

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA380/2025
[2025] NZCA 508**

BETWEEN	EDSON ROBERTO ALVES Appellant
AND	THE KING Respondent

Hearing:	2 September 2025
Court:	Courtney, Downs and Harvey JJ
Counsel:	C S Fredric for Appellant B T Vaili for Respondent
Judgment:	30 September 2025 at 11 am

JUDGMENT OF THE COURT

The appeal is dismissed.

REASONS OF THE COURT

(Given by Courtney J)

Introduction

[1] Edson Alves is a Brazilian national. He arrived in Auckland in July 2024 on a flight from Santiago, Chile. Customs officers stopped and searched him. His suitcases were found to contain a total of 1.952 kg of cocaine. Mr Alves eventually admitted that he had agreed to deliver the bags to a person he did not know and that he expected to be paid NZD 10,000 on delivery. He claimed not to know the suitcases contained drugs.

[2] Mr Alves pleaded guilty to one charge of importing the Class A controlled drug, cocaine, into New Zealand. Judge Webby imposed a sentence of six years and six months' imprisonment.¹ Mr Alves appeals against his sentence. He says that the Judge took too high a starting point and did not allow a sufficient discount for his personal factors.

The starting point

[3] The Judge took a starting point of 10 years' imprisonment.² In doing so, he noted that there was no tariff case for importation of cocaine but that the guidance provided for methamphetamine offending in *Zhang v R* may assist.³ Both *Zhang* and the later decision in *Berkland v R* adopted five sentencing bands for methamphetamine offending based on the quantity of drugs, with the specific role taken by the offender influencing where in those bands the offending is ultimately placed.⁴ The Judge considered that Mr Alves role was one of courier or drug mule and his participation fell "somewhere between a lesser role and a significant role".⁵

[4] The Judge also noted this Court's conclusion in *Cavallo v R* that sentencing for cocaine offending should not exceed that for like quantities of methamphetamine offending and should generally be placed slightly below the comparable starting point for methamphetamine offending, with a discount of around five per cent.⁶

[5] The Judge took into account the decisions in *de Macedo v R* and *R v Zubillaga*.⁷ The former involved the importation of 2.3835 kg of cocaine and the starting point was 11 years (though since it pre-dated *Cavallo* no adjustment was made to reflect that the offending involved cocaine rather than methamphetamine).⁸ The latter involved 1.946 kg of cocaine and the starting point was 10 years.⁹

¹ *R v Alves* [2025] NZDC 12083 at [25].

² At [20].

³ At [16], citing *Zhang v R* [2019] NZCA 507, [2019] 3 NZLR 648.

⁴ *Zhang v R*, above n 3, at [118] and [125]; and *Berkland v R* [2022] NZSC 143, [2022] 1 NZLR 509 at [41] and [71]–[72].

⁵ *R v Alves*, above n 1, at [17].

⁶ At [18], citing *Cavallo v R* [2022] NZCA 276 at [63].

⁷ *R v Alves*, above n 1, at [20], citing *de Macedo v R* [2020] NZCA 132 and *R v Zubillaga* [2024] NZDC 121, [2024] DCR 443.

⁸ *de Macedo v R*, above n 7, at [7] and [21].

⁹ *R v Zubillaga*, above n 7, at [1] and [12].

[6] The Judge settled on a starting point of 10 years.¹⁰ Although it was not expressed as such, this would reflect offending slightly below the middle of band 4 in *Zhang*.¹¹

[7] Mr Fredric, for Mr Alves, submitted that the starting point of 10 years was too high, given Mr Alves' role, which he argued should have been treated as "lesser" rather than somewhere "between lesser and significant". Mr Fredric compared Mr Alves' involvement with that of the appellant in *de Macedo*, who, like Mr Alves, had been stopped and searched at Auckland airport and found to have cocaine (2.3835 kg) in his suitcase.¹² In categorising Mr de Macedo's role as "lesser", this Court noted that he came within a number of the "lesser" criteria and none of the "significant" or "leading" criteria: he appeared to be naïve and possibly vulnerable to exploitation, his only involvement being to carry the cocaine across the border.¹³ He appeared to have been involved for little or no financial gain and believed that if caught he would simply be deported.

