

**IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA  
TĀMAKI MAKĀURAU ROHE**

**CRI-2018-004-000675  
[2019] NZHC 2896**

**THE QUEEN**

v

**TEVITA MATANGI FANGUPO  
TEVITA SITANILEI KULU  
TONI RAJENDRA FINAU  
HALENE JAMES IKUIA**

Hearing: 7 November 2019

Counsel: FMT Culliney and JV Barry for Crown  
RM Mansfield and H Smith for Defendant Fangupo  
SJ Bonnar QC and HJ Bell for Defendant Kulu  
MN Pecotic for Defendant Finau  
BL Sellars QC for Defendant Ikuia

Judgment: 7 November 2019

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**SENTENCING REMARKS OF DOWNS J**

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Solicitors/Counsel:  
Crown Solicitor, Auckland.  
SJ Bonnar QC, Auckland.  
BL Sellars QC, Auckland.  
RM Mansfield, Auckland.  
MN Pecotic, Auckland.  
HJ Bell, Auckland.

## Charges

[1] Mr Kulu, Mr Fangupo, Mr Finau, Mr Ikuia; you are for sentence for importing methamphetamine. Except for Mr Ikuia, there were other serious charges too. I list everything:

- (a) Mr Kulu: nine charges of importing methamphetamine; conspiring to import methamphetamine; two of attempting to import methamphetamine; two of supplying methamphetamine; three of offering to supply that drug; importing cocaine; and four charges of unlawful possession of a firearm. You pleaded guilty to the firearms offences at the beginning of trial. You were found guilty of everything else.
- (b) Mr Fangupo: eight charges of importing methamphetamine; conspiring to import methamphetamine; two of attempting to import methamphetamine; importing cocaine; and unlawful possession of a firearm. You pleaded guilty to the firearm offence at the beginning of trial. You were found guilty of everything else.
- (c) Mr Finau: three charges of importing methamphetamine; supplying it; conspiring to supply it; possession for supply; importing cocaine; two charges of unlawful possession of a firearm; and unlawful possession of ammunition. You pleaded guilty to the possession for supply charge and the Arms Act offences at the beginning of trial. You too were found guilty of everything else.
- (d) Mr Ikuia: you pleaded guilty before trial of importing methamphetamine. There are no other charges for you.

[2] Importing methamphetamine is punishable by imprisonment for life. So too supplying the drug, possessing it for supply, and offering to supply it. Conspiring to import methamphetamine has a 14-year maximum; attempting to do so, 10 years.

These penalties recognise the misery caused by methamphetamine, a topic recently addressed by the Court of Appeal. I today apply its revised guideline judgment.<sup>1</sup>

### **An overview of the offending**

[3] Between June 2017 and January 2018, you, Mr Fangupo, and you, Mr Kulu, imported large amounts of methamphetamine to New Zealand from California. Your offending was reasonably sophisticated. You followed a pattern. You sourced methamphetamine in California, albeit the drug likely came from Mexico. Your California contacts sent the drugs here. You took and remitted money to California to pay your American suppliers. All of the methamphetamine came here by post. All came to Auckland. Each package had a similar consignment note. Each package declared clothing, most with reference to the Nike label. Most packages described their contents as a gift. Most contained Nike footwear. The methamphetamine in each was packaged as cylinders. Distinctive clingwrap was wrapped around most.

[4] Five packages were caught at our border. These contained 14.8 kilograms of methamphetamine. Two packages were caught at the United States border. These contained at least 4.1 kilograms of methamphetamine. I say “at least” because United States officials did not weigh all their contents. Four packages were not caught by either their officials or ours. The communications imply these contained several kilograms of methamphetamine.

[5] Each of you says I cannot be sure of this. I am sure for three reasons. First, there are communications for three of the four uncaught packages, and these imply large amounts of methamphetamine in each. Those in relation to the 12 June package refer explicitly to two pounds, and later to the package being four ounces short. The communications in relation to the 24 July package include reference to five pounds of methamphetamine. The communications in relation to the January 2018 package refer to the methamphetamine weighing “three or four”. Context implies pounds, which, on the trial evidence, was your preferred measure, and of course, the Imperial system still used in the United States.

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<sup>1</sup> *Zhang v R* [2019] NZCA 507.

[6] Second, the caught packages support a conclusion the uncaught ones contained several kilograms of methamphetamine. The caught packages averaged a little under three kilograms of methamphetamine, or 2.3 kilograms if the smallest package—in relation to which you were both acquitted—is included in this analysis.<sup>2</sup>

[7] Third, there is no evidence you imported small quantities of methamphetamine.

