

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

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

**CRI-2017-004-009583  
[2019] NZHC 3299**

**THE QUEEN**

v

**RICKY TAT CHOI LEUNG  
WAI FAT WONG  
HAO LI  
ZHIZHAO TAN  
CHI LEUNG  
YIU WAI CHIANG  
TAI FI CHIU**

Hearing: 13 December 2019

Appearances: B R Northwood and E L Wooley for the Crown  
D S Niven for Ricky Leung  
M N Pecotic for Wai Wong and Hao Li  
L O Smith for Zhi Tan and Chi Leung  
G J Newell for Yiu Chiang and Tai Chiu

Judgment: 13 December 2019

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**SENTENCING NOTES OF MOORE J**

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## **Introduction**

[1] Ricky Tat Choi Leung, Tai Fi Chiu, Hao Li, Zhizhao Tan, Chi Leung and Yiu Wai Chiang, all appear for sentence having been convicted of charges connected to the importation of large quantities of methamphetamine between October 2016 and October 2017. Ricky Leung and Chi Leung, I will refer to you by your first names to avoid confusion. I intend no disrespect. All defendants may remain seated until I tell you to stand.

[2] I start by recording it is regrettable that you have had to wait eight months before being sentenced. But that was done with your consent because it was anticipated that the Court of Appeal's decision in *Zhang v R*<sup>1</sup> might have some application to your respective cases. I shall discuss *Zhang* later in these sentencing remarks.

[3] It is also regrettable that this morning I have had to adjourn the sentencing of Mr Wong so that a disputed facts hearing can take place. The circumstances giving rise to that unfortunate development will be set out in a separate Minute.

## **Charges and convictions**

[4] Mr Chiu, on 30 January 2019, you pleaded guilty to one charge of importing methamphetamine<sup>2</sup> and two charges of possession of methamphetamine for supply.<sup>3</sup>

[5] Mr Chiang, on 8 February 2019, you pleaded guilty to one charge of possession of methamphetamine for supply.

[6] Ricky Leung, at your trial a jury found you guilty of three charges of importation and two charges of possession for supply.

[7] Ms Li, Mr Tan and Chi Leung, that same jury found each of you guilty of one charge of possession for supply.

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

<sup>2</sup> Misuse of Drugs Act 1975, s 6(1)(a) and (2)(a); the maximum penalty is life imprisonment.

<sup>3</sup> Section 6(1)(f) and (2)(a); the maximum penalty is life imprisonment.

[8] I shall sentence each of you in turn. Before doing so, I must set out the facts and explain those factual matters which are relevant to your cases and the basis on which you are sentenced.

[9] The facts will be well known to you. They were covered in the course of the long trial. But because the process of sentencing is quintessentially a public function undertaken in an open, public Court, it is important I set those facts out.

### **The offending**

[10] The trial related to three importations of methamphetamine over a period of approximately one year. The total combined weight of drug imported was in excess of 250 kilograms. If that quantity had been sold on the New Zealand market it would have attracted, even at wholesale, many millions of dollars. The Crown puts the figure between \$48 and \$67 million. In the end it really does not matter. On any analysis it is a very large quantity indeed. It sits amongst the largest importations of the drug into this country.

[11] The method of importation was highly sophisticated. Each import was sourced from China. The methamphetamine was dissolved in gypsum, a concrete-like substance, which was poured into metal cases in the form of outdoor umbrella stands. Each stand was separately packaged and shipped to New Zealand in a container as part of a larger consignment of various outdoor furniture.

[12] For large scale and sophisticated international drug importations such as this, their success is driven not only by the degree of forward planning and careful execution but also by the division of responsibility reflected in the different roles played by the various participants in ensuring the overall success of the enterprise.

[13] Here there were three phases. The first was the creation and setting up of the systems and ground work to get the drugs landed, cleared and into storage ready for processing. The second phase involved securing the venue and equipment to facilitate extracting the drug from the gypsum. The third phase involved bringing in the “workers”, the men who were tasked to undertake the extraction process.

[14] Each of these quite distinct phases was vital for the overall success of the enterprise. I shall describe each of these phases and the participants who were engaged in those phases, starting with the scout who paved the way.

[15] This was Ricky Leung. He was the one who set up the systems to receive the drugs when they arrived in this country. He made numerous visits to New Zealand between April 2016 and September 2017.

[16] He first entered New Zealand on 12 April 2016. He remained in the country for nine days before departing. Then he returned for a further nine days from 4 June 2016. During this visit he registered an importation company. He returned to New Zealand three months later on 28 September 2016.

[17] The first importation took place on or before 14 October 2016 when the first of the containers of outdoor furniture arrived. Wrapped inside innocuous looking cardboard boxes were seven umbrella bases. Each had methamphetamine concealed inside it. This importation was cleared by Customs and later delivered to a storage unit in Parnell.

