

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA198/2022
[2023] NZCA 137**

BETWEEN	SIU JUN ZHOU First Appellant
	LEVONZ INVESTMENT LIMITED Second Appellant
AND	COMMISSIONER OF POLICE Respondent

Hearing:	27 March 2023
Court:	Collins, Venning and Gendall JJ
Counsel:	S N B Wimsett and Y Y Mortimer-Wang for Appellants K South and C C White for Respondent
Judgment:	2 May 2023 at 9.30 am

JUDGMENT OF THE COURT

- A The appeal is dismissed.**
- B The respondent is entitled to costs for a standard appeal on a Band A basis,
together with usual disbursements.**
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REASONS OF THE COURT

(Given by Collins J)

Introduction

[1] Mr Zhou and his investment company Levonz Investment Ltd (LIL) appeal a decision of Doogue J, in which the Judge made profit forfeiture orders against Mr

Zhou and LIL.¹ The profit forfeiture orders were made under s 55 of the Criminal Proceeds (Recovery) Act 2009 (the Act). We shall summarise the key relevant provisions of the Act at [12]–[22].

[2] The value of the unlawful benefit obtained by Mr Zhou was determined pursuant to s 53 of the Act to be \$2,214,000 and the maximum amount the Commissioner of Police (the Commissioner) was entitled to recover under the Act was also set at \$2,214,000. The Judge rejected Mr Zhou’s application under s 56 of the Act for relief based upon undue hardship.

[3] Three grounds of appeal are advanced. It is argued:

- (a) The Judge erred when she concluded Mr Zhou had failed to rebut the presumption in relation to the value of the unlawful benefit specified by the Commissioner.
- (b) The Judge erred by not considering that the Commissioner’s calculations of the unlawful benefit involved “double recovery” from Mr Zhou and his co-offender, Ms He.
- (c) The Judge erred when she declined Mr Zhou’s undue hardship application.

Background

[4] The Psychoactive Substances Act 2013, which came into force on 18 July 2013, made it unlawful for unlicensed persons to sell non-approved psychoactive substances, including synthetic cannabis.²

[5] Prior to the Psychoactive Substances Act coming into force, Ms He sold synthetic cannabis from a dairy that she owned in Christchurch. Mr Zhou worked in Ms He’s dairy at this time from where he also sold synthetic cannabis.

¹ *Commissioner of Police v He* [2022] NZHC 533 [High Court judgment].

² Psychoactive Substances Act 2013, ss 70(1)(a) and 70(2).

[6] In October 2014, Christchurch police commenced an investigation into the sale of synthetic cannabis by Ms He, Mr Zhou and other suspects. On 5 April 2015, police found 63.1 grams of synthetic cannabis in Mr Zhou’s possession. He pleaded guilty to a charge of possessing a psychoactive substance for the purposes of sale or supply.³

[7] The police investigation concluded on 11 May 2016. At that time 173 kilograms of synthetic cannabis was found in the possession of Mr Zhou and other offenders. He and the other offenders were charged in relation to their respective roles in the illegal synthetic cannabis operation.

[8] On 13 June 2019, Mr Zhou pleaded guilty to one charge of selling or supplying non-approved psychoactive substances and two charges for possession of supply of non-approved psychoactive substances.⁴ The amount of the psychoactive substances involved in Mr Zhou’s offending was the 173 kilograms seized on 11 May 2016. That was by far the largest quantity of unlawful psychoactive substance seized in New Zealand. The second largest seizure involved just 2.5 kilograms. Mr Zhou also pleaded guilty to unlawful possession of a restricted weapon (a taser gun), unlawful possession of a weapon and unlawful possession of ammunition.⁵

[9] Mr Zhou was sentenced by Judge O’Driscoll in the Christchurch District Court on 28 November 2019 to 26 months’ imprisonment in relation to the drugs charges. Concurrent sentences of one year imprisonment were imposed in relation to the firearms and ammunition charges.⁶

[10] The Crown case in the District Court was that Ms He was the principal offender while Mr Zhou was her “right-hand man or lieutenant in the selling and distribution of the synthetic cannabis”.⁷

[11] Mr Zhou was a very active dealer of synthetic cannabis. He obtained large quantities of synthetic cannabis from Ms He and from a Mr Zhen and a Mr Miao and

³ Psychoactive Substances Act, subs 70(1)(a) and 70(1)(c).

⁴ Sections s 70(1)(c)

⁵ Arms Act 1983, s 45(1)(b).

