IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA467/2024
[2025] NZCA 160

BETWEEN	DARREN ANDREW CREELMAN Appellant
AND	THE KING Respondent

Hearing: 27 March 2025

Court: Woolford, Muir and Isac JJ

Counsel: J J Rhodes for Appellant
B D Tantrum and R A van Boheemen for Respondent

Judgment: 12 May 2025 at 11 am

JUDGMENT OF THE COURT

A The appeal against sentence is allowed.

B The sentence of nine years' imprisonment on the charges of possession of methamphetamine for supply is set aside.

C The appellant is sentenced to seven years' imprisonment on the charges of possession of methamphetamine for supply. All other sentences remain the same.

REASONS OF THE COURT

(Given by Isac J)

Introduction

[1] Darren Creelman was sentenced to nine years' imprisonment in the District Court on 12 drug dealing and firearms offences.[1] He now appeals his sentence, arguing that the individual and combined starting points and uplifts adopted by the Judge were too high, and resulted in a sentence that is manifestly excessive.[2]

The offending

[2] On 5 February 2021, Mr Creelman was wanted for arrest. Police went to an address on Jervois Road in Herne Bay searching for him. As they made their way towards the property, one of the occupants broke the bathroom window and threw a fully loaded .22 calibre revolver over the head of one of the attending officers and into a neighbouring property. On entry police found three of Mr Creelman's associates in the living room. They heard the toilet flush, and then located the appellant in the bathroom after he had disposed of a quantity of methamphetamine. Following a search of the apartment and later search of a vehicle seized from the exterior carpark, police located quantities of methamphetamine, ammunition, a large sum of cash, sets of electronic scales, false driver licences, and precursor substances used to manufacture methamphetamine. At the time Mr Creelman was subject to a sentence of intensive supervision for offences committed in 2020 and on parole for drug dealing offences committed in 2013.

[3] Mr Creelman eventually pleaded guilty to eight charges in total — three of possession of methamphetamine for supply, one of unlawful possession of a firearm, two of unlawful possession of ammunition and two of dishonestly obtaining the false licences. Following a disputed facts hearing, Judge Sharp determined that

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1 *R v Creelman* [2024] NZDC 16790 [Sentencing Notes]. In total Mr Creelman was sentenced on four charges of possessing methamphetamine for supply; two charges of unlawful possession of firearms; three charges of unlawful possession of ammunition; two charges of dishonest use of a document; and one charge of possession of pseudoephedrine.

2 Pursuant to Criminal Procedure Act 2011, s 250. The Court must allow an appeal if for any reason there has been an error in the sentence imposed and a different sentence should be imposed. An error includes if the sentence was manifestly excessive: see *Tutakangahau v R* [2014] NZCA 279, [2014] 3 NZLR 482 at [32]–[35].

Mr Creelman had flushed not less than 250 grams of methamphetamine down the toilet.[3] In total, Mr Creelman was in possession of 349.7 grams of the drug.[4]

[4] While on bail for the Jervois Road offending, Mr Creelman was residing at a live-in drug rehabilitation facility in Dairy Flat, Auckland. On 6 October 2022, police executed a search warrant at the address finding firearms, methamphetamine and precursor substances concealed in a bucket near Mr Creelman's bedroom. Mr Creelman pleaded not guilty but was convicted by a jury of four further charges, namely possession of 377 grams of methamphetamine for supply,[5] possession of just under one kilogram of pseudoephedrine, and possession of a semi-automatic pistol and 200 rounds of .22 ammunition.

The sentence under appeal

[5] The position for the Judge at sentencing was not straightforward. There were two discrete sets of offences on which Mr Creelman was for sentence that were separated by 20 months. In addition to different aggravating features between the two sets there were also differing mitigating factors, given Mr Creelman's pleas.