[8] Mr Fredric submitted that the only difference between Mr de Macedo and Mr Alves was Mr Alves was going to be paid and he should therefore have been viewed as having a comparable "lesser" role. We do not accept that submission. Mr Alves' expectation of being paid NZD 10,000 was an important difference and indicated a role that was more than just "lesser".¹⁴ There was no error in the Judge's assessment of Mr Alves' role.

[9] As to the starting point itself, Mr Frederic invited us to treat this case as comparable with a number of recent cases involving methamphetamine and cocaine importation. In *R v Caffery* and *R v Alfonso* the quantities of methamphetamine and cocaine respectively were similar to the present case.¹⁵ The starting points were four years six months and five years six months respectively.¹⁶ We do not see these as helpful — both involved the defendants allowing the use of their addresses, a very

¹⁰ *R v Alves*, above n 1, at [20].

¹¹ *Zhang v R*, above n 3, at [125].

¹² *de Macedo v R*, above n 7, at [7].

¹³ At [15].

¹⁴ See *Berkland v R*, above n 4, at [70].

¹⁵ *R v Caffery* [2025] NZHC 203; and *R v Alfonso* [2024] NZHC 1868.

¹⁶ *R v Caffery*, above n 15, at [24]; and *R v Alfonso*, above n 15, at [42].

different and clearly lesser role.¹⁷ Likewise, *R v Bonilla Casanas*, which involved money laundering and ancillary offences (falsifying documents) in connection with a much greater quantity of cocaine (12.9 kg).¹⁸ The starting point was 11 years and six months.¹⁹ But given the different type of offending, which did not involve a direct part in the importation, this case is not comparable.

[10] Finally, Mr Frederic relied on *R v Del Carpio Orchante* where the defendant acted as a mule to bring some 13 kg of cocaine into New Zealand.²⁰ The reward was modest (NZD 1500) and the defendant acted, not for financial gain, but because his family had been threatened. The Judge took a starting point of 11 years.²¹ We agree that the quantity in the present case is much less. However, we perceive that the starting point taken by the Judge was relatively low to reflect the circumstances that led the defendant into the offending. It is not a helpful comparison for that reason.

[11] Significantly, Mr Frederic did not address the Judge's use of *de Macedo v R* and *R v Zubillaga* as comparator cases and did not submit that the Judge erred in his reliance on those cases. In our view, both are closely comparable to the present case. We see the starting point taken by the Judge as within range.

Discount for personal mitigating factors

[12] The Judge allowed a discount of 25 per cent for Mr Alves' guilty plea and further discounts totalling 10 per cent for personal factors, namely: four months because he would be serving a term of imprisonment in a foreign prison; two months for his acknowledged history of drug and alcohol abuse (notwithstanding that Mr Alves himself described his offending as arising from financial difficulty); and six months for his insight into and acknowledgement of the harm drugs do and efforts at rehabilitation.²² These discounts brought the starting point down to an end sentence of six years and six months' imprisonment.²³

¹⁷ *R v Caffery*, above n 15, at [20]–[21]; and *R v Alfonso*, above n 15, at [8].

¹⁸ *R v Bonilla Casanas* [2024] NZHC 1814 at [4]–[5].

¹⁹ At [24].

²⁰ *R v Del Carpio Ochante* [2025] NZHC 624 at [10].

²¹ At [12].

²² *R v Alves*, above n 1, at [21]–[24].

²³ At [24].

[13] Mr Fredric submitted that the discounts of 10 percent were inadequate because they did not fully reflect the causes of the offending, addiction (severe alcohol use disorder and severe cocaine use disorder) and the “drug-crime” nexus, the escalating and compounding effects of the COVID-19 pandemic and pre-existing vulnerabilities to substance abuse stemming from childhood experiences. In addition, there was no recognition for the fact that Mr Alves expressed remorse to the PAC report writer. Mr Fredric argued that a discount of 15–20 per cent should have been allowed for these factors.

[14] Even accepting the influence of Mr Alves’ addictions, there was nevertheless a financial motivation in this offending. Mr Alves’ efforts towards rehabilitation, while to be encouraged, are at an early stage. The expression of remorse to a PAC report writer would not usually, in itself, justify a discrete discount, particularly where a discrete discount has been given to recognise insight into the offending. Considering that the Judge was also required to address deterrence of this kind of offending in sentencing, we consider that the discounts were appropriate.

[15] The end sentence was within range and there is no basis on which to interfere with it.

Result

[16] The appeal is dismissed.

Solicitors:
Crown Solicitor, Manukau for Respondent