⁶ *R v He* [2019] NZDC 24130 at [52] [District Court sentencing notes].

⁷ At [18].

then sold that product to a long list of customers. Doogue J said Mr Zhou provided a synthetic cannabis “delivery service seven days per week, meeting many customers each day.”⁸ The Crown’s position at Mr Zhou’s sentencing was that he sold synthetic cannabis worth between \$27,000 and \$45,000 each week between 26 October 2014 and 11 May 2016 and that the direct profit he obtained was between \$442,000 and \$885,000.

Key relevant provisions of the Act

Profit forfeiture orders

[12] The primary focus of the appeal is upon the profit forfeiture orders made under the Act by Doogue J. Section 52 governs the contents of a profit forfeiture application which may be made against a person who has unlawfully benefited from significant criminal activity. The Act defines “significant criminal activity” as:⁹

- (1) ... unless the context otherwise requires, **significant criminal activity** means an activity engaged in by a person that if proceeded against as a criminal offence would amount to offending—
 - (a) that consists of, or includes, 1 or more offences punishable by a maximum term of imprisonment of 5 years or more; or
 - (b) from which property, proceeds, or benefits of a value of \$30,000 or more have, directly or indirectly, been acquired or derived.

[13] An application for a profit forfeiture order must, amongst other things, describe the significant criminal activity from which the respondent is alleged to have unlawfully benefited and state the value of that benefit.¹⁰

[14] Under s 53(1) of the Act, if the Commissioner proves, on the balance of probabilities, that the respondent has, in the relevant period of criminal activity, unlawfully benefited from significant criminal activity, the value of that benefit is presumed to be the value stated in the application.¹¹

⁸ High Court judgment, above n 1, at [54(f)].

⁹ Criminal Proceeds (Recovery) Act 2009, s 6.

¹⁰ Section 52(b) and (d).

¹¹ Section 53(1)(a).

[15] Section 53(2) provides that the presumption of the value of the benefit may be rebutted by the respondent on the balance of probabilities.

[16] Section 54 of the Act provides that, before making a profit forfeiture order, the High Court is required to determine the maximum recoverable amount under a profit forfeiture order. The maximum recoverable is calculated by deducting from the value of the benefit, the value of any property forfeited to the Crown as a result of any asset forfeiture order made in relation to the same significant criminal activity to which the profit forfeiture order relates.¹²

[17] Section 55 provides for the making of a profit forfeiture order when the High Court is satisfied on the balance of probabilities that the respondent has unlawfully benefitted from significant criminal activity and the respondent has interests in property.¹³ A profit forfeiture order must specify what property is to be realised pursuant to the order.¹⁴

[18] Section 56 confers a discretion on the Court to exclude certain property from being realised under a profit forfeiture order “if it considers that, having regard to all of the circumstances, undue hardship is reasonably likely to be caused to the respondent if the property were realised.”¹⁵ The circumstances the Court may have regard to when considering an undue hardship application include:¹⁶

- (a) the use that is ordinarily made, or was intended to be made, of the property that is, or is proposed to be, the subject of the profit forfeiture order; and
- (b) the nature and extent of the respondent's interest in the property; and
- (c) the circumstances of the significant criminal activity to which the profit forfeiture order relates.

Asset forfeiture orders

[19] The appeal only partially engages asset forfeiture orders.

¹² Section 54(1).

¹³ Section 55(1).

¹⁴ Section 55(2).

¹⁵ Section 56(1).

¹⁶ Section 56(2).

[20] Sections 50 and 51 of the Act provide that an asset forfeiture order may be made by the Court if it is satisfied on the balance of probabilities that specific property is tainted property. The Act defines “tainted property”:¹⁷

tainted property—

- (a) means any property that has, wholly or in part, been—
 - (i) acquired as a result of significant criminal activity; or
 - (ii) directly or indirectly derived from significant criminal activity; and
- (b) includes any property that has been acquired as a result of, or directly or indirectly derived from, more than 1 activity if at least 1 of those activities is a significant criminal activity.

[21] The Court can exclude certain property from an asset forfeiture order on hardship grounds.¹⁸ The criteria concerning hardship applications in relation to asset forfeiture orders is the same as the hardship criteria that govern profit forfeiture orders.¹⁹

Effective control over property

[22] Section 58(1) of the Act is also relevant to the appeal. That section provides:

58 Court may treat effective control over property as interest in property

- (1) If the High Court is satisfied that a respondent has effective control over property, the Court may, on an application made by the Commissioner, order that the property is to be treated as though the respondent had an interest in the property specified by the Court.