[8] The Crown alleged you had someone inside our postal services, perhaps even Customs, helping you. This because your conversations frequently referred to having someone on the inside. You argue there is inadequate evidence of this for it to feature today. I give you both the benefit of the doubt because the topic was not greatly explored in your communications, or at trial more generally.

[9] I return to the narrative. In June 2017, the two of you agreed to import 21 kilograms of methamphetamine in a single package. But, you decided it was better to break this quantity into smaller packages. The two of you also imported a much smaller amount of cocaine: 27 grams.

[10] Mr Kulu, you twice supplied methamphetamine; half a kilogram on each occasion. You offered three times to supply more. One of your offers was for more than five kilograms. You committed these offences in July and September 2017, and January 2018. So, within the same period as your importation of methamphetamine. You observe these dealings might have involved the drug that was not caught at either border. I accept this is a reasonable possibility.

[11] Mr Kulu and Mr Fangupo, each of you possessed firearms. I return to this topic shortly.

[12] Mr Finau, you helped import three packages containing at least 5.1 kilograms of methamphetamine. You also helped import the small amount of cocaine. You supplied methamphetamine between June and November 2017. You dealt in ounces or smaller amounts in this period. You conspired to supply methamphetamine. Police

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<sup>2</sup> The smallest contained 449 grams of methamphetamine.

found 27 grams of methamphetamine at your home in January 2018. They also found a shotgun and shotgun ammunition.

[13] Mr Ikuia, you helped import only one package of methamphetamine—the smallest. As noted, this weighed 449 grams.

### **Quantity and role**

[14] Sentencing in this context is a function of quantity, role and personal circumstance:

- (a) Mr Kulu, I begin with you. You imported 14.8 kilograms; several kilograms not caught; and you attempted to import at least another 4.1 kilograms. So, more than 20 kilograms. You and Mr Fangupo conspired to import 21 kilograms. I do not repeat your other dealings in the drug.
- (b) Mr Fangupo, you were convicted of importing one fewer package than Mr Kulu. You imported 12.2 kilograms of methamphetamine; several kilograms not caught; and you attempted to import at least 4.1 kilograms. So, you imported approximately 20 kilograms. You were the other half too of the 21-kilogram conspiracy.

[15] The Crown contends each of you had a leading role in this offending, and no one else in this country was below you. Each of you argues for a lesser, less serious, characterisation. And, each of you argues the offending was not particularly sophisticated, so your detection was inevitable.

[16] I am sure each of you had complementary, leading roles.<sup>3</sup> You, Mr Kulu, sourced the methamphetamine in California. You had lived there. You knew people. You, Mr Fangupo, identified New Zealand addresses to which the drugs could be sent. You also arranged payment of Californian suppliers and the changing of currency for this purpose. You went once to the United States with \$40,000 to pay your suppliers.

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<sup>3</sup> *Zhang v R*, above n 1, at [126]–[127].

The two of you were equals. And at the top. I reach these conclusions given the evidence at trial, and despite the fact Mr Kulu you are shaking your head. This revealed a home-grown operation in which neither of you was beholden to or taking instructions from anyone. The two of you saw a chance to make a lot of money and took it. You were not recruited by others, here or abroad. You both established this operation. Then you both ran it.

[17] I acknowledge more sophisticated methamphetamine operations can be envisaged and will, sadly, come to pass. However, your offending was still reasonably sophisticated. You managed to import several kilograms of a pernicious and highly lucrative drug. But for the vigilance of authorities here and abroad, you would have imported more. You successfully dealt with suppliers abroad, which is no easy thing. Your communications reveal successful distribution within Aotearoa. You were motivated by profit. It is not clear how much money you made, beyond a lot.

[18] Mr Kulu, you had \$215,000 in your apartment when you were arrested. Photographs on your phone show bundles and bundles of cash. In one conversation, you said you had never dreamt you would count so much. Other photographs on your phone show you holding a rock of methamphetamine almost the size of a fist. Your trial defence implied you made the money from importing and dealing steroids. While I accept you might have made some money that way, I have no doubt most of your profit came from methamphetamine. The evidence confirmed as much, and that methamphetamine is much more profitable. Indeed, an experienced drug detective said methamphetamine sells substantially more per pound, than gold.

