IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA315/2025
[2025] NZCA 559

BETWEEN	GRANT IAN SOWMAN Appellant
AND	THE KING Respondent

Hearing:	7 October 2025
Court:	Courtney, Venning and Osborne JJ
Counsel:	J W Wall for Appellant B D Tantrum and H J Bell for Respondent
Judgment:	22 October 2025 at 12 pm

JUDGMENT OF THE COURT

The appeal is dismissed.

REASONS OF THE COURT

(Given by Osborne J)

[1] Mr Sowman was sentenced on 21 May 2025 after pleading guilty to a charge of manufacturing methamphetamine.[1] He was sentenced to five years and ten months' imprisonment.[2]

1 Misuse of Drugs Act 1975, s 6(1)(c) and (2)(a).
2 *R v Sowman* [2025] NZDC 11308.

[2] Mr Sowman appeals his sentence. He submits it was manifestly excessive because the starting point adopted was too high and insufficient credit was given for his guilty plea.

Approach on appeal

[3] An appeal against sentence may be brought as of right under s 244 of the Criminal Procedure Act 2011. This Court must allow the appeal only if it is satisfied there has been an error in the sentence and that a different sentence ought to be imposed.[3] In the vast majority of cases, the court "will not intervene where the sentence is within the range that can properly be justified by accepted sentencing principles".[4] A sentence appeal "will almost always turn on a consideration of whether the final outcome is manifestly excessive", rather than the "route by which the judge reached that outcome".[5]

Law in relation to serious drug offending

[4] The guideline judgment for serious drug offending is *Zhang v R*.[6] It sets out a number of sentencing bands for methamphetamine offending. Most relevant in this case are:

(a) band three: less than 500 grams—six to 12 years; and

(b) band four: less than two kilograms—eight to 16 years.

[5] The identification of bands based on quantity reflects the conclusion that quantity rather than anticipated monetary yield is the most helpful measure of culpability.[7] Quantity is the first determinant because of the potential harm to the community.[8]

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3 Criminal Procedure Act 2011, s 250(2).
4 *Tutakangahau v R* [2014] NZCA 279, [2014] 3 NZLR 482 at [36].
5 *Ripia v R* [2011] NZCA 101 at [15]. See also *Kumar v R* [2015] NZCA 460 at [81].
6 *Zhang v R* [2019] NZCA 507, [2019] 3 NZLR 648 at [125].
7 At [101].
8 At [104].

[6] The role of the offender—in other words, what they actually did—is a fundamental component of the gravity and culpability assessment.[9] The role in methamphetamine drug offending is, in *Zhang*, identified by reference to three categories, namely "lesser", "significant", and "leading".[10] The Crown must prove any aggravating facts in dispute related to the offender's part in the offence.[11]

The District Court decision

[7] Mr Sowman was arrested at his home shortly after completing a methamphetamine cook. Police located 449 grams of methamphetamine in a single container and 283.8 grams of solid methamphetamine hydrochloride, a total quantity of 732.8 grams.

[8] Judge Jelaš placed the offending within band four.[12]

[9] The Judge then assessed Mr Sowman's role. Mr Sowman had explained to police he undertook the methamphetamine manufacture—a single cook—to pay off a long-standing debt.[13] He explained this arose in 2015 when he was arrested with a kilogram of drugs that belonged to another person and he had subsequently been harassed to repay a significant debt relating to the destroyed drugs. Mr Sowman explained that, under pressure to repay the debt, he decided to cook methamphetamine.

[10] The Judge accepted the Crown's submission that Mr Sowman's role was in the "significant" category but at the lower end of the (eight to 12-year) range, and adopted a starting point of nine years' imprisonment.[14]

Factors personal to Mr Sowman

[11] The first mitigating factor the Judge considered was Mr Sowman's guilty plea.[15]

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9 *Berkland v R* [2022] NZSC 143, [2022] 1 NZLR 509 at [63].
10 *Zhang v R*, above n 6, at [126]. These categories were adjusted in *Berkland v R*, above n 9, at [71].
11 *Zhang v R*, above n 6, at [127]; and Sentencing Act 2002, s 24(2)(c).
12 *R v Sowman*, above n 2, at [6].
13 At [4].
14 At [9].
15 At [10].