High Court judgment

[23] Doogue J granted the Commissioner’s application for a profit forfeiture order under s 55 of the Act.²⁰ The Judge found that Mr Zhou had committed significant criminal activity and unlawfully benefited from that activity.

¹⁷ Section 5.

¹⁸ Section 51(1).

¹⁹ Section 51(2).

²⁰ High Court judgment, above n 1, at [144].

[24] The Judge upheld the Commissioner’s assessment of the unlawful benefit as being \$2,214,000.²¹ In doing so, the Judge rejected Mr Zhou’s argument that he sold only 65.5 kilograms of synthetic cannabis and that the Commissioner’s calculations were flawed. In rejecting these arguments, Doogue J:

- (a) Found that the evidence put forward by Mr Zhou to support his assertion he had sold only 65.5 kilograms of synthetic cannabis was not credible.²²
- (b) Found that “the Commissioner [had] given an informed range for consideration by the Court” in relation to the assessment of the unlawful benefit.²³ The Judge noted “[i]t is not sufficient for Mr Zhou to simply attempt to find deficits in the Commissioner’s calculations.” Rather, “the onus [was] on Mr Zhou to prove the calculations to be incorrect with reference to evidence.”²⁴

[25] The Judge also rejected Mr Zhou’s application to exclude some property from the forfeiture order on the basis of undue hardship. Doogue J noted “a remarkable paucity of evidence in support of Mr Zhou’s [hardship] application.”²⁵ The Judge considered the use that the property was ordinarily put to and concluded that no undue hardship would arise from forfeiture.

[26] The Judge also found that two assets, which were legally owned by other people were to be treated as though Mr Zhou had an interest in the property and thus able to be subject to a profit forfeiture order:

- (a) A 2007 Subaru Legacy motor vehicle registered to Ms Gill. She “disavowed any proprietary interest in the property” and Doogue J therefore found the vehicle was “controlled, used and otherwise treated by Mr Zhou as his own.”²⁶

²¹ At [103].

²² At [63]–[82].

²³ At [85].

²⁴ At [92].

²⁵ At [105].

²⁶ At [22].

- (b) A Westpac bank account in the name of Caiqiong Huang, who is the mother of Mr Zhou. The Judge found that the bank account was “in fact used and controlled by Mr Zhou for the purposes of laundering the proceeds of his acknowledged significant criminal activity”.²⁷

[27] The Judge ordered the following property was to be realised under the profit forfeiture order:

[147] ...

Residential properties

- (a) 34 Amuri Street, Hei Hei, Christchurch, ... ;
- (b) 1 Longspur Avenue, Halswell, Christchurch, ... ;
- (c) Unit 3/107 Wrights Road, Christchurch ... ; and

Cash proceeds from sale of restrained motor vehicles

[148] The sale proceeds of \$78,807 plus any accrued interest realised from the sale of the following motor vehicles:

- (a) Land Rover 2007 ... registration number FYC38, registered to [Mr] Zhou;
- (b) Subaru Legacy 2007, registration number JUF105, registered to Natasha Nicolle Gill;
- (c) Mercedes-Benz 2013, ... registration number HGZ94, registered to [Mr] Zhou; and
- (d) Dodge 2014, ... registration number HSS558; and

Other property

[149] The funds attributed to Westpac Bank New Zealand Limited account number 03-0823-0021574-00 in the name of the second interested party, Caiqiong Huang, ... with a balance of \$18,961.35, plus any interest accrued.

[150] \$25,760.00 cash found by police on 11 May 2016 when police terminated their criminal investigation in respect of [Mr Zhou], plus interest accrued.

[151] 45A Hei Hei Road, Hei Hei, Christchurch ... – is to be returned to [Mr Zhou], plus the balance of proceeds after satisfying the profit forfeiture order.

²⁷ At [23].

First ground of appeal: was the presumption in s 53 rebutted?

[28] Mr Wimsett, senior counsel for Mr Zhou, submitted that Doogue J erred when she concluded Mr Zhou had failed to rebut the presumption of the value of the unlawful benefit he received alleged by the Commissioner, namely \$2,214,000.

