

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA274/2024
[2024] NZCA 532

BETWEEN LOUIS HALL
Appellant

AND THE KING
Respondent

Hearing: 1 October 2024
Court: Mallon, Gwyn and Moore JJ
Counsel: R M Mansfield KC and H C W Redwood for the Appellant
M W Nathan for the Respondent
Judgment: 21 October 2024 at 11 am

JUDGMENT OF THE COURT

- A The appeal is allowed. The minimum period of imprisonment of 40 per cent is set aside.**
- B All other aspects of the sentence appeal are dismissed.**
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REASONS OF THE COURT

(Given by Gwyn J)

Introduction

[1] Mr Hall, the appellant, was sentenced on 8 April 2024 in the District Court at Auckland,¹ after pleading guilty to the following offending:

- (a) participating in an organised criminal group;²

¹ *R v Hall* [2024] NZDC 7911 [sentencing notes].

² Crimes Act 1961, s 98A (maximum penalty 10 years' imprisonment).

- (b) offering to supply no less than three kg of methamphetamine (representative);³
- (c) MDMA offending involving approximately no less than 4.25 kg and an unknown commercial quantity of “Pink Porsche pills” (a count of possession for supply, supplying and offering to supply (all representative));⁴
- (d) cannabis offending involving no less than 56.47 kg (a count of possession for supply, supplying and offering to supply (all representative));⁵
- (e) unlawful possession of a firearm;⁶
- (f) receiving offending, involving a stolen Toyota Hiace motor vehicle valued at \$18,000;⁷ and
- (g) driving offending, namely driving whilst suspended (third or subsequent),⁸ exceeding 80 km/h posted speed limit,⁹ careless driving,¹⁰ driving contrary to alcohol interlock licence third or subsequent (two counts)¹¹ and driving with alcohol on his breath while on a zero-alcohol licence.¹²

³ Misuse of Drugs Act 1975, s 6(1)(c) and (2)(a) (maximum penalty life imprisonment).

⁴ Section 6(1)(f) and (2)(b) (maximum penalty 14 years’ imprisonment); and s 6(1)(c) and (2)(b) (maximum penalty 14 years’ imprisonment).

⁵ Section 6(1)(f) and (2)(c) (maximum penalty eight years’ imprisonment); and s 6(1)(e) and (2)(c) (maximum penalty eight years’ imprisonment).

⁶ Arms Act 1983, s 45(1) (maximum penalty four years’ imprisonment or a fine not exceeding \$5,000).

⁷ Crimes Act, ss 246(1) and 247(a) (maximum penalty seven years’ imprisonment).

⁸ Land Transport Act 1998, s 32(1)(c) and (4) (maximum penalty two years’ imprisonment or a fine not exceeding \$6,000).

⁹ Land Transport Act, s 40; Land Transport (Offences and Penalties) Regulations 1999, cls 3–4 and sch 1; and Land Transport (Road User) Rule 2004, r 5.1 (maximum penalty fine not exceeding \$1,000).

¹⁰ Land Transport Act, ss 8 and 37 (maximum penalty a fine not exceeding \$3,000).

¹¹ Section 32(1)(b) and (4) (maximum penalty two years’ imprisonment or a fine not exceeding \$6,000).

¹² Section 57AA(1) and (3) (maximum penalty three months’ imprisonment or a fine not exceeding \$2,250).

[2] Mr Hall was sentenced to 12 years and six months' imprisonment, with a minimum period of five years' imprisonment.¹³ He now appeals that sentence on the overall ground that it was manifestly excessive.

Background

[3] Mr Hall had a leading role in an organised drug syndicate which possessed, offered to supply and supplied commercial quantities of methamphetamine, MDMA and cannabis. Mr Hall directed and controlled 14 other co-defendants in the operation, which involved supplying controlled drugs throughout the country.

[4] The charges related to a 17-month period, from 1 January 2020 to 27 May 2021. The Police operation, Operation Escondido, was terminated on 28 October 2021 with the execution of a number of arrest warrants.

[5] Following Mr Hall's arrest he was released on electronically monitored (EM) bail on 17 November 2020. On 27 May 2021 the Police conducted a further search of his bail address, locating controlled drugs, cash and electronic devices showing ongoing drug dealing.

