IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA312/2025
[2025] NZCA 473

BETWEEN	VA'A VA'A Appellant
AND	THE KING Respondent

Hearing:	25 August 2025
Court:	Cooke, Brewer and Harvey JJ
Counsel:	B A Mugisho and B C S Moyer for Appellant K S Li and C R Armstrong for Respondent
Judgment:	17 September 2025 at 11.00 am

JUDGMENT OF THE COURT

The appeal is dismissed.

REASONS OF THE COURT

(Given by Harvey J)

[1] On 1 May 2025, Judge Andrée-Wiltens sentenced Va'a Va'a to 11 years and 3 months' imprisonment following his guilty plea to one charge of importing methamphetamine.[1] Mr Va'a appeals his sentence on two principal grounds: first, the starting point of 15 years' imprisonment was too high considering Mr Va'a's limited role in the offending; and second, the total discounts of 25 per cent were too low and failed to properly reflect Mr Va'a's guilty plea, cultural background and remorse.

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1 *R v Va'a* [2025] NZDC 9885 [judgment under appeal].

[2] The Crown opposes the appeal and submits the starting point was within range, the discounts were appropriate and the end sentence was not manifestly excessive.

The offending

[3] The Judge summarised the offending as follows:

> [2] In August of 2023 two consignments were sent addressed to you at your address with your phone number attached, and those consignments contained 49.43 kilograms of methamphetamine. You say that you already had a [Customs] client code. The prosecution say that as part of the arrangements here that you created that. I do not know what the situation is. But, nevertheless, you had a code which enabled the drugs to be sent to you.
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> [3] You provided your name, your address, phone number and there were a number of communications between you and an individual by the name of Pako Brendo about the importation of these drugs including one question which concerned about how fast you could open a box with a vacuum sealer inside it. The prosecution says that that means that you had full knowledge of what was going on here, that you were importing drugs, and you have admitted as much.
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> [4] You were also communicating with a logistics company to try and find out what had happened to the shipment and with New Zealand Customs trying to find out when the delivery was going to be cleared, and at one point you sent a text saying: "Just want to make sure I'm home to catch it." That is one of only a very few texts left on your phone in relation to this matter because you have deleted the others. Goodness only knows what they would have said.

[4] "Pako Brendo" was later identified as Patrick Maeva, Mr Va'a's co-defendant.

Approach on appeal

[5] An appeal against sentence proceeds as of right pursuant to s 244 of the Criminal Procedure Act 2011. Such an appeal may be allowed if this Court is satisfied there has been an error in the sentence appealed from and a different sentence should be imposed.[2] Where the sentence is within the range that can properly be justified by accepted sentencing principles, this Court will ordinarily not interfere.[3] An appellate court may only intervene and substitute its own views if the sentence under appeal is "manifestly excessive" or wrong in principle.[4]

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2 Criminal Procedure Act 2011, s 250(2) and (3).
3 *Tutakangahau v R* [2014] NZCA 279, [2014] 3 NZLR 482 at [36].
4 At [30]–[35], citing *Te Aho v R* [2013] NZCA 47 at [30].

Was the starting point manifestly excessive?

[6] For Mr Va'a, Mr Mugisho argued that the District Court Judge erred in describing his role as significant, and in adopting a 15-year starting point as a consequence.

[7] Although Mr Va'a was acting under Mr Maeva's direction, this is consistent with significant players being "important enablers in the chain who take their orders from leaders" in accordance with the categorisation of roles described by the Supreme Court in the leading case, *Berkland v R*.[5] As the person receiving the consignment, Mr Va'a had a key role in facilitating the importation — it was not limited to passive receipt. Mr Va'a played an operational and active part in the importation: he communicated with Mr Maeva, had the consignments sent to himself personally and made all the key arrangements with the logistics company. Mr Va'a also had a New Zealand Customs "client code" to monitor when the delivery would be cleared. Moreover, the summary of facts suggests that Mr Va'a would have been involved in unpacking the methamphetamine from the vacuum sealers were it not for the actions of police.

