

**IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA  
TĀMAKI MAKĀURAU ROHE**

**CRI-2022-404-73  
[2023] NZHC 2188**

**THE KING**

v

**MAXIMILLIANO JAVIER LUNA**

Hearing: 15 August 2023

Appearances: B Kirkpatrick for the Crown  
M E Goodwin and Ms C M Chester-Cronin for the Defendant

Sentence: 15 August 2023

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**SENTENCING REMARKS OF LANG J**

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Solicitors/counsel:  
Meredith Connell, Office of the Crown Solicitor, Auckland  
M E Goodwin, Auckland

[1] Mr Luna, you appear for sentence having pleaded guilty to 10 charges relating to the importation, possession and supply of Class A and Class B controlled drugs. The Class A drugs in question are methamphetamine, lysergide (LSD) and cocaine whilst the Class B drugs are MDMA (ecstasy) and ephedrine.

[2] The individual charges to which you have entered guilty pleas are as follows:

- (a) selling methamphetamine (representative charge);
- (b) possessing 1.024 kilograms of methamphetamine for sale (representative charge);
- (c) importing 3.98 kilograms of ecstasy;
- (d) possessing 5 kilograms of cocaine for sale (representative charge);
- (e) possessing 47.113 grams and a bottle of ecstasy for sale (representative charge);
- (f) possessing 6.478 kilograms of ephedrine for sale;
- (g) possessing 150 tabs of LSD for sale;
- (h) selling ecstasy (representative charge); and
- (i) selling 5.154 kilograms and other amounts of ephedrine (representative charge).

[3] The maximum sentence for importing, selling or possessing Class A controlled drugs is life imprisonment, whilst the maximum sentences for the remaining charges range between 10 and 14 years imprisonment.

### **The facts**

[4] You are to be sentenced on the basis of an agreed summary of facts. This records that you became involved in a very large and sophisticated drug importation

and distribution syndicate that became the subject of a wide-ranging police investigation. The organisation was well organised, with members allocated roles such as “storemen” who stockpiled and repackaged bulk drugs and “runners”, who delivered drugs and obtained payment from customers. The leader of the syndicate was Mr Xavier Valent, who was based overseas but nevertheless exercised tight control over the syndicate’s operations in New Zealand. He has been sentenced to life imprisonment for his role in its operation.<sup>1</sup>

[5] You were introduced to the syndicate in or around September 2018, initially to act as a receiver or “catcher” of imported drugs. You agreed to receive drug consignments sent from overseas to your home. You were paid in cash for your willingness to assist in this way.

[6] You dispute that you were paid the sum of \$5,000 for an initial “dummy run” importation. However, you accept you were subsequently involved in two importations of drugs. In September 2018 Mr Valent imported 4.55 kilograms of ephedrine into New Zealand concealed in a shipment of 40 heaters. You agreed to accept delivery at your home address and deal with the importation in accordance with the directions given by a senior member of the syndicate, Mr Alarcon Ramos.

[7] The consignment never arrived at your address because it was intercepted by the New Zealand Customs Service (Customs). The consignment was addressed to a person named Hong Lin. You denied knowing this person when Customs Officers visited your address and asked you about the consignment. You have been charged with conspiring to possess ephedrine for supply as a result of this attempted importation.

[8] Approximately a month later, in October 2018, Mr Valent arranged for 3.98 kilograms of ecstasy to be imported into New Zealand concealed in hollowed out books. On this occasion you again agreed to receive the drugs at your home address and deal with them in accordance with directions to be given. This consignment was also intercepted by Customs. You have been charged with importing ecstasy as a result of this series of events.

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<sup>1</sup> *R v Valent* [2023] NZHC 1432.

[9] In November 2019 your role changed from being the recipient of imported drug consignments to becoming a “runner” for the syndicate. Mr Alarcon Ramos asked you to deliver drugs and cash for the syndicate in the Auckland area between the hours of 8.00 am and 6.00 pm on weekdays. This eventually led to you becoming the primary “runner” for one of the distribution teams. Police surveillance teams observed you meeting with and being given bags of cash or drugs by other syndicate members on numerous occasions. You then delivered these to others in accordance with directions that were given to you in daily lists. Between November 2019 and 5 February 2020 you transported grams, ounces and kilograms of methamphetamine, cocaine and ecstasy as well as substantial quantities of ephedrine. You were also trusted to regularly uplift and deliver large quantities of cash to a money remittance business in Newmarket.