District Court judgment

[6] District Court Judge Lummis adopted a starting point of 15 years' imprisonment for the methamphetamine offending (the lead offending) and applied an uplift of three years' imprisonment for the remaining charges.¹⁴

[7] The Judge focused on Mr Hall's role in the offending, noting this was a critical consideration.¹⁵ The Judge said there could be "no dispute" that Mr Hall's role was a "leading one" and had "all the hallmarks of a leading role", with the only factor not present being the use of business as a cover (although noting the use of Airbnb accommodation instead).¹⁶

¹³ Sentencing notes, above n 1, at [44], [47] and [49]. Mr Hall was also disqualified from driving.

¹⁴ At [38].

¹⁵ At [17], citing *Berkland v R* [2022] NZSC 143, [2022] 1 NZLR 509.

¹⁶ At [19] and [27].

[8] The Judge was satisfied that Mr Hall ran an organised criminal syndicate to supply commercial quantities of controlled drugs throughout New Zealand.¹⁷ The Judge recorded that the main drugs dealt by the group were the Class B controlled drugs MDMA, in both powder and crystal form, “Pink Porsche” MDMA pills and the Class C controlled drug cannabis. Mr Hall was the conduit between senior organised crime figures and his syndicate.

[9] The Judge was also satisfied that the other 14 co-defendants were subservient to Mr Hall.¹⁸ The operation included the use of encrypted messaging applications and the use of Airbnb accommodation in affluent areas for storing drugs and facilitating drug deals.¹⁹ An indicator of the financial gain generated was Sky City Casino records which showed Mr Hall gambling over \$930,000 at the casino up until 28 October 2020.²⁰

[10] The Judge recorded Mr Hall’s strong connections with various groups, such as the King Cobras, the Comancheros and the Head Hunters, although noting that he was not a patched member of a motorcycle gang and nor were those in his group, but rather friends from his peer social group.²¹ The Judge expressly said that the slightly reduced starting point proposed reflected that fact.²²

Grounds of appeal

[11] Mr Mansfield KC advanced four arguments before us:

- (a) the starting point of 15 years’ imprisonment for the methamphetamine offending was excessive;
- (b) the uplift of three years’ imprisonment for the additional offending was excessive;

¹⁷ At [10] and [19].

¹⁸ At [19].

¹⁹ At [12]–[13].

²⁰ At [26].

²¹ At [20].

²² At [29].

- (c) the reduction of 10 per cent for guilty plea was inadequate; and
- (d) a minimum period of imprisonment (MPI) was not required.

Starting point too high

[12] As noted, the Judge adopted a starting point for the methamphetamine offending of 15 years' imprisonment.²³ Mr Mansfield accepts that the lead offending was the methamphetamine offending but submits the starting point was too high. Although he accepts that the three kg of methamphetamine offered to be supplied falls within band 5 of *Zhang*,²⁴ he says the scale of the methamphetamine offending needs to be considered in context. Methamphetamine dealing was not Mr Hall's modus operandi. He and his cohorts primarily dealt in MDMA and cannabis.

[13] While counsel acknowledges that Mr Hall had a "leading" role within the group in relation to the sale and supply of those drugs, his role in relation to the methamphetamine offending was incidental to the other dealing.²⁵ That is reflected in the infrequency of the supply or offer to supply methamphetamine: the two separate offers to supply methamphetamine occurred within a short period of time, between 2 August 2020 and 17 August 2020. There was no evidence that the offers were consummated, or could have been.

[14] For those reasons, Mr Mansfield says Mr Hall's role in relation to methamphetamine is more properly at the bottom of the "leading" category in *Zhang* and the starting point should have been adjusted accordingly.

[15] By way of comparison, Mr Mansfield referred us to a number of other authorities, particularly focusing on *R v Zagros*.²⁶ Mr Zagros accepted that he imported or attempted to import eight kg of methamphetamine into New Zealand. A large number of MDMA tablets were also located at his address; he used others beneath him in the distribution chain; he laundered money received from the

²³ At [38].

²⁴ *Zhang v R* [2019] NZCA 507, [2019] 3 NZLR 648 at [125].

²⁵ At [126].

²⁶ *R v Zagros* [2022] NZHC 2874.

importations of drugs into Bitcoin; he used encrypted electronic communications; he was charged with firearms offending; and he made a large profit from his activities.

[16] Nation J adopted a starting point of 13 years' imprisonment for the actual methamphetamine importations of 3.67 kg, uplifted by two years' imprisonment to reflect the attempted importation of 4.33 kg of methamphetamine.²⁷ A further uplift of one year's imprisonment was adopted to reflect the MDMA offending and an additional one year uplift for the money laundering and common assault offending.²⁸

[17] Mr Nathan, in response, emphasised that Mr Hall's methamphetamine offending cannot be seen in isolation from his ongoing commercial drug distribution operation. The operation continued for some 17 months, and was New Zealand-wide. Counsel referred to a number of authorities involving lower quantities of methamphetamine and defendants with less culpable roles, suggesting these make clear that the 15-year starting point was appropriate for Mr Hall.²⁹

[18] We are satisfied the sentencing Judge was correct to treat this offending as within band 5 of *Zhang* and to conclude that Mr Hall had a leading role. We have reviewed the authorities cited by counsel as to the appropriate starting point in those circumstances.