[19] Mr Fangupo, unlike Mr Kulu, you were not found with large amounts of cash. And, your lifestyle was, forgive me, modest. However, a lot of money must have come into your hands. Things could hardly be otherwise. Your own record keeping implies you hoped for \$80,000 per pound; again, an Imperial measure given your American connection. You hoped to make millions. Indeed, you made a note saying you hoped to make \$12.9 million in a single year. The note contains calculations on how you would do so, essentially by importing kilogram after kilogram of methamphetamine to New Zealand. You say the note reveals you as a dreamer, even a fantasist, as you were never likely to make this sum.

[20] I accept your calculations betray heady optimism, but your note has obvious significance. It confirms what is already clear: you were motivated by profit. It confirms you and Mr Kulu were equals. The note shows expected profits were to be divided equally between you. And, the note confirms you and Mr Kulu were atop this home-grown organisation. Anticipated super-profit does not go to those at the bottom of the supply chain.

[21] Mr Fangupo, you made a document in relation to the conspiracy to import 21 kilograms of methamphetamine. It too is important. The document contains packing instructions, instructions in relation to a covering invoice for plastic electrical pipes, and related detail, including diagrams. Mr Kulu, you sent the document to a contact in California from whom you sourced methamphetamine. It is clear you and Mr Fangupo planned to import 21 kilograms of the drug, initially in as a single package, from California. You later decided to do so across smaller packages. I mention this to state the obvious: these are not the actions of people other than at the top of their own enterprise.

[22] Mr Finau, this brings me to you. You helped import at least 5.1 kilograms of methamphetamine. I do not repeat your other dealings with the drug. The Crown contends you played a significant role in this enterprise. I disagree. You provided addresses to which the methamphetamine was to be sent. But, you were barely competent. You gave your own address and that of another member of your family. You answered to others. Moreover, the trial evidence satisfies me you were out of your depth. You occupied a lesser role and, thankfully, were not very good at what you did.

[23] Mr Ikuia, you helped import 449 grams of methamphetamine. You gave a business address for the package containing this amount. Mr Fangupo gave you \$5,000 for doing so. In short, you were nothing more than a pawn, on this the Crown agrees.

### **Starting points**

[24] The Crown advances starting points of between 23 and 25 years' imprisonment for you, Mr Kulu, and you, Mr Fangupo. Mr Kulu, you suggest a starting point of

17 years' imprisonment for the importation charges and another year for the balance of your drugs offending. These figures assume you did not have a leading role. Mr Fangupo, you suggest a starting point of 16 years' imprisonment for your drugs offending. You make the same assumption.

[25] Mr Kulu, I adopt a 20-year starting point for your importation offences, influenced by your attempted importations and conspiracy to import. As will be apparent, I consider the Crown's starting point too high; yours too low. In selecting 20 years, I emphasise your leading role, the large amounts of methamphetamine you imported or tried to, and your exclusively commercial imperative.

[26] I do not uplift for the conspiracy as it is reasonably possible much of the methamphetamine you imported or tried to import was in execution of the conspiracy. Instead—and as I have said hopefully clearly—I treat this as part of the mix.

[27] Your other dealings in methamphetamine could be dealt with in two ways. On one view, these involved additional, discrete criminality even if the drug was that you had imported. This because you were actively distributing it within the New Zealand market. On the other view, the criminality of the importation charges captures what you did, because the whole point of importation was to supply domestically. I do not uplift for these other charges. These are the early days of the recalibrated sentencing regime for methamphetamine. A conservative approach is warranted.

[28] I do not uplift for the cocaine either. This was a reasonably small amount. This aspect of your offending also presents as experimental.

[29] Mr Fangupo, I adopt the slightly lower starting point of 19 years for your importation offending, again influenced by your other drug offences. You were convicted of one fewer importation than Mr Kulu and you faced no supply charges. But, you were clearly an equal partner at the top of this enterprise. What I said about Mr Kulu applies otherwise equally to you.

[30] Mr Finau, the Crown advances a starting point of 16 years' imprisonment for all your drug offences. This assumes you had a significant role. As I have found, you

did not. You offer eight years' imprisonment for your importations. You say your minor role and ineptitude justify a starting point below that otherwise applicable.<sup>4</sup> You say your case is exceptional. You acknowledge your other dealings in methamphetamine require another year as these were not the imported drugs.

[31] I accept your analysis for the reasons you give and one other. I have no doubt you were drawn into this offending by others and but for their influence, would not have been involved. I adopt eight years' imprisonment for your importations and add 12 months for your representative supplies of methamphetamine and possession for supply of that drug.