[18] Ricky Leung left the country on 25 November 2016. He came back for three days in June 2017 and then again on 9 July 2017. During that visit he hired a storage unit in Grey Lynn. He left again on 13 July 2017.

[19] The second importation took place on or about 14 August 2017, that is 10 months after the first. Its contents were similar to the first but this time the shipment contained 16 umbrella bases. Each was wrapped in the same way as the first. It was this importation which was intercepted and inspected by Customs. The bases looked suspicious. And so they looked at them more closely. They scanned and tested them. Methamphetamine was detected. The gypsum substrate containing the drug was removed and replaced with a similar looking placebo substance. A small quantity of methamphetamine was left in one of the bases and on 23 August 2017 a controlled delivery was made to the consignee address; a storage facility in Onehunga.

[20] The shipment was received by an innocent agent acting on instructions from Ricky Leung, who sent him money from China to cover the costs.

[21] On 11 September 2017 Messrs Chiu and Wong and Ms Li arrived in New Zealand on a flight from Hong Kong. This was the second phase; the “facilitators”. After hiring a car and checking in to their hotel, they went to a storage facility in Takapuna. Mr Chiu signed a contract to hire a storage unit for the period 12 September to 11 October 2017. Mr Wong was listed as the alternate contact person. Plainly this storage facility was leased to house the third importation which at that time was still on the water en route to New Zealand.

[22] On 14 and 15 September 2017 Ms Li and Mr Chiu made enquiries about rental properties. These led to Mr Chiu signing a one-month tenancy agreement on 15 September 2017 on a house in Manurewa.

[23] The following day, on 16 September 2017, Ricky Leung arrived back in New Zealand from Hong Kong. He was met at the airport by the innocent agent he had been using from the beginning.

[24] On 17 September 2017 Ricky Leung and Mr Chiu were observed visiting and inspecting the storage unit in Grey Lynn which had been rented earlier. Mr Chiu took photographs. Later that same day Ms Li and Mr Wong went to Noel Leeming in Manukau City. There they purchased a large side-by-side freezer. Ms Li paid in cash.

[25] The following day, on 18 September 2017, Mr Tan, Chi Leung and Mr Chiang arrived together in Auckland on the same flight from Hong Kong. This was the third phase; the arrival of the workers. They were met by Mr Wong and Ms Li who took them into the city to check into their hotel.

[26] Within hours Mr Wong, Ms Li, Mr Chiu, Mr Chiang, Mr Tan and Chi Leung boarded a people mover (“the Estima”) hired a few days earlier by Mr Wong. They drove to a shopping complex in Botany. At a cookware shop they purchased three large stainless steel cooking pots, three hot plates and a variety of other items consistent with extracting the drug from the substrate.

[27] A short time later the same group drove to Bunnings Warehouse (“Bunnings”) in Botany. Mr Chiang, Mr Chiu, Mr Tan and Mr Wong went inside. Ms Li and Chi Leung remained in the Estima. Gloves, duct tape, splash goggles, wrecking bars, chisels, hammers, angle grinders, wrenches, a multi-mixer tool and carpet protectors were purchased. Again, these tools and other items were obviously bought for breaking up the gypsum.

[28] On 19 September 2017, the next day, the Manurewa tenancy commenced. Shortly after 9:00 am the freezer, bought two days earlier by Mr Wong and Ms Li, was delivered to Manurewa. Mr Wong and Ms Li were present when it arrived. Mr Wong signed the receipt.

[29] Later that morning Ms Li and Mr Wong visited a refrigeration specialty shop in Greenlane. They purchased a vacuum pump. Shortly afterwards they went to another retail outlet where they bought two electronic thermometers.

[30] Later that same day Ricky Leung picked up Mr Chiu in a rental car. They drove to the Onehunga storage unit where they removed six boxes from the container and placed them in the car. These were the boxes which were the subject of the controlled delivery. From there the two men drove back to Sky City. Mr Chiu got out of the car. Mr Chiang took his place. Ricky Leung and Mr Chiang then drove back out to Botany and into the carpark of the shopping mall. He and Mr Chiang unloaded the six boxes onto the ground. Then he drove off leaving Mr Chiang with the boxes.

[31] Within minutes the Estima arrived and stopped beside Mr Chiang and the boxes. Mr Wong was the driver. Ms Li was in the passenger seat. In the back were Mr Chiu, Mr Tan and Chi Leung.

[32] Although Ricky Leung drove away he did not leave the carpark immediately. Instead, he drove around the back of the shopping complex, to ensure the valuable cargo he had left on the road with Mr Chiang had been picked up. He then returned to the city.

[33] Mr Chiu, Chi Leung and Mr Wong got out of the Estima. They loaded the boxes into the back. Then they drove to the house in Manurewa. Ms Li got out and went inside. The others went to a nearby park before returning to the house and unloading the boxes into the house.