[19] Mr Nathan referred us to *Chai v R* where this Court observed:³⁰

[20] Another, useful way of analysing the appropriate starting point for Mr Chai is by reference to the bands denoted by *Zhang*. That is because the quantity here, two kilograms, is right on the cusp of bands four and five. So that means, for instance, that the ringleader of a supply chain concerned with say 1.95 kilograms might expect a starting point near the band four top of 16 years. A person in the chain with an unequivocally lesser role (but the same 1.95 kilograms) might expect 10 years (up from the eight year starting point, because the band starts at only 500 grams). Logically, someone in between (i.e. significant role and 1.95 kilograms) might expect between 12 and 14 years. A further 50 grams, taking the offender into band five, should make no very appreciable difference to those numbers.

²⁷ At [51] and [55]–[56].

²⁸ At [57] and [59].

²⁹ *Wellington v R* [2020] NZCA 277; *To'a v R* [2020] NZCA 187; and *Chai v R* [2020] NZCA 202.

³⁰ *Chai v R*, above n 29, at [20].

[20] On that basis — that two kg of methamphetamine is the start of band 5 — a starting point of 15 years’ imprisonment could be seen as available for Mr Hall, given his leading role in the drug syndicate. However, *Chai v R* related to completed importations. The distinguishing feature of this case is that the methamphetamine convictions were on the basis of the two offers only. On what is known from the proven conduct, they were limited and incidental to the sophisticated and commercial MDMA and cannabis operation.

[21] Mr Mansfield relied on a number of authorities, including *Pratap v R*, where this Court imposed a starting point of 13 years’ imprisonment, in respect of importing 2.369 kg of methamphetamine, with a leading role but at the lower end of band 5 of the *Zhang* scale.³¹ The Judge in this case noted that *Pratap* seemed to be an “outlier”,³² but there are some parallels between that case and this in terms of the quantity of methamphetamine involved, which this Court described as “a small-scale operation when compared to many commercial methamphetamine operations”.³³ Here, the methamphetamine operation could also be described as “small-scale” and was, as we note below, subsidiary to the MDMA and cannabis operation.

[22] Mr Mansfield also relied on *R v Kim* which involved at least 15 kg of methamphetamine.³⁴ Mr Kim had a “significant role”, but did not “exercise significant autonomy, had no decision-making authority and did not manage others”.³⁵ This Court upheld a starting point of 14 years’ imprisonment for Mr Kim’s methamphetamine offending. While *Kim* is not on all fours with Mr Hall’s case, as the Court said:³⁶

... [E]ach case must be assessed on the basis of their individual circumstances and ... a combination of different factors will need to be taken into account when assessing an appropriate starting point.

[23] In light of those authorities, and balancing all of the aspects of Mr Hall’s offending — namely, a leading role, involving two proven offers to supply three kg of methamphetamine, to some degree incidental to the main commercial operation of

³¹ *Pratap v R* [2021] NZCA 308 at [31].

³² Sentencing notes, above n 1, at [30].

³³ *Pratap v R*, above n 31, at [26].

³⁴ *Kim v R* [2023] NZCA 332.

³⁵ At [25].

³⁶ At [29].

supplying MDMA and cannabis — we would have concluded that 15 years’ imprisonment was, when viewed in isolation, somewhat too high. However, as we come to, taken in the round it did not result in an end sentence which was manifestly excessive.

Uplift for remaining charges

[24] An uplift of three years’ imprisonment was applied by the Judge for the remaining offending. Mr Mansfield says this uplift was excessive. He says the offending warrants one separate uplift and two further years’ imprisonment would be appropriate.