[6] Judge Sharp first set a starting point for the October 2022 offending. He considered the jury's verdicts required sentencing to proceed on the basis that the appellant had at least joint custody and control of the drugs, firearms and ammunition.[6] There were "doubts" as to precisely what Mr Creelman's role in the offending had been.[7] However, the Judge concluded it was "greater than the lower level, but not sufficient to elevate it into the higher levels for control".[8] A starting point of six years' imprisonment was therefore adopted.[9] From that a reduction of one year was applied to reflect the causal connection between addiction and the offending. An uplift of

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3 *R v Creelman* [2024] NZDC 4932.
4 Sentencing Notes, above n 1, at [39].
5 The Judge noted at [30] that Mr Creelman was found by the jury to be in possession of 395 grams of methamphetamine, but reduced that to 377 grams to take into account purity. Counsel noted that whether that reduction is correct is not clear, but it is of no moment to the present appeal.
6 At [29].
7 At [33].
8 At [36]. For a description of the levels of roles within methamphetamine offending see *Berkland v R* [2022] NZSC 143, [2022] 1 NZLR 509 at [71] and *Zhang v R* [2019] NZCA 507, [2019] 3 NZLR 648 at [126].
9 At [37].

12 months was then required for each of the charges of unlawful possession of a firearm and possession of pseudoephedrine.[10] That resulted in an adjusted "starting point" of seven years' imprisonment.

[7] In relation to the February 2021 offending, the Judge found as a matter of proof Mr Creelman had not engaged in manufacturing methamphetamine at the address. There were also others present who, in addition to Mr Creelman, had methamphetamine "in their direct possession".[11] The offending fell within band three of *Zhang* and a starting point of eight years was adopted.[12] An uplift of 12 months was then applied for the firearms charges, and a reduction of 18 months provided for Mr Creelman's guilty plea.[13]

[8] Combining the starting points for both sets of offences resulted in a combined starting point of 14 years and four months' imprisonment.[14] A further discrete uplift of six months' imprisonment was applied because all of the offending had occurred while the appellant was subject to a sentence, on parole and on bail.[15] The adjusted starting point of 14 years and 10 months' imprisonment was then reduced to 13 years on account of totality.[16] However, a further uplift of six months' imprisonment was imposed given Mr Creelman's previous criminal history was "considerable".[17] This resulted in an adjusted starting point of 13 years and six months' imprisonment.

[9] In terms of mitigating factors, reductions totalling 54 months, or four years and six months' imprisonment, were provided in recognition of the appellant's prospects of rehabilitation, background, and time spent on restrictive bail conditions.[18]

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10 At [38].
11 At [40].
12 At [42], citing *Zhang v R,* above n 8.
13 At [42].
14 At [43]. We note the Judge appears to have incorrectly calculated the adjusted starting point for the February 2021 charges. The adjustments identified at sentencing would result in a sentence of 14 years and six months' imprisonment.
15 At [43].
16 At [44].
17 At [45].
18 The Judge applied discounts of 30 months for rehabilitative prospects (at [46]), 18 months for the factors identified in Mr Creelman's s 27 report, (at [47]), and six months for time on bail (at [48]).

Were the adopted starting points, individually and collectively, within range?

[10] For the appellant, Mr Rhodes submits the individual starting points and uplifts were too high, and as a result the combined starting point was disproportionate. A global starting point for both sets of offences should have been "around" nine years' imprisonment, and an appropriate end sentence would have been in the region of five years and nine months. The appellant's central point is that by treating the two sets of offences discretely and adopting cumulative starting points, the end sentence failed to reflect the overall gravity of the offending and the requirements of totality.

[11] For the respondent, Mr Tantrum argues the starting points — both discrete and combined — were clearly within range, and the end sentence properly allowed for the totality of Mr Creelman's offending and personal circumstances. Mr Creelman's involvement indicates a "significant" role in the drug dealing operation on both occasions, as identified in *Berkland* and *Zhang*. Relevant sentencing authorities indicate that had a starting point for the drug offending been set in isolation, a starting point of 10 years' imprisonment could have been expected before uplifts for the firearms and other charges.[19]

[12] At the core of the offending for which Mr Creelman was sentenced was his possession of methamphetamine in dealing quantities on two occasions, aggravated by the presence of firearms and ammunition. The second set of charges arose while Mr Creelman was still on bail awaiting trial in relation to the first set. The Judge also appears to have accepted Mr Creelman's role was similar on both occasions. In relation to the October 2022 offending, the Judge considered the appellant had at least "joint custody or control, of the drugs, the firearms, and the ammunition", and that Mr Creelman had a "greater than the lower level" role but not one "sufficient to elevate it into the higher levels of control".[20] For the February 2021 offending, while the Judge did not explicitly refer to an assessment of Mr Creelman's role, he did find there was no evidence the appellant had been involved in the manufacture of the methamphetamine, in contrast to others present at the address, and there was evidence the co-defendants "had methamphetamine in their direct possession".[21]

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19 Relying on *Duthie v R* [2023] NZCA 312; and *Moses v R* [2020] NZCA 296, [2020] 3 NZLR 583.
20 Sentencing Notes, above n 1, at [29] and [36].
21 At [40].