[32] Mr Ikuia, for you, the Crown advances a starting point of eight years' imprisonment. You suggest five years' imprisonment, which is also below the otherwise applicable level. You highlight your foolishness in giving your business address, and your role, as I have said, of a pawn. Your offending is somewhat like, but much less serious, than that of a co-offender I have not mentioned, Mr Shane Singh. Mr Singh agreed to receive two packages containing a total of 4.4 kilograms of methamphetamine. He was paid \$10,000 to do so. Lang J adopted a 14-year starting point.<sup>5</sup> Mr Singh was sentenced before the Court of Appeal's new guideline judgment. I adopt five years' imprisonment given your very modest role and naivete.

[33] This is a generous approach Mr Ikuia and Mr Finau. It recognises the striking differences between you and those at the top.

### **Uplift for firearms?**

[34] Mr Kulu, at the beginning of trial, you pleaded guilty to unlawfully possessing four pistols in January 2018. Mr Fangupo, you pleaded guilty to unlawfully possessing one in the same period. These were described as "starter pistols" at trial, and so while firearms, much less sinister. The Crown says I should rely on an armourer's report which it contends reveals these could fire ammunition like any other firearm.

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<sup>4</sup> *Zhang v R*, above n 1, at [123] and [125].

<sup>5</sup> *R v Singh* [2019] NZHC 498.

[35] I am not sure the report establishes this. Indeed, it is not clear to me how much like or dislike these particular weapons were. So, while offending of this type would ordinarily require an increase to your sentence for the obvious reason drugs and firearms are a very bad combination, your cases do not require this response. This conclusion does not create a precedent; it reflects unusual facts. Nor does it endanger the safety of the community. You will both be in prison for a long time.

[36] Mr Finau, at the beginning of trial, you pleaded guilty to earlier possessing the starter pistols found at Mr Kulu's apartment. The same reasoning applies to you. But, there is a catch. You also pleaded guilty to possessing an obviously sinister weapon, a shotgun with a cut down butt, and 72 rounds of ammunition. The gun was in the boot of your car—or a car—at your home. So too the ammunition. That the shotgun might have been missing its firing pin is beside the point. This was a potentially dangerous weapon, for which you had ammunition, but no lawful purpose. I increase your starting point by a year.

### **Mitigating features**

[37] Mr Kulu, you are 31. You have no convictions aside from three in the United States: one for unlawful possession of a drug and two for what appear to be possession of some type of weapon. You say the former involved only medicine. You have spent much of your time in the United States, from which you were deported. You have a three-year-old daughter there.

[38] You are addicted to opiates. You injured your shoulder playing football for Oklahoma State University. You are a keen bodybuilder. And on your own defence, an importer and supplier of steroids. You wrote me a letter this morning. I have read it. So too your recent certificate from prison.

[39] You seek a 10 percent discount for prior good character, and your opiate addiction. You argue the latter was the "gateway" into your offending. I disagree. You were motivated by money. Your relatively young age, American record and scale of offending make a discount for good character awkward. This type of discount is generally reserved for older offenders who have lived an otherwise blameless life, and then committed one or two offences; not a series for reward. The idea of a single lapse

influences that type of discount. However, there is prospect of reform despite your refusal to accept responsibility for the drugs offending. And, your addiction may make prison a little harder. I allow 10 percent for these reasons, and not those you argue.

[40] You also seek an eight-month deduction for your time on electronically monitored bail. The Crown says you breached this twice, albeit each breach was minor. I make no allowance. You called evidence to the effect you repeatedly sold steroids while on bail for this offending. Whether you contravened the Medicines Act 1981 is beside the point; clearly, your bail conditions did not anticipate you trading steroids while awaiting trial for serious drug offending in this Court.

[41] Mr Fangupo, you are 26. You have no convictions aside from three under the Land Transport Act 1998. These are irrelevant. You are married with step-children. You have positive community references and, it appears, church support. Your pre-sentence report refers to “a respectable education and employment history”. You seek a discount of 15 percent for prior good character. Some of what I said about Mr Kulu applies to you. Discount for you is better conceptualised for prospect of rehabilitation despite your denial of the drugs offending. As with Mr Kulu, I allow 10 percent.

[42] I have not overlooked, Mr Fangupo, the letter you wrote to me in which you say you were not motivated by money. I do not agree. It is inconsistent with what you did. And, the evidence at trial.

[43] You also seek a discount for time on electronically monitored bail. I do not give you any. You committed some of these offences while you were standing trial for manslaughter in this court (May, June and July 2017). You were acquitted of that charge, but you were still on bail for it when you committed some of these offences.<sup>6</sup> This aggravates your offending and offsets the discount that would otherwise have been applicable for electronically monitored bail.