[34] A short time later the Estima, driven by Mr Wong, left the Manurewa address. Ms Li was in the front seat and Mr Chiu, Chi Leung and Mr Tan were seated in the back. Mr Chiang remained behind in the house. They drove to the Onehunga storage facility and unlocked the same container from which Mr Chiu and Ricky Leung had unloaded the six boxes earlier in the day. Ms Li remained in the car while the men opened the container and started to load boxes into the back of the Estima.

[35] Meanwhile, back in Manurewa, Mr Chiang started to open the boxes. He must have discovered that they had been tampered with. He immediately texted Mr Tan. He told him that there was a situation. He told him not to come back. CCTV surveillance images captured Mr Tan taking this call. Mr Tan could be seen communicating with those inside the container. Then he placed his hand on a box being carried by Chi Leung. Chi Leung immediately returned it to the container. The other men emerged from the container. They unloaded the boxes from the back of the Estima and returned them to the container. The container was locked before the Estima returned to Auckland City.

[36] In the meantime Mr Tan received another message from Mr Chiang, He asked them to pick him up from Manurewa. Mr Tan suggested Mr Chiang get a taxi. The Estima continued on into Auckland.

[37] On its arrival in Auckland city the Estima stopped in Federal Street. Its occupants dispersed. Again this was captured on CCTV. Mr Chiu ran off. He was pursued and caught by the Police. Mr Tan, Ms Li, Mr Wong and Chi Leung were also apprehended.

[38] Later that afternoon Mr Chiang returned to the hotel by taxi. He and Ricky Leung met at a nearby Chinese café. From there they walked to the hotel where they were arrested.

[39] The hotel rooms were searched. In the room shared by Mr Wong and Ms Li a suitcase containing documentation linked to the importations was located.

[40] On Chi Leung's cellphone images of a white crystalline substance were recovered together with images of items on the packing lists associated with the importations.

[41] The property in Manurewa was searched. The six boxes were located just inside the front door. The top box appeared to have been opened. The newly purchased freezer was seen in the laundry. In the spare room were the items purchased the day before at the cookware shop and at Bunnings.

[42] About a month later another importation arrived. Although the consignment was declared as dry cleaning machines it contained various heavy-duty grinding equipment. Plainly this hardware was to help with the extraction.

[43] Then, on or about 22 October 2017, the third drug consignment arrived. As with the previous two it contained a wide range of outdoor furniture including 17 umbrella bases. They were tested. All were found to contain methamphetamine dissolved in the gypsum substrate.

### **Approach to sentence**

[44] I must formulate the starting points for each defendant in accordance with the guidelines recently set out by the Court of Appeal in *Zhang*. There it was confirmed that quantity remains an important measure of culpability.<sup>4</sup> That is because quantity is an indicator of commerciality and harm to the community.

[45] But quantity alone does not determine culpability.<sup>5</sup> A defendant's role in the offending has a fundamental influence on culpability and can be accommodated by movement within any given band.<sup>6</sup> It is common sense that a more limited measure

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<sup>4</sup> At [104].

<sup>5</sup> At [104].

<sup>6</sup> At [110].

of engagement in criminal dealing deserves a less severe sentence than a significant or leading role.<sup>7</sup> And it is that principle which is very much in play in this case.

[46] As earlier noted the first importation contained some 48 kilograms of methamphetamine. The second contained 109 kilograms. The third 110 kilograms.

[47] Ricky Leung was found guilty in respect of all three importations; some 267 kilograms in total. The charges to which Mr Wong pleaded guilty related to the same amount.

[48] Mr Chiu pleaded guilty to charges in respect of the first and second importations only; 157 kilograms. The remaining four defendants were involved only in the second importation; 109 kilograms.

[49] In all cases the defendants sit comfortably within band 5 of *Zhang*, that is offending involving two kilograms or more of methamphetamine.<sup>8</sup> On any assessment a staggering amount of the drug was involved here. Further, in the Crown's submission, the method of importation was highly sophisticated, ingenious and obviously transnationally organised. It is impossible to disagree with that submission.

[50] The starting point for each defendant will thus range between 10 years' and life imprisonment, depending on the extent of each defendants' involvement in the various importations.

[51] I turn now to address the sentence for each defendant.

### **Ricky Leung**

[52] First, Ricky Leung. As noted, Ricky Leung was convicted of all three importations; totalling some 267 kilograms of methamphetamine. He was also convicted of possession for supply in respect of the first and second shipments.

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<sup>7</sup> At [118].

<sup>8</sup> At [125].

*Starting point*

[53] The Crown says he played a “leading role”. He kept at arm’s length from the rest of the group but was tasked with organising everything in New Zealand prior to the importations. In that sense he was a pathfinder who paved the way for the importations. He travelled here in advance. He established an importation company. He obtained customs codes, arranged storage space and investigated office accommodation. He went with Mr Chiu to the Onehunga storage facility to pick up the boxes and he supervised their loading into the Estima in the carpark. But, the Crown says, he took instructions from Mr Chiu.