[29] Five arguments were advanced before us as part of Mr Zhou's challenge to the value of the unlawful benefit he was presumed to have received:

- (a) The figure of \$2,214,000 was calculated on the basis that the synthetic cannabis in question was valued at \$9.00 per gram without proper justification.
- (b) The Judge did not account for the impact of wholesale customers when assessing the average price per gram of the synthetic cannabis.
- (c) Doogue J erred when she said that even if \$9.00 per gram was high, this was offset by the fact the quantities used when calculating the value of the unlawful benefit were conservative.
- (d) It was argued the Commissioner erroneously relied on text data messages over a five-month period and extrapolated the evidence of the unlawful benefit during that five-month period to cover the total period of the offending. Mr Zhou says more accurate evidence could be obtained from WeChat messages which he says were a complete record of the unlawful activity.
- (e) Some of the profit in the Commissioner's analysis was derived from the sale of a legal substance called Damiana in conjunction with synthetic cannabis.

[30] We will address each of the arguments in the same sequence that we have set out at [29]. Before doing so, we iterate the observations of this Court in

Cheah v Commissioner of Police,²⁸ in which it was explained that the statutory presumption in s 53(1) of the Act means that once the Commissioner has assessed the unlawful benefit obtained by an offender, the onus switches to the offender to prove the actual benefit. This will normally require much more than a critique of the Commissioner's methodology. Genuine evidence concerning the actual benefit obtained needs to be put forward by the offender if he or she is to rebut the presumption.

[31] Mr Zhou swore an affidavit for the High Court proceeding. He maintained that he sold just 65.5 kilograms of synthetic cannabis and that the benefit he obtained was, at most, \$196,500. That assertion was firmly rejected by Doogue J. She concluded Mr Zhou lacked credibility. This was because his explanations shifted over the course of his evidence and during the course of his statement to the police on 10 October 2019. For example, Mr Zhou gave evidence that he thought he was selling "Damiana or grass". That explanation is impossible to reconcile with the fact Mr Zhou pleaded guilty to the charges we have summarised at [8].

Nine dollars per gram

[32] There are three reasons why Doogue J was entitled to accept the Commissioner's calculations based on Mr Zhou selling synthetic cannabis at \$9.00 per gram.

[33] First, when he pleaded guilty in the District Court Mr Zhou accepted the police summary of facts. That summary of facts specified that the average price of the synthetic cannabis he sold ranged from \$8.33 to \$10.00 per gram.

[34] Second, Detective Scott calculated Mr Zhou's unlawful benefit. The detective explained the price at which Mr Zhou sold synthetic cannabis ranged from \$8.33 per gram for wholesale purchases (such as the Mongrel Mob) and \$10.00 per gram for "street customers". This evidence demonstrates the reasonableness of the Commissioner's decision to adopt a midpoint of \$9.00 per gram when calculating Mr Zhou's unlawful benefit.

²⁸ *Cheah v Commissioner of Police* [2020] NZCA 253.

[35] Third, as we have noted Mr Zhou claimed that he supplied only 65.5 kilograms of synthetic cannabis and that he benefited to the sum of no more than \$196,500. That equates to \$9.00 per gram.

[36] The Judge was therefore entitled to accept the Commissioner's midpoint figure of \$9.00 per gram.

Built-in tolerances

[37] We will address the points summarised at [29(b) and (c)] under the heading of "Built-in tolerances".

[38] Detective Scott concluded Mr Zhou was selling between three to five kilograms of synthetic cannabis per week but, that three kilograms per week was likely an underestimate of the amount of synthetic cannabis Mr Zhou was actually selling. Nevertheless, the police opted to use three kilograms per week when calculating Mr Zhou's unlawful benefit.

[39] Detective Scott described the basis of his calculations of Mr Zhou's unlawful benefit by confining his calculations to an 82-week period from 26 October 2014 to 11 May 2016. The date of 26 October 2014 was the date from which the police were able to extract data from one of Mr Zhou's phones. That data related to him dealing in synthetic cannabis. In all likelihood however, Mr Zhou had been trading in synthetic cannabis from 8 May 2014 (when synthetic cannabis became an unlawful psychoactive substance) to 26 October 2014.

[40] The calculations made by the police involved them placing to one side the five and a half-month period Mr Zhou was probably actively dealing in synthetic cannabis. He therefore obtained a significant benefit when the police placed to one side the five and a half-month period of likely offending that preceded 26 October 2014.

[41] Using the figure of \$9.00 per kilogram, Mr Scott calculated over the 82-week period that Mr Zhou's unlawful benefit was between \$2,214,000 and

\$3,690,000. By adopting the lowest of these figures, the police accommodated the impact of wholesale purchases.

[42] Furthermore, by adopting the lowest calculation of \$2,214,000, the police also accommodated tolerances for any other factors in a way that benefited Mr Zhou.