[44] Mr Finau, you are 28. You have no convictions apart from this offending. You have a partner and two young children. You have step-children too. Your partner is

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<sup>6</sup> Sentencing Act 2002, s 9(1)(c).

experiencing difficulty. I do not elaborate but have read the letters, including yours. Like Mr Kulu and Mr Fangupo, you continue to deny importing methamphetamine. You also deny selling it. You say you received no financial gain. Your stance is irreconcilable with the verdicts and evidence. However, you did acknowledge possessing methamphetamine for supply.

[45] The pre-sentence report suggests your offending might have been the result of financial pressure. I have no reason to doubt that, but add another factor. I consider you were the subject of unfortunately influence by another or others. You seek a discount for prior good character, prospect of reform and remorse. The last is difficult because you do not acknowledge your most serious offending. There are also the points I spoke of earlier in relation to Mr Kulu and Mr Fangupo. However, you had no convictions and your prospect of reform is real. Your early progress in prison suggests this. I allow 15 percent for these reasons.

[46] Mr Ikuia, you are 28. You had one conviction under the Land Transport Act 1998. It is irrelevant. You are married. You too have a young family. You have been working as a barber for 11 years. You have two employees. You have excellent references. And, your pre-sentence report is positive. You pose a low risk of re-offending. You seek a discount given this mix. I allow 20 percent. Prospect of reform is high.

[47] You were charged 20 June 2018. You pleaded guilty 12 April 2019. Trial was then 10 days away. You seek a 20 percent discount for your plea. Discount at this level would not be fair to those who plead guilty genuinely early. You did not. Ten percent is appropriate. To this I add five percent for remorse. This additional discount reflects you are truly sorry; not merely saying so to get a lighter penalty. Before moving on, I note I also read your letter to me.

[48] This produces these sentences:

- (a) Mr Kulu, 18 years' imprisonment.

- (b) Mr Fangupo, 17 years' imprisonment, this after further deduction of a month to avoid messy math.
- (c) Mr Finau, 8 and a half years' imprisonment.
- (d) Mr Ikuia, 3 years and 4 months' imprisonment.

**Minimum periods**

[49] Mr Kulu and Mr Fangupo, the Crown seeks minimum periods of 60 percent for each of you. Each of you argues a minimum period is unnecessary. I disagree. You both imported large amounts of methamphetamine over only seven months. You both made a lot of money, albeit how much is unknown. You were both motivated by profit. You were the leading figures in this operation. In short, this was *yours*. Parole eligibility after only one-third of your respective sentences would send quite the wrong message. I impose minimum periods of 50 percent. Thereafter, parole eligibility is better left to the Parole Board.

**Sentences**

[50] Now sentences themselves. The sentence I impose on each charge has little relevance; what is important is your overall sentence.

[51] Mr Kulu please stand... [the imposed sentences are captured in this table].

<b>Mr Kulu</b>	
<b>Charges</b>	<b>Penalty</b>
Imported methamphetamine (charges 2, 4, 6, 7, 11, 12, 16, 18, 22)	18 years
Offer to supply (charges 8, 23, 24)	10 years
Supplied methamphetamine (charges 14, 15)	10 years
Conspiracy to import methamphetamine (charge 3)	10 years
Attempts to import (charges 9, 10)	8 years

Imported cocaine (charge 17)	2 years
Possession of firearms (charges 30, 31, 32, 33)	12 months
<b>Minimum period</b>	
I impose a minimum period of 50 percent on each importation charge.	
<b>Mr Fangupo</b>	
Imported methamphetamine (charges 2, 6, 7, 11, 12, 16, 18, 22)	17 years
Conspiracy to import methamphetamine (charge 3)	10 years
Attempts to import (charges 9, 10)	8 years
Imported cocaine (charge 17)	2 years
Possession of firearm (charge 29)	12 months
<b>Minimum period</b>	
I impose a minimum period of 50 percent on each importation charge.	
<b>Mr Finau</b>	
Imported methamphetamine (charges 12, 16, 18)	8 and a half years
Supplied methamphetamine (charge 19)	3 years
Conspired to supply (charge 13)	6 years
Possession for supply (charge 25)	2 years
Imported cocaine (charge 17)	2 years
Possession of firearms (charges 26, 27)	12 months
Possession of ammunition (charge 28)	12 months
<b>Mr Ikuia</b>	
Importing methamphetamine	3 years, 4 months

[52] You may stand down.

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**Downs J**