[54] The Court 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.<sup>9</sup> Adopting this principle and given the sheer scale of the offending, its sophistication and Ricky Leung’s prominent role within it, the Crown presses for a sentence of life imprisonment.

[55] In response, Mr Niven argues that Ricky Leung played a significant, rather a leading, role. The organisational tasks he performed did not require detailed knowledge or expertise. Indeed, many of those tasks were carried out by the innocent agent when Ricky Leung was abroad. He was not involved in the handling of the methamphetamine or in organising the extraction process. Further, Mr Niven points out, it is clear Ricky Leung was taking his instructions from Hong Kong and acted more or less independently of the rest of the group. He says he was paid a set fee for his involvement. Mr Niven says that overall his offending warrants a starting point between 25 and 30 years.

[56] Life imprisonment has only been imposed for methamphetamine-related offending on two previous occasions. The first was *R v Rhodes*. There the offender was responsible for the manufacture of approximately 1.4 kilograms of methamphetamine and had offered to supply a lesser amount through a “highly

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<sup>9</sup> Sentencing Act 2002, s 8(d).

orchestrated” arrangement.<sup>10</sup> The Court of Appeal described a sentence of life imprisonment as “inevitable”, taking into account the fact that the defendant was subject to bail on an unrelated drug charge and at the time of the offending as well as a previous Australia conviction for drug-related offending for which he received a 14-and-half-year sentence.<sup>11</sup>

[57] The second was *R v Chen* where 95 kilograms of methamphetamine and 196 kilograms of pseudoephedrine were imported.<sup>12</sup> Mr Chen, “one of the main actors in the operation” and a “crucial player”, was sentenced to life imprisonment.<sup>13</sup> So too was Mr Pan, who was “not the instigator or mastermind” but also “a crucial player”.<sup>14</sup>

[58] However, by contrast, those involved in the importation of approximately 500 kilograms of methamphetamine at Ahipara in June 2016 received starting points of between 29 and 32 years’ imprisonment.<sup>15</sup> The sheer quantity of methamphetamine involved in that offending made it a truly egregious case. And yet life imprisonment was not imposed. This reflects the statutory principle that the Court must impose a penalty near to the maximum if the “offending is near to the most serious of cases”, an instruction which must be “borne firmly in mind”.<sup>16</sup> The Court of Appeal in *Zhang* commented that even those cases are rare.<sup>17</sup> But I consider this is such a case. And the reason for that is the sophistication of the importation and the massive quantity of drugs involved.

[59] Having said that, I do not go so far as to say that Ricky Leung’s conduct is within the most serious of its kind, warranting the imposition of the statutory maximum. While I am satisfied, as I must be to the high criminal standard, that Mr Leung was plainly a senior figure in the operation, it is clear that he was not the mastermind behind it. Whoever that may have been, they kept at arm’s length and safely directed the operation from outside the jurisdiction. But at the same time Ricky

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<sup>10</sup> *R v Rhodes* [2009] NZCA 486 at [92].

<sup>11</sup> At [98].

<sup>12</sup> *R v Chen* [2009] NZCA 72, [2010] NZLR 158.

<sup>13</sup> At [172]-[179].

<sup>14</sup> At [185]-[188].

<sup>15</sup> *R v Fonua* [2017] NZHC 1193; *R v Wan* [2017] NZHC 1193; *R v Tuilotolava* [2017] NZHC 2621; *R v Fakaosilea* [2018] NZHC 3362; *R v Cullen* [2019] NZHC 2088.

<sup>16</sup> Sentencing Act 2002, s 8(d); see also *R v Finau* (2003) 20 CRNZ 333 (CA).

<sup>17</sup> At [52].

Leung's role should not be underplayed. He came to New Zealand in advance of all his co-offenders. Though acting under instruction from an offshore director further up the command structure, he essentially paved the way for the criminal enterprise. Further, it should not be overlooked that Ricky Leung was involved in all three importations. For these reasons I adopt a starting point of 30 years' imprisonment.

*Personal factors*

[60] Ricky Leung is 63 years old. He suffers from diabetes and high cholesterol. He was born in Hong Kong but moved to Canada as a teenager. All the family he has live in either of those countries. He has no connections to New Zealand and thus no convictions here. His family recently visited him in prison and they have provided the Court with letters of support. The pre-sentence report assesses Ricky Leung as having a low potential to reoffend and no identifiable rehabilitative needs. Mr Niven has also provided the Court with various certificates for courses his client has completed while on remand. These include positive thinking, stress management and communication skills. He seeks a modest discount to reflect these mitigating factors.