[10] You were paid in cash, usually receiving between \$2,000 and \$5,000 per week. Amounts varied, however, depending on the quantities of drugs and cash you were transporting. The Crown alleges, but you dispute, that you were also given an Audi motor vehicle to use for the purpose of transporting drugs and cash. On several occasions you asked Mr Alarcon Ramos for more pay, and you also asked to be paid on days when there was no work for you.

[11] Your role in the syndicate never progressed beyond being a runner, but your activities led to you having contact regularly with the most senior members of the syndicate. These included Mr Alarcon Ramos, Ms Ramos Mazuela and Mr Valent. Your contact with these members of the syndicate enabled you to gain an appreciation for how the syndicate worked.

[12] Between 5 December 2019 and 5 February 2020, you and Mr Alarcon Ramos were in possession of four kilograms of cocaine that had been imported from Brazil. You collected the drugs from the courier who brought them into New Zealand on a commercial flight. You then delivered them to Mr Alarcon Ramos. However, you deny assisting Mr Alarcon Ramos to repackage the cocaine into ounce bags for supply. Between 31 January 2020 and 5 February 2020, you were in possession of around one kilogram of methamphetamine and over 47 grams of ecstasy for the purpose of supply.

[13] On 5 February 2020 the police terminated the operation and arrested you and other members of the syndicate. Search warrants were executed on seven associated properties. At Ms Ramos Mazuela's address the police found approximately \$804,000 in cash, 24.7 grams of methamphetamine, 47.13 grams of ecstasy, 6.47 kilograms of ephedrine and 150 tabs of LSD. The police also found a suitcase containing a set of scales, vacuum sealable packaging, an apron and used sealable bags. You were in joint possession of these controlled drugs along with other members of your syndicate. No controlled drugs were found at your own address.

### **Approach**

[14] I propose first to select a starting point for the lead, or most serious, charges. I take these to be the charges relating to the offending involving methamphetamine. I will then increase the starting point to reflect the remaining charges before determining the extent to which the resulting sentence should be increased or reduced to reflect aggravating or mitigating features personal to you. Finally, I will determine whether you should be required to serve a minimum term of imprisonment before being eligible to apply for parole.

### **Disputed facts**

[15] As will be apparent, you dispute three aspects of the summary of facts. These relate to the following factual issues:

- (a) Whether you were involved in the "dummy run" importation of cocaine for which you were paid the sum of \$5,000.
- (b) Whether you were given an Audi motor vehicle for use in your drug running activities.
- (c) Whether you assisted Mr Alarcon Ramos in repackaging the imported consignment of four kilograms of cocaine.

[16] Had I considered these issues to be material for the purposes of sentence I would have heard evidence about them in order to determine the matters in dispute.

However, the Crown and your counsel agree that the disputed issues are unlikely to make a material difference to the sentence. I agree with that assessment. I will therefore select a starting point without taking those issues into account.

### **Starting point**

[17] The leading authority for the starting point to be adopted in charges involving methamphetamine is the decision of the Court of Appeal in *Zhang v R*.<sup>2</sup> In that case, the Court identified bands of offending based on the quantity of methamphetamine involved.<sup>3</sup> There is no dispute that the quantity of methamphetamine with which you were involved places you in band 5, the highest band identified in *Zhang*. This relates to offending involving more than two kilograms of methamphetamine. In such cases the starting point will be between 10 years and life imprisonment.

[18] In selecting the starting point the Court of Appeal emphasised that the weight of the methamphetamine involved in the offending remains relevant but is not a determinative factor.<sup>4</sup> The role an offender plays within a particular network will significantly inform where the starting point will lie within a band and between bands.<sup>5</sup> The Court also identified the types of role an offender may play based on several different factors. It described these in ascending seriousness as being lesser, significant and leading.

[19] You clearly had an important function within the syndicate because you took physical possession of drugs and cash from other persons and then delivered them to customers or others within the syndicate. As I have already observed, you would also receive drugs on behalf of the syndicate and collect and deliver large sums of cash to individuals or to the money remittance business as instructed. You handled hundreds of thousands of dollars on behalf of the syndicate. It is estimated that during the period when you were involved, the syndicate laundered millions of dollars.