[25] Mr Mansfield relied on *R v Maciel*.³⁷ However, as the sentencing Judge identified in her judgment, the key distinction between that case and this one is that Mr Maciel’s role was described as sitting towards the middle of the “significant” category with no management function.³⁸

[26] In our view three years’ uplift was light given the significant quantity of drugs supplied, its commerciality and the use of Airbnb premises for packaging, storage and dealing, and the possession of an unlawful firearm. Those aspects of the offending would have attracted significant sentences in their own right, but for totality considerations:

- (a) Mr Hall’s MDMA offending involved no less than 4.257 kg, together with an unknown commercial quantity of “Pink Porsche” pills. As the Crown submits, a stand-alone starting point in excess of eight years would be well within range for that offending. In sentencing Mr Zheng, one of Mr Hall’s co-defendants, the sentencing Judge adopted a starting point of seven years and six months’ imprisonment for his MDMA offending, involving five kg and at least 2,100 “Pink Porsche” MDMA pills. Mr Zheng had a mid-to-high position within the syndicate.

³⁷ *R v Maciel* [2021] NZHC 836.

³⁸ Sentencing notes, above n 1, at [38].

- (b) Mr Hall’s cannabis offending involved no less than 56.47 kg of cannabis which would fall into category 3 of *R v Terewi* as a large-scale commercial quantity for supply with sophistication and organisation.³⁹ As set out in *Terewi*, offending within category 3 attracts a starting point of “four years or more”.⁴⁰ Instigators or controllers will attract sentences at the upper end of the range. Given the quantity, likely financial yield, sophistication of this operation, and Mr Hall’s controlling role, a standalone starting point in the vicinity of six years would have been available on the basis of *Terewi*.⁴¹
- (c) The unlawful possession of a firearm charge related to a cut-down Norinco JW-15, .22 rifle with a suppressor. The combination of drug offending and firearms may have warranted an uplift of between 12 and 18 months.⁴²
- (c) The receiving charge related to a stolen Toyota Hiace motor vehicle valued at \$18,000 and a starting point in the range of 18 months could have been warranted.
- (d) In addition, a short term of imprisonment (probably converted to a community-based sentence) would usually be appropriate for the driving offending.

³⁹ *R v Terewi* [1999] 3 NZLR 62 (CA). While the categories in *R v Terewi* are directed at cultivation, this Court has previously confirmed that the categories apply to supply and sale offending: *Bishop v R* [2010] NZCA 66 at [19], citing *R v Leighs* CA360/02, 15 September 2003 at [11].

⁴⁰ *R v Terewi*, above n 39, at [4].

⁴¹ See *Borg v R* [2015] NZCA 289 where this Court considered a five and a half year starting point appropriate for offending at the “middle to upper range” of category 3, citing *R v Daley* HC Tauranga S1550/99, 13 August 1999 and *R v Prest* HC Auckland CRI-2008-004-28639, 27 May 2010 where starting points of six and a half years and six years respectively were adopted. We note the comments that the guideline may require reconsideration: see *R v Smyth* [2017] NZCA 530 at [17]; *Smith v R* [2022] NZCA 606 at [12]; and *Anderson v R* [2022] NZCA 472 at [20] although each of these cases did not involve the degree of commerciality involved here.

⁴² The combination of firearms and drugs has been recognised in the following cases as inherently dangerous, regularly warranting an uplift between 12 and 18 months: *To’a v R*, above n 29, at [19], citing *R v Fonotia* [2007] NZCA 188, [2007] 3 NZLR 338 at [40]; *Mills v R* [2016] NZCA 245 at [18]; and *Joyce v R* [2020] NZCA 124 at [24].

[27] In addition, the Judge did not apply any additional uplift for the further offending while on EM bail.⁴³ We conclude that, rather than being excessive, the uplift applied by the Judge was generous.

[28] Collectively, the offending would have justified a four- to five-year uplift on a 13 to 14 year starting point on the lead offending, taking into account totality. The Judge's uplift of three years reflected a greater reduction for totality because of her higher starting point on the methamphetamine offending. In short, while we might have constructed the starting point slightly differently, the combined starting point was available to the Judge. Ultimately, the question on appeal is about the appropriateness of the end sentence rather than the process by which it was reached.⁴⁴

Reduction for guilty plea

[29] The Judge applied a 10 per cent reduction to reflect Mr Hall's guilty pleas. Mr Mansfield says the reduction was too low (the very lowest available) and a 15 per cent reduction would be appropriate. While counsel accepts that Mr Hall first appeared on 28 October 2020 and did not enter his guilty plea until 9 June 2023, he notes there was a vast amount of documentary evidence to be worked through, and new charges arose in May 2021, while Mr Hall was on EM bail. His plea avoided the need for what would have been a lengthy trial, given the number of charges involved.

[30] We conclude that a 10 per cent reduction for Mr Hall's guilty plea was appropriate having regard to the particular circumstances. These were:

- (a) Mr Hall first appeared on 28 October 2020. His guilty plea was entered on 9 June 2023, three days before his trial was to commence. After pleas were entered, Mr Hall sought a disputed facts hearing on quantum that was set down for hearing on 27 November 2023, and not resolved until three days before that hearing.