[13] The Judge did not impose cumulative sentences. His methodology instead involved the aggregation of individual starting points to reach a combined starting point. In this context, s 84 of the Sentencing Act 2002 provides some guidance for the treatment of offences of a similar kind at sentencing and the use of cumulative and concurrent sentences. Cumulative sentences of imprisonment are generally appropriate if the offences for which an offender is being sentenced are different in kind, whether or not they are a connected series of offences.[22] Concurrent sentences, which are usually fixed using a global starting point, are generally appropriate if the offences are of a similar kind and are a connected series of offences.[23] In determining whether offences are a connected series, the court may consider the time at which they occurred, the overall nature of the offending, or any other relationship between the offences that the court considers relevant.[24] Where a court is considering imposing cumulative sentences of imprisonment, they must not result in a period of imprisonment that is wholly out of proportion to the gravity of the overall offending.[25]

[14] While it was open to the Judge to adopt adjusted starting points, we consider a preferable approach would have been for the Judge to have cross-checked the combined 14 year starting point he proposed to adopt against one determined on a global basis. This would have enabled an assessment whether the cumulative starting points met the requirements of totality, even after adjustment.[26] This is especially so given the focus in applying *Zhang* on the total volume of drugs over the period under consideration.[27]

[15] The total amount of methamphetamine for supply in Mr Creelman's possession over the period of the offending was 726.7 grams. That places it toward the bottom of band four of *Zhang*, with a starting point between eight and 16 years' imprisonment.[28]

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22 Sentencing Act 2002, s 84(1).
23 Section 84(2).
24 Section 84(3).
25 Section 85(2).
26 For an example of this, see *Pryor v Police* [2022] NZHC 1011 at [17]. In this decision, a global starting point was considered appropriate on appeal for two drug dealing charges six months apart because they were similar in kind despite occurring on two separate occasions. Separate starting points for each set of charges had led to a final starting point that was too high having regard to the overall culpability of the offender.
27 See for example *Malolo v R* [2022] NZCA 399 at [18]; and *Cossey v R* [2021] NZCA 677.
28 *Zhang v R,* above n 8, at [125]. Band four is for quantities of methamphetamine between 500 grams and 2 kilograms.

Given the Judge's apparent conclusion that the appellant's role fell in the mid to lower end for the culpability range, we consider a global starting point on the possession for supply charges ought to have been 10 years' imprisonment before adjustment for the additional charges, and personal aggravating and mitigating factors. We note our global starting point is also consistent with the respondent's view of the drug offending if viewed in isolation and the authorities Mr Tantrum relied on.

[16] Applying the same uplifts and reductions as those adopted by the Judge to a 10 year starting point results in an end sentence of seven years' imprisonment. Given the two-year disparity in end sentences, we are satisfied the sentence imposed was manifestly excessive.

Were the Judge's uplifts within range?

[17] Given our conclusion on the main ground of appeal, we deal with Mr Creelman's second ground of appeal briefly. It was suggested the total uplift applied by the Judge for the firearms charges of two years' imprisonment was too high when compared to similar cases.[29]

[18] We disagree. The uplifts for the firearms charges were well within range, if not generous to the appellant. The fact the February 2021 offending involved a confrontation with police when Mr Creelman was in possession of a loaded revolver is concerning. Nor can any criticism be made of the other uplifts adopted for Mr Creelman's extensive previous history of drug offending, and for offending while on bail and parole. These were seriously aggravating features and could have warranted substantially greater uplifts than those applied by the District Court.

Conclusion and Result

[19] The appeal against sentence is allowed.

[20] The sentence of nine years' imprisonment on the charges of possession of methamphetamine for supply is set aside.

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[29] See *R v Fonotia* [2007] NZCA 188, [2007] 3 NZLR 338; *Griffin v R* [2020] NZHC 548; and *Berkland v R*, above n 8.

[21] The appellant is sentenced to seven years' imprisonment on the charges of possession of methamphetamine for supply. All other sentences remain the same.

Solicitors:
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