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<sup>2</sup> *Zhang v R* [2019] NZCA 507, [2019] 3 NZLR 648.

<sup>3</sup> At [125].

<sup>4</sup> At [104].

<sup>5</sup> At [118].

[20] You were also aware of the nature and scale of the syndicate's operations. This is demonstrated by the fact that, in early December 2019, you had a discussion with Mr Alarcon Ramos in which you discussed how the syndicate could better conceal controlled drugs within products to be imported into New Zealand. This suggests a desire on your part to become actively involved in the operation of the importation arm of the syndicate's activities as well as the distribution side of the business.

[21] You also communicated directly with Mr Valent, who was the overall leader of the syndicate. In addition, you had a close relationship with Mr Alarcon Ramos, Mr Valent's deputy, and Ms Ramos Mazuela. Importantly, you appear to have been motivated solely by financial reward. There is no suggestion you were driven to offend by addiction issues.

[22] The Crown contends that you were in possession of approximately seven kilograms of methamphetamine. It relies for this submission on the quantities of methamphetamine referred to in the daily lists of deliveries that you received and gave effect to. The Crown therefore argues that the methamphetamine-related offending warrants a starting point of 13 to 14 years imprisonment. Mr Goodwin initially contended on your behalf that this offending justified a starting point of no more than 11 to 12 years imprisonment. He now accepts, however, that you acknowledged to the police that you handled at least as much methamphetamine as another syndicate member, Mr Maciel. Mr Maciel handled 7.096 kilograms of methamphetamine.

[23] In determining the starting point to be selected in your case I consider the starting points selected when several other members of your syndicate were sentenced to be instructive. In the written transcript of these remarks I will set these out in table form but I will now read them out so that you are aware of the cases I have taken into account:

<u>Offender</u>	<u>Reference</u>	<u>Quantity</u>	<u>Role</u>	<u>Starting point</u>
Mr Maciel	[2021] NZHC 836	7.096 kg	Towards the middle of significant	13 years
Mr Al-Obidi	[2022] NZHC 1274	2.6 kg	Between lesser and significant	11 years

Mr Macalalad	[2020] NZHC 2930	7.816 kg	Below the middle of significant	13 years six months
Mr Treasurer	[2023] NZHC 1433	At least 2 kg	On the cusp between lesser and significant	11 years
Mr Kim	[2022] NZHC 952	15 kg	Lower end of significant	14 years
Mr Montgomery	[2022] NZDC 4244	10 kg	Leading	18 years
Ms Ramos-Mazuela	[2021] NZHC 1606	31 kg	Lower end of significant	17 years
Mr Alarcon Ramos	[2020] NZHC 2257	24 kg	Leading	Life imprisonment
Mr Broom	[2022] NZDC 6554	11.5 kg	Lower level of significant	11 years

[24] I take your offending as being at around the same level as that of Mr Macalalad, who was first a runner and then a storeman. His offending involved 7.816 kilograms of methamphetamine. The sentencing Judge described his role as falling below the middle of the significant category. I also see your role as being more significant than that of Mr Al-Obidi, for whom a starting point of 11 years imprisonment was selected. Your offending has obvious similarities with Mr Maciel, who was also a runner. He performed your role during weekends and on weekdays when you were unavailable. The Judge who sentenced him selected a starting point of 13 years imprisonment. However, I consider your offending to be slightly more serious than his because you worked for a longer period. You also worked for five days a week whereas he mainly worked in the weekends or on other occasions when you did not. Your offending also included involvement in the attempted importation of drugs.

[25] Having regard to the factors to which I have referred I take your offending also to be towards, although slightly below, the middle of the significant band. I therefore select a starting point of 13 years six months imprisonment to reflect the offending involving methamphetamine.

### **Uplift for remaining offending**

[26] It is now necessary to apply an uplift to reflect the other charges to which you have pleaded guilty. This is necessary because they relate to different events and different types of controlled drugs.