⁴³ Sentencing notes, above n 1, at [39].

⁴⁴ *Tutakangahau v R* [2014] NZCA 279, [2014] 3 NZLR 482 at [36]; and *Ripia v R* [2011] NZCA 101 at [15].

- (b) All other 14 defendants pleaded guilty prior to Mr Hall and had been sentenced by the Judge. They received discounts of 15 and 25 per cent, reflecting the varying stages at which they pleaded guilty. As the Judge noted, they too had to deal with voluminous documentary evidence.
- (c) The Judge was well-placed to consider parity as between defendants. The last defendant to plead before Mr Hall (Mr Zheng) did so on 15 May 2023. He received a 15 per cent discount.

Minimum period of imprisonment

[31] The Judge adopted a minimum period of imprisonment of 40 per cent. Mr Mansfield submits that an MPI was not required but, if one was to be applied, it should have been at the lowest level.

[32] Section 86(2) of the Sentencing Act 2002 requires a judge to consider whether the minimum statutory non-parole period specified in the Parole Act 2002 is insufficient to meet any or all of the four purposes specified in s 86(2)(a)–(d). If so, a longer MPI may be imposed. Under s 86(4) that MPI must not be greater than the lesser of 10 years or two-thirds of the full sentence.

[33] As this Court said in *Zhang*, a sentence of nine years or above is not a threshold above which the imposition of an MPI is expected. In each case it is necessary to ask whether the normal parole period is sufficient to achieve the sentencing purposes identified in s 86(2).⁴⁵

[34] An appeal against the imposition of an MPI is treated as an aspect of the sentence appeal.⁴⁶ The imposition of an MPI involves “a degree of discretion”, with the sentencing judge to be “extended in a margin of appreciation” in making the order and its length.⁴⁷

⁴⁵ *Zhang v R*, above n 24, at [172] and [277].

⁴⁶ Sentencing Act 2002, s 86(5). An order imposing a minimum period of imprisonment is treated as a sentence for the purposes of the appeal provisions in pt 6 of the Criminal Procedure Act 2011.

⁴⁷ *Tiumalu v R* [2019] NZCA 234 at [18]; and *Skipper v R* [2013] NZCA 104 at [27].

[35] The sentence imposed on Mr Hall was a lengthy one — 12 years and six months' imprisonment. Under that sentence he would not be eligible for parole until he had served four years and three months in prison. The effect of the MPI was to increase that minimum period of imprisonment by just under 14 months.

[36] Although the quantity involved, the commercial nature of the enterprise and Mr Hall's role would point towards an MPI, there are personal factors that are relevant. Mr Hall is a relatively young man (29 at the time of sentencing). Prior to this offending he had a relatively limited criminal history, the most serious offence being non-aggravated robbery for which he was sentenced to seven months' imprisonment in 2014. Mr Hall has previously been convicted for possession of cannabis for supply, but has no previous Class A controlled drugs convictions.

[37] Mr Hall has a background of mental health issues and trauma. He had an addiction to methamphetamine and possibly a gambling addiction, which appear to have driven his offending. By way of example, he is said to have gambled over \$930,000 at Sky City Casino.

[38] We consider that the lengthy sentence imposed on Mr Hall, coupled with the statutory minimum period of four years and three months' imprisonment is sufficient to hold him accountable for the harm done to the community by his offending. It denounces the conduct in which he was involved and is a very significant deterrent to drug-related offending.

[39] So far as protection of the community is concerned, the information before the Judge indicated that Mr Hall had taken some steps toward rehabilitation including completing a Community Alcohol and Drugs Services course. As the s 27 report considered at sentencing records, Mr Hall had at that time been clean from drugs for the almost three years he had been in prison on remand. Further, as the Judge recorded, Mr Hall has strong support from his mother and his uncle.

[40] We conclude that the imposition of a 40 per cent MPI was not necessary for the purposes identified in s 86(2) and its imposition was an error. No order should have been imposed.⁴⁸

Result

[41] The appeal is allowed. The minimum period of imprisonment of 40 per cent is set aside.

[42] All other aspects of the appeal against sentence are dismissed.

Solicitors:
Crown Solicitor, Auckland for Respondent

⁴⁸ See *Rogers v R* [2022] NZCA 39; and *Hura v R* [2023] NZCA 7. Both cases involved a similar fact assessments where this Court set aside a minimum period of imprisonment.