[61] Discounts may be given to recognise a defendant's efforts towards rehabilitation, mitigating personal circumstances and strong family support. But it is a factor properly left for the Judge's discretion and may be refused if the defendant has an extensive criminal history.<sup>18</sup>

[62] Further, the Court of Appeal in *Zhang* confirmed that isolation of, and denial of family support to, foreign nationals imprisoned for drug offending may be treated as a mitigating factor where it makes the sentence harder than usual to bear.<sup>19</sup> Discounts of around five percent have been given by this Court in recognition of the hardship caused by cultural isolation of this sort.<sup>20</sup> Combined with Ricky Leung's evident prospects of rehabilitation (towards which he has already made efforts), I consider a discount of two-and-a-half years, or roughly eight percent, to be appropriate. That leads to an end sentence of **27-and-a-half years' imprisonment**.

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<sup>18</sup> *Ross v Police* [2015] NZHC 1633 at [42]-[43].

<sup>19</sup> At [163].

<sup>20</sup> See *R v Yung* [2017] NZHC 895 and *R v Yuen* [2016] NZHC 571.

*Minimum period of imprisonment*

[63] The Court may impose a minimum period of imprisonment (“MPI”) if it is satisfied that it is necessary for the purposes of accountability, deterrence or denunciation.<sup>21</sup> MPIs are not to be imposed as a matter of routine.<sup>22</sup> The test in s 86 of the Sentencing Act 2002 needs to be applied in individual cases and must not be fettered.<sup>23</sup> But this is a case which involved significant commercial drug dealing. The principles of deterrence, denunciation and accountability lie at the forefront of this sentence and I therefore consider the imposition of an MPI to be necessary.<sup>24</sup>

[64] I also make clear that the prospect of deportation can have no bearing on my sentence. It is well settled it is not a proper ground for refusing to impose an MPI which would otherwise have been justified.<sup>25</sup>

[65] Counsel are agreed an MPI is necessary in Ricky Leung’s case. The Crown argues for the statutory maximum: 10 years. Mr Niven presses for nine. Ricky Leung is not a young man and is not in splendid health. I thus impose an MPI of nine years, noting that he will be 72 by the time he will be eligible for parole.

[66] At this point I propose to say something about MPIs generally. How MPIs work does not seem to be well understood by the public. An MPI is not a “get out of jail early card”. I have sentenced Mr Leung to 27-and-a-half-years’ imprisonment. That is his sentence. He may serve all of that term or he may serve less. What time he actually serves will be for the Parole Board to decide. But what the MPI does is require him to serve at least 10 years (which is the maximum the law allows) before he is eligible to be even considered for parole.

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<sup>21</sup> Sentencing Act 2002, s 86(2).

<sup>22</sup> *Zhang v R* at [169].

<sup>23</sup> At [174].

<sup>24</sup> At [171].

<sup>25</sup> At [168].

## **Mr Chiu**

[67] Next Mr Chiu. Mr Chiu pleaded guilty to the second importing charge. He also pleaded guilty to possession for supply in respect of the first two shipments. Thus the total quantity relating to his offending was 157 kilograms.

### *Starting point*

[68] In the Crown's submission, Mr Chiu was the senior leader in the group. He signed the tenancy agreement for the house in Manurewa and hired the storage unit in Takapuna. He instructed Ricky Leung to rent a car and take him to the unit in Onehunga. Once there he collected six boxes containing methamphetamine and also assisted in obtaining extraction equipment. The Crown seeks a starting point of life imprisonment or alternatively a 30 year finite sentence.

[69] Mr Newell acts for Mr Chiu. He accepts that Mr Chiu was more than a mere catcher. But while his role was more than significant, there is no evidence to demonstrate he was a leader or senior figure. Mr Newell points out that Mr Chiu used his own personal information to lease the house in Manurewa. Had he truly been a senior figure, he would have delegated this task to someone else. In the circumstances, Mr Newell presses for a starting point of 26 years' imprisonment.

[70] I am inclined to agree with Mr Newell. Mr Chiu may have told Ricky Leung to hire a car. But in the overall context of their respective roles in the offending, that does not necessarily place him further up in the hierarchy than Ricky Leung. Mr Chiu was the more hands on of the two indicating lower level involvement. He was closely connected to the purchases at the cookware shop and Bunnings. He, with Ricky Leung removed the six boxes from the Onehunga storage unit. He was in the Estima and helped to load the boxes into it at the Botany shopping mall. And he helped unload the other boxes later in the day at the Onehunga storage facility when Mr Tan received the call from Mr Chiang.

[71] In my view these actions speak to a role which was less senior. In contrast, Ricky Leung played a more organisational and supervisory function, distancing

himself from the actual transport and extraction of the methamphetamine. I thus adopt a starting point of 26 years and six months' imprisonment.