[8] In addition, Mr Va'a admits he was motivated by financial gain given his failing business and financial problems. He expected to receive $100,000 for his role in the operation. While modest in comparison with the expected commercial profit of the importation, this was still a significant sum. Similarly, while leaders may be expected to obtain a share of the profits, significant players are typically paid.[6] On the other hand, we accept Mr Mugisho's submission that Mr Va'a's involvement does not appear particularly sophisticated.

[9] From the cases cited by Mr Mugisho, *Pai v R* is most relevant.[7] Mr Pai and four friends flew from Taiwan to New Zealand. They were approached by a man who said he would pay them $20,000 if they rented a house and received a package for him. Mr Pai and one friend agreed. They rented a house and changed their plane

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5 *Berkland v R* [2022] NZSC 143, [2022] 1 NZLR 509 at [67].
6 At [70].
7 *Miriau v R* [2024] NZCA 630; *Zhang v R* [2019] NZCA 507, [2019] 3 NZLR 648; *R v Mazuela* [2021] NZHC 1606; and *Pai v R* [2020] NZCA 146.

tickets. On 28 November 2014, crates containing 15 wire drawing machines were sent from Taiwan to Mr Pai, laden with 22.6 kilograms of methamphetamine. On 11 December 2014, the crates arrived and Mr Pai signed for the delivery. He took a taxi to a shop and bought tools before returning. Mr Pai and his friend used the tools to open the containers and transport the machines into the house.[8] This Court considered Mr Pai's role as being at the lower end of significant in accordance with the categorisation of roles described in *Berkland v R*.[9] While there was no evidence that he knew what drug was being imported or the quantity, the operation was significant, which Mr Pai would have known.[10] A starting point of 15 years' imprisonment was accordingly upheld.[11]

[10] In comparison, Mr Va'a did not rent a house, change tickets or unpack the vacuum sealers. On the other hand, he was actively involved in tracking the consignment and helping its progress through Customs knowing it contained drugs. There is also information in the summary of facts suggesting he would have unpacked the vacuum sealers. Furthermore, the amount of methamphetamine here was more than twice as much as in *Pai v R* (49.43 kilograms versus 22.6 kilograms) and Mr Va'a expected to obtain ten times as much money. Given these considerations we consider Mr Va'a's role was just as significant, and the offending just as serious, as in *Pai v R* — and potentially even more so. We do not consider a similar starting point of 15 years' imprisonment is manifestly excessive or wrong in principle.

[11] We accordingly disagree with Mr Mugisho's submission that the Judge erred in assessing Mr Va'a's role as significant. Instead we agree with the Judge's conclusion that Mr Va'a's role in the offending was at the lower end of significant and that a starting point of 15 years was appropriate. This ground of appeal fails.

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8 See *Pai v R*, above n 7, at [10]–[26].

9 At [52]. This Court applied the bands in *Zhang v R*, above n 7, which was the tariff case prior to *Berkland v R*, above n 5. While *Berkland v R* adjusted some of the categorisations in *Zhang v R*, the analysis of Mr Pai's involvement remains unchanged.

10 *Pai v R*, above n 7, at [54].

11 At [56].

Were the discounts insufficient?

Guilty plea

[12] In order to consider Mr Mugisho's submission that the 15 per cent discount for a guilty plea was inadequate, we first describe the chronology of events.

[13] Mr Va'a first appeared on this charge in the Manukau District Court on 31 August 2023. Counsel was instructed on 15 September 2023. That day, Mr Va'a pleaded not guilty and elected trial by jury. On 30 October 2023, counsel advised the Crown that Mr Va'a had instructions to resolve the matter, or to at least engage in discussions. However, no formal resolution offer was made as neither party had received or reviewed the full file. Ms Li submitted that, at most, the Crown was invited to consider s 12 of the Misuse of Drugs Act 1975 when reviewing the file. On 6 February 2024, the Crown filed its Crown Charge Notice and summary of facts.[12] A case review hearing was then adjourned twice: once because both parties were still reviewing the file, and again because Mr Va'a sought ESR testing.