[43] The Judge was entitled to accept that the Commissioner's calculation was reasonable. She was also entitled to conclude that Mr Zhou's attempts to argue that he sold only 65.5 kilograms of synthetic cannabis was grossly misleading.

Extrapolation

[44] The submission that Mr Zhou's WeChat messages provided a more complete record of his unlawful activity is in itself fundamentally flawed because the WeChat messages were also incomplete.

[45] The police obtained more than 140,000 lines of text data from Mr Zhou's phone for the five-month period commencing 26 October 2014. The majority of that data referred to him meeting people at pre-arranged locations in Christchurch.

[46] The police were fully entitled to rely on that text data and extrapolate the information obtained from that data over the 82-week period that the police relied upon when calculating Mr Zhou's unlawful benefit.

Damiana

[47] The argument advanced before us that Mr Zhou was profiting from the sale of Damiana is very difficult to accept because:

- (a) it is totally inconsistent with Mr Zhou having pleaded guilty to having supplied hundreds of purchases with synthetic cannabis; and
- (b) the likely response of customers if in fact Mr Zhou was only selling Damiana and not synthetic cannabis. It is striking that there was no evidence of text messages to show that customers were only receiving Damiana from Mr Zhou.

[48] Notwithstanding Mr Zhou's attempts to critique the Commissioner's methodology, he has failed to demonstrate that Doogue J erred when she concluded Mr Zhou had failed to rebut the presumption in s 53 of the Act.

[49] It is also striking that Mr Zhou's accumulated property during the period of his alleged offending was significant. The total value of tainted property at the time of the hearing in the High Court as \$1,842,355.74. That evidence is generally consistent with the Commissioner's calculation of Mr Zhou's unlawful benefit from the sale of synthetic cannabis.

[50] Mr Zhou has failed by a considerable margin to show that the High Court Judge erred when she concluded he had not rebutted the presumption set out in s 53(2) of the Act.

Second ground of appeal: double recovery

[51] The second ground of appeal contends the Commissioner has unreasonably recovered twice from the benefit received by both Mr Zhou and Ms He. The profit forfeiture order made in relation to Ms He was \$3,510,000.

[52] Mr Wimsett relied on four cases from the House of Lords and the United Kingdom Supreme Court when he submitted that recovery under the New Zealand Act should proceed on the basis that joint offenders are jointly and severally liable.²⁹

[53] In *R v Ahmad* the United Kingdom Supreme Court explained that confiscation orders against joint beneficiaries of criminal offenders should be assessed under the Proceeds of Crime Act 2002 (UK) on a joint and several basis.³⁰

[54] There is, however, a critical distinction between the Act with which we are concerned and the United Kingdom's Proceeds of Crime Act. Under the latter statute, courts must undertake the assessment of the value of the benefit received by an

²⁹ *R v May* [2008] UKHL 28, [2008] 1 AC 1028 (HL); *R v Ahmad*; *R v Fields* [2014] UKSC 36, [2015] AC 299; *R v Waya* [2012] UKSC 51, [2013] 1 AC 294; and *R v Harvey (Jack)* [2015] UKSC 73, [2017] AC 105.

³⁰ *R v Ahmad*; *R v Fields*, above n 29, at [44] and [50].

offender.³¹ In contrast, as we have emphasised, under the Act, Parliament has provided for a statutory presumption as to the unlawful benefit obtained by those who are engaged in significant criminal activity.³²

[55] The distinction between the United Kingdom legislation and the regime set out in the Act was examined by Katz J in *Commissioner of Police v Tang*.³³ The Judge explained under the Act, when an offender seeks to argue that they should be liable for a specific portion of the overall proceeds of a criminal enterprise, they are required to prove on the balance of probabilities:

[30] ...

- (a) that the overall benefits derived from the significant criminal activity were not received either solely by him or jointly by him and one or more co-offenders (if they were, each co-offender will be liable for the full amount of such benefit); and
- (b) that he did not benefit at all or only benefitted to a specific amount (in which case he will only be liable for that amount).

[56] Thus, unlike the position in the United Kingdom, if an offender in New Zealand fails to rebut the presumption in s 53 of the Act:³⁴

... then a Court would not be entitled to simply divide the benefit equally between the conspirators. That is because, in the absence of credible evidence from a respondent rebutting the statutory presumption, the benefit amount to be included in the profit forfeiture order must be that stated in the Commissioner's application.