*Personal factors*

[72] Mr Chiu is 59 years old. As with others, he has no family connections in New Zealand. Neither does he have prior convictions. Mr Chiu expressed remorse to the writer of the pre-sentence report. He said he had no understanding of methamphetamine prior to his offending and he now realises what a harmful substance it is. Mr Newell seeks discounts for his client's age, status as a foreign national, lack of previous convictions and remorse.

[73] As with Ricky Leung, I am prepared to grant Mr Chiu a discount to reflect his cultural isolation and lack of previous convictions insofar as it bears on his prospects of rehabilitation. That discount will also incorporate a credit for his limited expression of remorse, which is not so tangible as to warrant independent recognition. However, Mr Chiu's age should only be taken into account if not recognising it would lead to a sentence that is disproportionately severe.<sup>26</sup> Mr Chiu is only 59 years old. He has no significant health concerns. I do not regard this factor as worthy of a discrete discount. I thus deduct two-and-a-half years from Mr Chiu's sentence for the abovementioned factors.

*Guilty plea*

[74] Mr Chiu pleaded guilty on 30 January 2019, just under two weeks before the trial started. But Mr Newell says Mr Chiu first advised him he wished to plead guilty when he saw him in custody on 11 September 2018. Matters were delayed when Mr Chiu was relocated to Wellington. He also instructed Mr Newell not to enter guilty pleas on his behalf until disclosure of all electronic documents was complete. This was, apparently, on the advice of his former counsel. To Mr Chiu's considerable credit he has not attempted to minimise his role or his knowledge. He was the first to indicate his willingness to plead guilty. In the circumstances, Mr Newell seeks a full 25 percent discount for his client's guilty plea. The Crown says I should allow 20 percent. I

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<sup>26</sup> *M (CA91/2012) v R* [2013] NZCA 325 at [52].

consider this is appropriate; even generous. Mr Chiu pleaded early but certainly not at the earliest responsible or practicable opportunity.

[75] Applying this discount, I arrive at a final sentence of **19 years and two months' imprisonment**.

*Minimum period of imprisonment*

[76] In terms of an MPI, the Crown seeks the statutory maximum of 10 years. Mr Newell says this would lead to an anomaly. Mr Chiu would receive a greater MPI than Ricky Leung despite the fact that Ricky Leung proceeded to trial. Mr Chiu's guilty plea would thus be robbed of its practical benefit. I agree with that submission. Accordingly, I impose an MPI of eight-and-a-half years.

**Ms Li**

[77] Next is Ms Li. Ms Li was convicted of possession for supply in respect of the second importation; 109 kilograms. So too were the remainder of her co-offenders.

*Starting point*

[78] The Crown says Ms Li played a "significant role". She accompanied Mr Wong when obtaining extraction equipment and was involved in the acquiring of the property in Manurewa. She carried cash to pay for some of the equipment and pointed out what to buy in the cookware shop. Further, she was present throughout the transport of the boxes. The Crown presses for a starting point between 23 and 24 years' imprisonment.

[79] Ms Pecotic says Ms Li played a "lesser role" in the offending. She says she followed instructions from her husband, Mr Wong. She did not travel to the storage facility in Onehunga, nor was she involved in the purchase of tools from Bunnings. She did not play an active role in handling the boxes. She remained in the Estima while others loaded and unloaded the boxes containing the drugs. Ms Pecotic suggests a starting point of eight years' imprisonment below band 5.

[80] Ms Pecotic supports this by submitting that Ms Li's conviction must reflect the fact that she did not know the truth of what was happening and did not query what was

in the boxes. Rather, she was naïve to the whole affair and dutifully followed her husband's instructions. That claim is supported by both Mr Wong's affidavit and an affidavit sworn by Ms Li. The problem for present purposes is that having regard to the jury's verdict I am not prepared to draw that inference even if it were available. I must sentence Ms Li on the basis of the jury's decision; that she knew of the presence of methamphetamine. I reject that she was simply reckless. I am not prepared to place Ms Li below band 5. The Court of Appeal in *Zhang* commented that Judges should be more willing to set a starting point below the range specified in the bands where the offender plays a lesser role as opposed to looking purely at quantity. But Ms Li's role, while clearly less senior than the main players, was nevertheless significant. She arrived on the flight on 11 September with Mr Wong and Mr Chiu. Though not a leader, she took an active role in important operational and administrative tasks such as acquiring the house in Manurewa and purchasing equipment. Despite never handling the product, she was present during its transportation. Given the amount involved in her offending, her involvement would have to be very much more tangential in order to justify the course Ms Pecotic presses for. Overall, I consider a starting point of 23 years' imprisonment is an accurate reflection of her culpability.

#### *Personal factors*

[81] Ms Li is 43 years old. She continues to deny her offending. Her background and personal circumstances do not differ materially from her co-offenders. The supporting letters from her friends and family are heart breaking and emphasise the emotional cost of Ms Li's isolation in a foreign land and culture. I apply a discount of two years to reflect her cultural isolation and prospects of rehabilitation. This brings the end sentence down to **21 years' imprisonment**.