[14] In May 2024, counsel explored the possibility of Mr Va'a giving a further interview but neither the Police nor the Crown were willing to provide an undertaking as to any sentencing discount for assistance. At a case review hearing on 31 May 2024, Mr Va'a then requested a sentence indication. A resolution proposal on the basis of attempted importation of methamphetamine was also submitted to the Crown on 10 July 2024. A sentence indication hearing was then scheduled for 16 August 2024, but was adjourned due to the Crown's ongoing review of the resolution proposal.

[15] On 6 December 2024, the Crown advised it would not accept the proposal, but confirmed it would support a 20 per cent discount if a guilty plea was entered by the next callover on 19 December 2024, but that the discount would thereafter diminish. In a 17 December 2024 callover memorandum, defence counsel confirmed the Crown's position and advised the Court that further instructions were required, although resolution was likely. The matter was adjourned to 23 January 2025.

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[12] Mr Maeva was also charged on 2 March 2024, and the Crown assumed responsibility for his charge on 24 May 2024.

Mr Va'a entered a guilty plea on 23 January 2025 at the third callover to the original charge.

[16] The Judge applied a 15 per cent discount for Mr Va'a's guilty plea:

> [12] You did not plead guilty immediately and you have heard the discussion that I had with Mr Moyer about that. You knew what you had done. Had you wanted to, you could have pleaded on day one. You did not. You postponed matters, you asked for a sentence indication before you ultimately pleaded guilty. So you first appeared in 2023 and you pleaded guilty in January of 2025. It is no longer a prompt plea and as well as that the prosecution case against you I would describe as overwhelming from day one. So the prospects of getting the maximum discount that is available for a prompt plea of 25 per cent have evaporated over time in your case. Mr Moyer has today asked for a discount of 20 per cent. I am afraid I think the appropriate level is a generous 15 per cent.

[17] Mr Mugisho submitted the Judge erred by failing to properly consider the procedural background and context. The delay was not due to a lack of willingness to plead but rather due to procedural issues, Crown engagement and disclosure issues, which cumulatively justify a higher discount. Counsel cited *R v Tuumaga*, where the defendant pleaded guilty on 8 January 2025, having been charged in February 2023, to the importation of between 550–560 kilograms of methamphetamine.[13] Despite the delay, a 25 per cent discount was applied. The timing in Mr Va'a's case is similar and involves much less methamphetamine. Mr Mugisho contended it would therefore be inconsistent and unjust to apply a 15 per cent discount. Given Mr Va'a's early indication of a willingness to resolve, the efforts to progress resolution and the Crown's support for a 20 per cent discount, counsel argued a discount of at least 20 per cent was justified.

[18] We nevertheless accept Ms Armstrong's submission that *R v Tuumaga* is of limited assistance here as the delay in that case was seemingly solely related to receipt and review of disclosure.[14] Counsel contended the 15 per cent discount reflected the significant lapse of time between Mr Va'a's first appearance until his guilty plea, notwithstanding a resolution proposal. We agree. The Crown's proposal of a 20 per cent guilty plea discount was tied to the second callover scheduled for 19 December 2024, and a guilty plea was not entered by this date. In any case, this

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13 *R v Tuumaga* [2025] NZHC 996.
14 At [56]–[57].

was an issue for the Judge to determine and he did so according to orthodox sentencing principles, taking account of the relevant considerations.

[19] We see no reason to disturb his conclusion on the guilty plea discount.

Cultural and personal factors

[20] The Judge accepted Mr Va'a had experienced significant hardship and highlighted four examples: first, the recent death of his mother; second, the late discovery of his adoption; third, his migration to New Zealand and the associated cultural, linguistic and social adjustments; and fourth, the financial strain due to poor business outcomes and the COVID-19 pandemic. However, the Judge found there was no causal connection between these factors and Mr Va'a's offending, and so he applied a modest 2.5 per cent discount.[15]

[21] Mr Mugisho submitted the Judge's discount for personal factors was manifestly inadequate and failed to properly apply the guidance set out in *Berkland v R*.[16] He referred to the cultural report which identified multiple intersecting personal and cultural stressors that significantly impaired Mr Va'a's decision-making and resilience to criminal influence, including:

(a) financial hardship due to poor business literacy and cultural expectations to provide;

(b) psychological strain linked to adoption trauma and isolation as a migrant;

(c) acute grief following the loss of his mother; and

(d) influence and manipulation by others exploiting his vulnerable state.