[57] We adopt the reasons of Katz J in *Tang*. The rebuttable presumptions in s 53 reflects Parliament's assessment that because offenders are usually the ones who possess information relating to their profit sharing arrangements, they are required to shoulder the onus of disproving the Commissioner's assessment of their unlawful benefit.

[58] There are two fundamental reasons why the second ground of appeal fails to gain any traction.

³¹ Proceeds of Crime Act 2002 (UK), s 6(5)(a).

³² See Criminal Proceeds (Recovery) Act, s 53(1).

³³ *Commissioner of Police v Tang* [2013] NZHC 1750.

³⁴ At [31].

[59] First, Mr Zhou has not proven he and Ms He were jointly benefiting from the offending. On the contrary, the Commissioner's case firmly established that Ms He was supplying synthetic cannabis to Mr Zhou at \$6.00 per gram. Mr Zhou was a supplier in a chain that included Ms He, and those who purchased from Mr Zhou, including wholesale purchasers such as members of the Mongrel Mob.

[60] Second, there was no error involved when the Commissioner calculated Mr Zhou's benefit by focusing on the gross revenue he received. This is because, the New Zealand statutory regime has been deliberately cast as a penal scheme designed to reduce the opportunity for a criminal to benefit from significant criminal offending and to deter others from engaging in similar offending.

[61] This last point was made by Winkelmann J in *Solicitor-General of New Zealand v Rhodes*,³⁵ a case that was decided under the Proceeds of Crimes Act 1991, the legislation that preceded the Act. The Judge was required to decide if a pecuniary penalty order could be reduced to reflect pecuniary penalty orders previously made in relation to Mr Rhodes' co-offenders. The Judge said the Court should not be "required to undertake an inquiry into profit sharing arrangements of offenders as if they were engaged in a legitimate commercial enterprise".³⁶ Winkelmann J also said she did not:

[41] ... consider that the possibility of over-recovery is a reason to reduce the amount of the penalty order. As has been noted on numerous occasions, the Act is a penal statute. The scheme of the legislation is such that the penalty imposed will often exceed any profit retained by the respondent. That that is so is made clear by the prohibition of a deduction of any expenses or outgoings, and the inclusion in the calculation of benefit of any property or money that comes into the control of the defendant, whether or not the defendant is entitled to a share of that property or money.

[62] The analysis of the principles underpinning pecuniary penalty orders under the 1991 Act applies with equal, if not greater force to the assessment of an offender's benefit from significant criminal offending under the Act.

³⁵ *Solicitor-General of New Zealand v Rhodes* HC Auckland CIV-2007-404-3773, 16 February 2010.

³⁶ At [40].

Third ground of appeal: undue hardship

[63] The third ground of appeal claims Doogue J failed to properly assess Mr Zhou's claim under s 56 of the Act that he would suffer undue hardship unless all of his real estate property was excluded from being realised.

[64] In *Doorman v Commissioner, New Zealand Police*³⁷ and *Duncan v Commissioner of Police*,³⁸ this Court affirmed that undue hardship under s 56 of the Act must entail more than hardship inherent in forfeiture.

[65] In her judgment Doogue J observed there was "a remarkable paucity of evidence in support of Mr Zhou's [hardship] application".³⁹ Rather, the evidence showed his offending was highly premeditated and cynical.

[66] Four properties were found to be tainted. Also tainted was the cash value of the cars and the cash found on termination of the police operation.

[67] Mr Zhou did not raise any matters which went beyond the hardship that most people would suffer if they had their property confiscated under the Act.

[68] Mr Zhou also attempted to argue that the realisation orders would result in disproportionate consequences. That is not correct because, as we have found, the forfeiture orders were properly made and no undue hardship was demonstrated by Mr Zhou in relation to the realisation orders.

Result

[69] The appeal is dismissed.

³⁷ *Doorman v Commissioner, New Zealand Police* [2013] NZCA 476, [2014] NZLR 173 at [70] citing *Commissioner of Police v Doorman* HC Nelson CIV-2010-442-000169, 15 December 2011 at [49].

³⁸ *Commissioner of Police v Duncan* HC Tauranga CIV-2010-470-933, 11 October 2011 at [156], approved in *Duncan v Commissioner of Police* [2013] NZCA 477, (2013) 26 CRNZ 796 at [60].

³⁹ High Court judgment, above n 1, at [105].

[70] The respondent is entitled to costs for a standard appeal on a Band A basis, together with usual disbursements.

Solicitors:

Rice Speir, Auckland for Appellants

Crown Solicitor, Christchurch for Respondent