#### *Minimum period of imprisonment*

[82] Ms Pecotic argues an MPI is not necessary to hold Ms Li accountable for her offending. For the reasons outlined above when considering Ricky Leung's MPI, I disagree. The Crown suggests an MPI of nine years. I consider this is too high. I impose an MPI of eight years.

## **Mr Chiang**

### *Starting point*

[83] Now to Mr Chiang. The Crown acknowledges Mr Chiang played a lesser role. His involvement was limited to purchasing equipment and moving boxes. However, the Crown points out that Mr Chiang was trusted to watch over the methamphetamine when it was briefly left at the carpark in Botany and later at the house in Manurewa. He then alerted Mr Tan that something was amiss. The Crown seeks a starting point of 22 years' imprisonment.

[84] Mr Newell agrees that Mr Chiang played a lesser role. His role was that of a worker recruited to extract the methamphetamine. He says there is no reason to elevate his position in the hierarchy above that of Mr Tan and Chi Leung. A starting point of 20 years is suggested.

[85] I agree that Mr Chiang was little more than a worker whose role was to handle the product and, when the time came, to help with its extraction. As both the Crown and Mr Newell agree, he was a willing pair of hands but he assumed no organisational role. I therefore adopt a starting point of 21 years' imprisonment.

### *Personal factors*

[86] Mr Chiang is 57 years old. His background is materially similar to his co-offenders. He too has completed several rehabilitative courses while in prison. Mr Newell repeats the submissions he made on Mr Chiu's behalf regarding discounts for age, foreign status and lack of previous convictions. For the same reasons I am prepared only to grant a discount of two years for Mr Chiang's cultural isolation and rehabilitative prospects.

### *Guilty plea*

[87] Mr Chiang pleaded guilty on 8 February 2019, the week before the trial. Mr Newell says this was after the Crown dropped a charge of importation against him. Further the Crown accepts that Mr Chiang indicated he would plead guilty earlier on, after Mr Chiu had. It accepts a discount of 15 percent is available. Despite considering

that to be rather generous I am prepared to grant it. That leads me to an end sentence of **16 years and two months' imprisonment**. I impose an MPI of seven years.

## **Mr Tan**

### *Starting point*

[88] Next is Mr Tan. The Crown submits Mr Tan's role was more or less identical to Mr Chiang's, except for the fact that he was not left to watch over the product. Mr Tan also received the alert from Mr Chiang after which he directed the others to stop removing the boxes from the storage container. A starting point of 21 years is suggested.

[89] Mrs Smith, on the other hand, presses for a starting point in the region of 19 years' imprisonment. Mr Tan was only involved in 109 kilograms of methamphetamine. Furthermore, his participation was limited. He was a mere worker who did what he was told. Mrs Smith describes him as having "no autonomy". Further, while it can be inferred that he acted with a financial motive, there is no evidence he was allocated a share of the profits.

[90] I consider Mr Tan's culpability to be equivalent to Mr Chiang's. While Mr Chiang was left to watch over the methamphetamine at the house in Manurewa, it was Mr Tan whom he called when he detected something was amiss. Common sense suggests the division of those sort of roles between the defendants was random rather than indicative of any sort of higher authority or structure on either of their parts. I therefore adopt the same starting point of 21 years' imprisonment.

### *Personal factors*

[91] Mr Tan is 61 years old. As with his co-offenders, he has links to both China and Canada. He has no family in New Zealand. He has no previous convictions. He is assessed by the pre-sentence report writer as presenting a low risk of reoffending. He has also completed various rehabilitative courses while in prison.

[92] Mrs Smith has provided the Court with a psychological report from Mr van Rensburg. Mrs Smith says its contents merit a further discount of 30 percent

on top of a discount of 20 percent for Mr Tan's other personal factors. She cites *Solicitor-General v Heta* in support.<sup>27</sup> Quite what the basis is for such a discount is unclear. Mr Tan's upbringing as described in the report is largely unremarkable. He suffers from no mental health or substance abuse problems. In fact, the essence of the report seems to be that Mr Tan continues to deny knowledge of the importation enterprise. But that, of course, is inconsistent with the verdict returned by the jury. For these reasons I cannot give Mr van Rensburg's report any weight. I am, however, prepared to give Mr Tan a discount for his rehabilitative prospects and cultural isolation as I have done in respect of his co-offenders. That discount will be two years, leading to an end sentence of **19 years' imprisonment.**

*Minimum period of imprisonment*

[93] The Crown argues for an eight-year MPI. Mrs Smith submits an MPI is not necessary. For the reasons stated above, I disagree. I impose an MPI of seven-and-a-half years.

**Chi Leung**

*Starting point*

[94] Finally, Mr Leung. The Crown acknowledges the lesser role played by Chi Leung. He was involved in moving boxes but did little else to distinguish himself from his co-offenders. The Crown submits a starting point of 20 years' imprisonment is appropriate.