[22] Counsel contended these factors cumulatively reduced Mr Va'a's moral culpability and supported a narrative of disadvantage and impaired judgment

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15 Judgment under appeal, above n 1, at [14]–[15].
16 Citing *Berkland v R*, above n 5, at [107]–[109].

deserving of greater sentencing recognition. Instead, the Judge took a restrictive approach to causation and did not properly engage with the cumulative and contributory nature of Mr Va'a's disadvantage. Mr Mugisho argued the discount for cultural and personal factors should be increased to at least 10 per cent, consistent with *R v Rapana*. There, the High Court applied a 10 per cent discount for background and personal factors, despite the causal connection between them and the defendant's involvement in significant commercial Class A drug offending not being very strong.[17] Conversely, Ms Armstrong submitted that the causative contribution of a defendant's background can be displaced, wholly or in part, where the offending is particularly serious.[18] She endorsed the Judge's finding that there is no link between the background factors and the offending such as to justify an increased discount.

[23] We do not accept that cultural factors justifying a greater discount have been established. As to financial hardship, the cultural report states Mr Va'a's trajectory into offending appears to stem from his business failing over two years prior to the offending. To the extent he was in financial strife, and experienced cultural pressure to provide, there was no evidence this was linked to his offending. Mr Va'a claimed this financial pressure caused him to commit to the offending two years prior, and then he was coerced to remain involved. But this assertion is not supported by a sufficient evidential foundation. Comments in the report that suggest Mr Va'a was "likely easy prey" are also speculative. This is also true of the claim that because Mr Va'a has no addiction issues nor drug-related convictions, it seems "highly plausible" that negative peers influenced his behaviour and decision-making. We do not accept there is a basis to conclude that Mr Va'a was exploited, manipulated or coerced into the offending.

[24] As to psychological strain due to Mr Va'a's adoption and isolation, we note that he was born in New Zealand and was raised in a loving home without alcohol or drugs. He did learn in his late teens that he was adopted, which contributed to his mental health issues at the time. However, there is an insufficiently clear link between the news of his adoption and his offending some 20 years later. Although we accept that Mr Va'a has a degree of familial and cultural deprivation, it does not appear causative of his offending. Similarly, regarding acute grief, the report notes that

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17 Citing *R v Rapana* [2025] NZHC 1705 at [53].
18 Citing *Berkland v R*, above n 5, at [111].

Mr Va'a's adoptive mother died in 2023, shortly before he was notified about the drugs being delivered. Mr Va'a felt his grief impeded his decision-making. Even so, we agree with Ms Armstrong that there is insufficient causative link with the offending, which would almost certainly have been in train prior to the delivery of the methamphetamine.

[25] When assessing potential discounts for cultural reasons, the context of the offending can also be important. As noted in *Berkland v R*:[19]

> [111] … Complex and orchestrated offending is likely to involve careful assessment of the risks of detection and therefore increased agency. The contribution of background to offending with this level of agency may therefore be significantly reduced or even negated and other sentencing goals, such as community protection, may become more important. …

[26] Plainly, this was serious offending that involved the importation of 49.43 kilograms of methamphetamine into New Zealand. The potential for significant social harm is obvious. The offending also has a clear element of commerciality, planning and premeditation.

[27] Ms Armstrong submitted this is an instance of heightened agency, as evidenced by Mr Va'a deleting his messages to Mr Maeva. She also sought to distinguish *R v Rapana*. In that case, there was still *some* link identified, as the reports and affidavits connected Mr Rapana's involvement in a major drug supply network with the challenges he faced as a youth, the absence of a father figure and being exposed to abuse, which ultimately led to his use of drugs as a young person and subsequent addiction.[20] While the causal connection was not strong, it was still present.

[28] We agree with counsel that there is insufficient link established in the present case. It cannot be shown that Mr Va'a's history is sufficiently and causally connected to his offending when balanced against the seriousness of the offending and the inference of heightened agency.

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19 *Berkland v R*, above n 5.
20 See *R v Rapana*, above n 17, at [51].