[12] Mr Sowman was initially charged both in relation to manufacturing methamphetamine and possessing it for the purpose of supply. The summary of facts was amended and the latter charge was withdrawn, whereupon Mr Sowman promptly ended his guilty plea. Mr Sowman accepts through counsel that the withdrawal of the supply charge was "cosmetic" and did not alter the substance of the case.

[13] Mr Sowman first appeared in the District Court in May 2024. At a Crown case review hearing in late July 2024, a jury trial date of 2 December 2024 was set, with a first callover date of 8 October 2024. There were then plea discussions. It was at the 8 October callover that Mr Sowman pleaded guilty on the basis of an amended summary of facts in which precise quantities of the drugs were identified and reference was made to Mr Sowman's assertion that he had completed one cook to pay off a drug debt.

[14] In the District Court, Mr Sowman sought a credit of 25 per cent on account of the guilty plea. The Crown recognised credit in the range of 20 per cent was available.

[15] The Judge fixed a credit of 15 per cent having regard to the timing of the guilty plea and the strength of the Crown case.[16]

[16] The Judge also allowed credit of 20 per cent (not challenged on this appeal) on account of matters in Mr Sowman's personal history, including drug addiction and evidence of Mr Sowman's rehabilitative efforts.[17]

[17] In addition to those matters identified in the sentencing remarks, there were two additional personal factors that could have been considered as aggravating factors:

(a) at the time of his offence, Mr Sowman was subject to a sentence of supervision for possession of fantasy substances for supply;[18] and

(b) Mr Sowman has previous convictions for drug offending including manufacturing methamphetamine, possessing methamphetamine

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16 At [10].
17 At [16].
18 Sentencing Act, s 9(1)(c).

material and utensils, and possessing methamphetamine, for which sentences of imprisonment have been imposed.[19]

The $100,000/$10,000 discrepancy

[18] The Judge, in sentencing Mr Sowman, referred to the debt Mr Sowman said he owed on account of the 2015 incident as being "$10,000".[20] That figure was identified in the pre-sentence report as stated by Mr Sowman in his pre-sentence interview. However, the alcohol and other drug assessment (AOD) report provided to the Court referred to the debt as "$100,000".

[19] The discrepancy between the two figures was apparently not identified at the time Mr Sowman was sentenced.

[20] The Judge, having referred to a debt of $10,000, observed any manufacturing Mr Sowman had undertaken to repay a debt appeared to be well beyond the value of the debt to be repaid. This aspect of monetary reward strongly suggested to the Judge this was not going to be a one-off exercise.[21]

Starting point

Submissions

[21] Mr Tantrum, for the Crown, submitted Mr Sowman's offending was properly characterised by the Judge as falling within the "significant" category.

[22] Mr Tantrum identified this Court has previously made it clear that, where counsel have reached agreement regarding the factual summary on which a guilty plea is to be entered, sentencing must proceed on the basis of that summary.[22] Mr Tantrum emphasised the level of Mr Sowman's debt was self-reported. He submitted the debt, even if the Court were to accept it was $100,000, cannot cause Mr Sowman's role to

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19 Section 9(1)(j).
20 *R v Sowman*, above n 2, at [4].
21 At [15].
22 Referring to *Pokai v R* [2014] NZCA 356 at [30]; citing *R v Apostolakis* (1997) 14 CRNZ 492 (CA) and *R v Whiunui* CA212/05, 9 November 2005.

be categorised as any lower than at the lower end of the significant range given the manufacturing value appeared to be well beyond that figure.

[23] Mr Tantrum submitted this was not a case of Mr Sowman's free-will being overborne by threats relating to the debt as Mr Sowman's explanation to police indicates a deliberate decision to engage in manufacturing methamphetamine at Mr Sowman's home address.