[95] Mrs Smith largely agrees with the Crown's description but presses for a starting point of 19 years' imprisonment.

[96] I consider Chi Leung's role in the enterprise to be broadly comparable but slightly less significant than Messrs Tan and Chiang. Unlike those two, Chi Leung did not go into the cookware shop or Bunnings to help purchase extraction equipment. Also, the fact that Mr Chiang contacted Mr Tan to alert him that the boxes were

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<sup>27</sup> *Solicitor-General v Heta* [2018] NZHC 2453, [2019] 2 NZLR 241.

tampered with suggests those two had been given slightly more responsibility. I therefore adopt a starting point of 20 years' imprisonment for Chi Leung.

### *Personal factors*

[97] Chi Leung is 37 years old. He was born in China and grew up in Hong Kong. His personal circumstances are all but identical to his co-offenders'. He has no family in New Zealand and has undertaken several courses while on remand.

[98] Mr van Rensburg has also prepared a report for Chi Leung. Mrs Smith repeats her submission that together with Chi Leung's personal circumstances, the report warrants an overall discount of 50 percent. I cannot accept that submission. Mr van Rensburg's report provides little information of relevance and assistance to the Court on sentencing. Chi Leung told Mr van Rensburg that he was ignorant of the presence of methamphetamine and was simply acting out of loyalty to his godfather, Mr Chiang. The first point is again directly contradicted by the jury's verdict and the second is taken into account in the assessment of Chi Leung's lesser role. I therefore accord Chi Leung the same discount I did for Mr Tan; that is two years for rehabilitation and cultural isolation. This leads me to an end sentence of **18 years' imprisonment**. I also impose an MPI of seven-and-a-half years.

### **Sentence**

[99] I now ask all of you to stand.

[100] Ricky Tat Choi Leung, on each of the three charges of importing methamphetamine and two charges of possessing methamphetamine for the purposes of supply, I sentence you to **27 years and six months' imprisonment**. Those sentences are to be served concurrently. I also order a minimum period of imprisonment of nine years.

[101] Tai Fi Chiu, on the charge of importing methamphetamine and each of the two charges of possessing methamphetamine for the purposes of supply, I sentence you to **19 years and two months' imprisonment**. Those sentences are to be served

concurrently. I also order a minimum period of imprisonment of eight years and six months.

[102] Hao Li, on the charge of possessing methamphetamine for the purposes of supply, I sentence you to **21 years' imprisonment**. I also order a minimum period of imprisonment of eight years.

[103] Yiu Chiang, on the charge of possessing methamphetamine for the purposes of supply, I sentence you to **16 years and two months' imprisonment**. I also order a minimum period of imprisonment of seven years.

[104] Zhizhao Tan, on the charge of possessing methamphetamine for the purposes of supply, I sentence you to **19 years' imprisonment**. I also order a minimum period of imprisonment of seven years and six months.

[105] Chi Leung, on the charge of possessing methamphetamine for the purposes of supply, I sentence you to **18 years' imprisonment**. I also order a minimum period of imprisonment of seven years and six months.

[106] Before I stand you down I need to say something about those who travel to these shores as visitors for the sole purpose of importing for distribution vast quantities of drugs like methamphetamine. There is only one reason why such people are prepared to take the huge risks which come with that conduct. It is because the reward, if successful, is handsome. Of course, the risks are high. As in this case our border control is highly effective and much of what is sent here is intercepted and those connected with it, identified and arrested. But if they are not caught they scuttle back to where they came from, much the richer for their efforts.

[107] Everyone in this country knows what the scourge of methamphetamine is doing to our communities from Kaitaia to Bluff. The human toll is incalculable. The drug knows no borders. It has no conscience. It wrecks its damage on those who are addicted to it and it destroys their families and those close to them. The human misery and cost is as vast as it is pervasive.

[108] Whether very long sentences will have a deterrent effect on others who may be contemplating entering this pernicious trade is hard to know . But it is the only tool our Courts have to not only proclaim how seriously we view this kind of offending but also to send out the unequivocal message that if you get caught it is inevitable that you will go to jail in New Zealand for a very long time.

[109] To your cost you have learned that lesson. Let's hope the message gets out.

[110] Stand down.

[111] I also make orders for the destruction of all goods, material and equipment seized by the Police and Customs during the operation pursuant to s 32 of the Misuse of Drugs Act 1975. That includes all goods and drugs in the respective imports, material and equipment seized from the Claymore St address, Storage King Grey Lynn and the Onehunga storage unit, as well as forfeiture of all foreign currency and cash seized.

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**Moore J**

*Solicitors:*

Crown Solicitor, Auckland

Mr Niven, Auckland

Ms Pecotic, Auckland

Mrs Smith, Auckland

Mr Newell, Auckland