Zhang v R*.

Media

To make any audio or visual recording you will need to apply to the Supreme Court Registry before Wednesday 17 March 2021 using the usual [application form](#).

Remote viewing of hearing

This hearing can be viewed remotely by members of the public. Courtroom restrictions apply to remote viewing. No recording is permitted. Email your request with your name and phone number to the Supreme Court Registry supremecourt@courts.govt.nz before Wednesday 17 March 2021.

Contact person:

Kieron McCarron, Supreme Court Registrar (04) 471 6921

Court of Appeal decision in *Berkland v R*: [\[2020\] NZCA 150](#) (8 May 2020)

Supreme Court leave decision in *Berkland v R*: [\[2020\] NZSC 125](#) (17 November 2020)

Court of Appeal decision in *Harding v R*: [\[2020\] NZCA 217](#) (5 June 2020)

Supreme Court leave decision in *Harding v R*: [\[2020\] NZSC 127](#) (17 November 2020)