[27] As the Crown points out, the cocaine offending alone would attract a starting point of around 13 years imprisonment given the fact that five kilograms were involved. Similarly, the fact that you were involved in importing and distributing approximately four kilograms of ecstasy would ordinarily justify a starting point of around nine years imprisonment on a stand-alone basis. The charge relating to possessing and conspiring to possess just under 11 kilograms of ephedrine would also justify a starting point of at least eight years imprisonment on a stand-alone basis.

[28] However, sentences of this magnitude would be plainly inappropriate given the starting point I have selected on the methamphetamine charges. The Crown accepts that this is so. It suggests the overall gravity of your offending justifies a sentence of 16 and a half years imprisonment and submits I should apply an uplift that attains this object. Mr Goodwin submits an uplift of no more than three years is required.

[29] It can be argued that a greater uplift than three years is required given the quantities of drugs involved, but it is necessary to ensure that any uplift is broadly in line with those applied in the cases of other members of your syndicate. These range between 12 months and four years. I consider the approach suggested by your counsel achieves a degree of parity with your co-defendants. It also results in the same end sentence as that suggested by the Crown to be appropriate. I therefore apply an uplift of three years to reflect the remaining charges. This means the sentence will be one of 16 years six months imprisonment before taking into account aggravating and mitigating factors personal to you.

### **Aggravating factors**

[30] You have no previous convictions and there will therefore be no uplift for aggravating factors personal to you.

### **Mitigating factors**

[31] You were arrested in February 2020 and entered your guilty pleas in April 2023. Your trial was originally scheduled to commence in September 2022, but the charges against you were severed from those to be determined at the trial of Mr Valent and Mr Treasurer. The Crown acknowledges however that your guilty pleas follow

resolution discussions that resulted in some amendment to the charges and concessions by the Crown. The Crown nevertheless points out that the factual basis for the Crown case remained essentially the same. It suggests a discount of no more than 15 per cent is appropriate whilst Mr Goodwin contends a discount of at least 20 per cent should be given. I propose to apply a discount of three years, or just over 18 per cent, to reflect your guilty pleas.

[32] Mr Goodwin has tendered a cultural report under s 27 of the Sentencing Act 2002. This provides me with a great deal of information about your upbringing and early life. You were born in Argentina and moved to New Zealand with your family when you were 12 years of age. This was prompted by your parents' concern about the economic uncertainty and high crime rate in Argentina.

[33] You report initially being bullied at intermediate school in New Zealand because you looked different and were unable to speak English fluently. You say you also witnessed your parents being disrespected and discriminated against when they first arrived in New Zealand.

[34] At the high school you attended there was a greater number of South American students than had been the case at your intermediate school. This provided you with a greater sense of belonging, although you nevertheless encountered ongoing social difficulties. Your family also suffered stress over a lengthy delay that occurred before their residency visas were granted.

[35] You have been involved in successful businesses with your father and, later, with your wife. Unfortunately, however, your paternal grandfather passed away in 2019. You say this was an extremely difficult time for you and it was at this time that significant depressive symptoms first emerged. Your businesses also began to suffer financially and you began to accumulate debt during the period leading up to your offending. You are now being treated for depressive issues and, in this regard, you are extremely fortunate to maintain the strong support of your wife and wider family.

[36] The Court may provide an offender with a discount where factors identified in a cultural report have some link or connection with the underlying causes of offending.

This need not need be particularly strong but it must have some nexus with the underlying causes of the offending. In your case, Mr Luna, I find little in the report, other perhaps than the death of your grandfather, that I can realistically link to the causes of the present offending. The offending appears to have been driven largely by your need for money to support your ailing businesses and to support your family rather than from any underlying issues attributable to your upbringing or childhood. I am, however, prepared to make some allowance for the factors identified in the report including your previous good character and the difficulties you have suffered since arriving in New Zealand. I propose to apply a discount of 20 months, or just over 10 per cent, to reflect these factors.

[37] The cultural report does, however, suggest that you have rehabilitative prospects. Your ability to contribute positively to society has already been demonstrated by the fact that you have been involved in successful businesses in the past. I therefore propose to make a further allowance of 20 months to reflect your rehabilitative prospects and the remorse you have expressed.