[29] For these reasons, we do not accept that the Judge erred in providing only the modest discount for these factors.

Remorse

[30] The Judge declined to provide any discount for remorse:

> [16] There is no remorse here. You say that you now recognise the consequences of what you were attempting to do. Now that you are standing where you are in the dock you do, but back in the time when it really mattered it did not and also when you were first apprehended there was no remorse. You did not immediately say: "Yes, I am sorry, I did it." You have waited until a very long time to finally say: "By the way I apologise. I know it was wrong. I should not have done it." That is not remorse. True remorse is where you front up immediately. You have not done that. There is no discount for extra remorse other than what is available to you for your plea.

[31] Mr Mugisho submitted this approach does not align with appellate guidance on remorse. Mr Va'a's remorse was clear from his cooperation in a recorded police interview, early engagement in resolution discussions and his guilty plea. Similarly, his pre-sentence and cultural reports and the personal letter he addressed to the Court demonstrate genuine remorse. Counsel contended these cumulative expressions of remorse meet, and arguably exceed, the threshold set out in *Moses v R* and *Williams v R*.[21] Mr Mugisho argued the Judge erred in declining to recognise remorse solely because Mr Va'a did not express it upon arrest. A proper assessment of remorse must consider the totality of the circumstances and the sincerity and consistency of Mr Va'a's subsequent conduct. Mr Mugisho submitted that a discount of five per cent for remorse was justified.

[32] As foreshadowed above, in *Williams v R* this Court granted an eight per cent discount for remorse after the appellant submitted a letter expressing shame, awareness of the harm caused, a commitment to rehabilitation and a desire to make amends.[22] The Court found these factors went beyond the mere entry of a guilty plea. In *Moses v R*, this Court affirmed:[23]

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21 Citing *Moses v R* [2020] NZCA 296, [2020] 3 NZLR 583 at [24]; and *Williams v R* [2023] NZCA 156.

22 *Williams v R*, above n 21, at [41]–[42].

23 *Moses v R*, above n 21 (footnote omitted).

> [24] … Remorse is a question of fact and judgement. The defendant bears the onus of showing that it is genuine, meaning that it qualifies as remorse and he or she actually experiences it. Remorse need not be extraordinary to earn a discount, but it does require something more than the bare acceptance of responsibility inherent in the plea. Courts look for tangible evidence, such as engagement in restorative justice processes.

[33] In his letter to the Court, Mr Va'a said:

(a) "I am deeply remorseful for my actions and have acknowledged the seriousness of my conduct";

(b) "I have let down my whole family", in reference to the impacts of the drug on the community, particularly the Pacific Island community;

(c) "I am disappointed disgusted and ashamed [of] my actions and not thinking of [t]he effects this is going to have on my kids [and] partner";

(d) "[This conviction] will affect my job at [KiwiRail]" and "will also have a big impact on my future career [and] moving me and family to Australia to better our lives"; and

(e) that his family have "cut [him] off".

[34] The Judge concluded this was not "true remorse".[24] We agree. The pre-sentence report recorded that Mr Va'a expressed regret for his actions upon the "full realisation as to what he has done" and that he was worried how his family would fare with him in prison. He appeared to minimise his involvement by referring to himself as a "mule", and how he thought the payment of $100,000 was just for allowing his details to be used, although he acknowledged later his more active involvement in the communications to Mr Maeva and to Customs. In short, the remorse expressed was focused on the circumstances Mr Va'a found himself in and the consequences of his conviction for himself. It came very late, and only when he finally realised the gravity of the offending and the impact of his incarceration on his family. There has been no tangible evidence of his remorse, such as by participation

[24] Judgment under appeal, above n 1, at [16].

in restorative justice or rehabilitative processes. In these circumstances, we consider it was open to the Judge not to provide a separate discount for remorse.

Conclusion

[35] Given our findings above, we do not consider the Judge erred either in setting the starting point, or in the level of the discounts allowed. We do not consider the Judge erred in imposing an end sentence of 11 years and 3 months' imprisonment or that this sentence was manifestly excessive.

Result

[36] The appeal is dismissed.

Solicitors:
Crown Solicitor, Manukau for Respondent