[24] For Mr Sowman, Mr Wall submitted the value of Mr Sowman's drug debt had assumed, as an aggravating factor, such significance for the purposes of sentencing that it was inappropriate for the sentencing Judge to rely on the figure attributed to Mr Sowman in the pre-sentence report.[23] The key consideration arising in relation to proof of facts under s 24 of the Sentencing Act is procedural fairness.[24]

[25] Mr Wall submitted, had the level of the drug debt been correctly identified, the starting point for sentence could have been lower based on the characterisation of Mr Sowman's role. Specifically, Mr Wall submitted Mr Sowman's role in the drug operation was so affected by pressure to repay the drug debt (rather than pursuit of financial gain in the true sense) that the starting point should have been eight years' imprisonment. Mr Wall sought to draw a comparison with cases in which a sentence for dealing in drugs is adjusted where the offender has engaged in the offending to fund a drug addiction.[25]

Analysis

[26] We recognise the Judge must have overlooked the discrepancy between the pre-sentence and the AOD report when quoting Mr Sowman's self-reported level of debt. The Judge evidently focused on the $10,000 figure identified in the pre-sentence report.

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23 Citing *Arahanga v R* [2012] NZCA 480, [2013] 1 NZLR 189 at [71]–[76]; and *Rolleston v R* [2024] NZCA 494 at [23].

24 *Rolleston v R*, above n 23, at [23].

25 Citing *Looker v R* [2025] NZCA 2 at [35]–[41].

[27] While recognising the discrepancy existed, we consider the Judge correctly identified Mr Sowman's role as falling toward the lower end of the "significant" category. As the Court observed in *Zhang*:[26]

> Knowing participation in importation or manufacture should simply be treated as indicative of a more significant role and degree of culpability, attracting a higher sentence starting point across the range indicated.

[28] Mr Sowman's knowing participation as a cook in 2024 is underscored by his previous convictions (2006, 2016 and 2022) for manufacturing methamphetamine, all of which attracted significant sentences of imprisonment and home detention. To the extent Mr Sowman was pressured, influenced or intimidated in relation to the index offending, that is a factor already recognised in *Berkland* as tending towards a "significant" role rather than the higher "leading" role.[27]

[29] Whether Mr Sowman was or was not anticipating some financial gain from the manufacturing (beyond repaying his debt), we find a starting point above eight years' imprisonment was called for.[28]

[30] There is not a valid comparison to be drawn between Mr Wall's instances of offending to support a personal addiction and the index offending where Mr Sowman deliberately chose to engage in unlawful manufacturing on a commercial scale in order to expunge a debt which itself had arisen through earlier serious drug offending.

[31] The nine years' starting point was within range.

Personal mitigating factors and end sentence

Submissions

[32] Mr Wall submitted the Judge's 15 per cent credit for Mr Sowman's guilty plea failed to have sufficient regard to the negotiated basis upon which Mr Sowman's plea

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26 *Zhang v R*, above 6, at [122].

27 *Berkland v R*, above n 9, at [71].

28 In the following cases, the defendant's role was "significant" despite being motivated by a debt: *Miller v R* [2020] NZCA 131 at [19]–[22]; *Hall v R* [2020] NZCA 183 at [46]; and *R v Gaviria* [2024] NZHC 1916 at [30]. See also *Martin v R* [2020] NZCA 318 at [25]–[26]; and *R v Linton* [2025] NZHC 126 at [22]–[23].

was entered including the amendment to the summary of facts. These matters, he submitted, explained the delay. He submitted the appropriate credit for guilty plea was 20 per cent.

Analysis

[33] We consider the Judge's credit of 15 per cent was appropriate having regard to all the circumstances of the guilty plea, including its timing.

[34] More fundamentally, Mr Sowman has failed to establish the end sentence of five years and ten months' imprisonment was manifestly excessive. Even had we been satisfied (which we are not) the Judge had erred in setting the starting point or the guilty plea credit, Mr Sowman benefitted in the sentencing exercise through receiving a credit for personal history and rehabilitation efforts at the higher end (20 per cent) of an appropriate range. Further, his end sentence was not adjusted (as it could have been) on account of the two personal factors identified above at [17] (offending while subject to a sentence and previous convictions).

Result

[35] The appeal is dismissed.

Solicitors:
Crown Solicitor, Auckland for Respondent