[38] I note also that you were on electrically monitored bail from 28 February 2020 until 19 November 2020. This required you to observe a 24-hour curfew at your address. I propose to apply a discount of three months to reflect the period when you were subject to a 24-hour curfew. I make no allowance for the period during which you were subject to a curfew between the hours of 10.00 pm and 6.00 am because I do not consider that type of restriction to be unduly harsh.

[39] It follows that I have identified discounts totalling 79 months, or six years seven months. This means the end sentence will be one of 9 years 11 months imprisonment.

### **Minimum term of imprisonment**

[40] Section 86 of the Sentencing Act 2002 permits a Court to impose a minimum term of imprisonment in any case where the offender receives a sentence of two years imprisonment or more. It may only do so where such an order is necessary because the usual parole conditions are insufficient to meet the sentencing purposes of deterrence, denunciation, the need to hold the offender accountable and the need to

protect the community. In the ordinary course of events, an offender is required to serve two-thirds of a sentence before being eligible to apply for parole. The Crown submits that you should be required to serve 40 per cent of your sentence before being eligible to apply for parole. Your counsel contends that no minimum term of imprisonment should be imposed.

[41] As the Court of Appeal emphasised in *Zhang*, minimum terms of imprisonment should not be imposed as a matter of routine or in a mechanistic way.<sup>6</sup> Rather, the Court must analyse whether the prescribed factors require the imposition of a minimum term of imprisonment in the case with which it is dealing.

[42] The Crown points to the fact that Mr Maciel was required to serve a minimum term of 40 per cent and the Court of Appeal dismissed his appeal against that order. The Crown also points out that the same minimum term of imprisonment was imposed on Mr Macalalad, Mr Kim and Mr Montgomery. Mr Alarcon Ramos received a minimum term of 50 per cent. However, no such order was made in the case of Mr Al-Obidi, whose offending was addiction driven and who had taken commendable rehabilitative steps. Similarly, no order was made in the case of Mr Treasurer, given the nature of his offending and his good prospects for rehabilitation.

[43] Your offending was extremely serious. It was at around the level of that of Mr Maciel, Mr Macalalad and Mr Kim, all of whom have been ordered to serve a minimum term of 40 per cent of their sentences before being eligible to apply for parole. Further, your offending was driven by the need for financial gain rather than to feed any form of addiction. Although you have rehabilitative prospects and have expressed remorse, I consider this is insufficient to militate against the imposition of a minimum term of imprisonment given the magnitude of your offending.

[44] In dismissing Mr Maciel's appeal against the imposition of a minimum term of imprisonment the Court of Appeal observed:<sup>7</sup>

Mr Maciel is a mature adult, apparently educated, and well able to know and understand what he is doing. His motivation was purely commercial and is not, by his own admission, driven by addiction. There is little in his personal

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<sup>6</sup> *Zhang v R*, above n 5, at [169].

<sup>7</sup> *Maciel v R* [2021] NZCA 634 at [25].

circumstances that would make the otherwise appropriate imposition of an MPI incorrect. In saying that we do not overlook the guilty plea, and claimed insight and remorse, but in this case consider the circumstances and scale of the offending remain the primary sentencing factor. We consider his age, now 31, to be a neutral factor.

[45] I consider you are in much the same position as Mr Maciel. At 34 years of age, you are a mature adult and you knew full well what you were doing. In the ordinary course of events you would be eligible for parole after serving just over three years and three months of the sentence. I consider that would be manifestly inadequate in the circumstances of your case to reflect the sentencing purposes of deterrence, denunciation and the need to hold you accountable for your offending.

[46] Taking those factors into account, I am satisfied that a minimum term of imprisonment is required. It should be at the same level as that imposed on Mr Maciel. You will therefore be required to serve a minimum term of four years before being eligible to apply for parole.

### **Sentence**

[47] If you would stand, Mr Luna.

[48] On the charges of selling methamphetamine and being in possession of methamphetamine for supply, you are sentenced to 9 years 11 months imprisonment. On those charges you are ordered to serve a minimum term of four years before being eligible to apply for parole.

[49] On all remaining charges, to which you have pleaded guilty, you are sentenced to five years imprisonment. All sentences are to be served concurrently. On the remaining charges to which you have not entered guilty pleas, you are discharged under s 147 of the Criminal Procedure Act 2011.

[50] Thank you Mr Luna, you may stand down.