

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

**I TE KŌTI MATUA O AOTEAROA
ŌTAUTAHI ROHE**

**CRI-2021-009-8205
[2024] NZHC 1810**

THE KING

v

ZANE ROBERT JORDAN

Hearing: 4 July 2024
Appearances: B Hawes and A M Harvey for Crown
S N B Wimsett KC for Defendant
Judgment: 4 July 2024

SENTENCING REMARKS OF MANDER J

Introduction

[1] Zane Jordan, you appear for sentence in relation to two charges of possession for supply of the Class A controlled drug cocaine, to which you have pleaded guilty.¹

The offending

[2] Your offending arises out of a significant police investigation into the importation of cocaine into this country from South America. The drug syndicate operated from at least January 2018 to November 2021 and involved the importation of an estimated 42.5 kilograms of cocaine into New Zealand with a street price of over \$19,000,000. However, the offending for which you are for sentence is limited to two

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

discrete transactions that involved the internal trafficking of cocaine within New Zealand. You dispute that you were aware of the broader drug trafficking operation. I return to that point later.

[3] On 25 April 2021, you were parked in a motor vehicle in Auckland. Two of your co-defendants got into your vehicle and supplied cocaine to you. They had both travelled to Auckland from Christchurch that morning.

[4] On 11 July 2021, you met again with one of those gentlemen. He supplied you with a further package of cocaine. Later that month, on 27 July, you paid for the cocaine by providing \$100,000 in cash.

[5] The total amount of cocaine involved in your offending was between 650 and 700 grams. You were involved in two cash handovers for the cocaine you received — the one on 27 July of \$100,000 and another for \$114,100 — both of which were in payment for the cocaine.

Approach to sentencing

[6] The Sentencing Act 2002 sets out the purposes and principles of sentencing that I am required to take into account in sentencing you today. Relevant purposes include accountability, denunciation, deterrence and rehabilitation. I need to consider the gravity of your offending, the degree of your culpability, the seriousness of the offending and the general desirability of consistency in imposing sentences for like offending. I am required to impose the least restrictive outcome that is appropriate in the circumstances.

[7] In passing sentence, I must fix a period of imprisonment that is commensurate with the seriousness of your offending, in accordance with sentencing guidelines for Class A drug offending provided by the appellate courts.² Broadly, your culpability is to be assessed by the quantity of the drug involved and the role you played in the

² *Zhang v R* [2019] NZCA 507, [2019] 3 NZLR 648; *Cavallo v R* [2022] NZCA 276, (2022) 30 CRNZ 726; and *Berkland v R* [2022] NZSC 143, 1 NZLR 509.

offending.³ I must then consider matters personal to you which may be of aggravating or mitigating effect to arrive at the appropriate end sentence.

Effects of offending

[8] In sentencing you today, it is important to recognise the harm caused by serious drug offending, particularly that of Class A drugs. Your offending does not have a direct victim. But the distribution of cocaine, like other hard drugs, has countless victims within the community who often experience the very worst outcomes. These include adverse mental health, criminal offending to fund addiction, the breakdown of personal and employment relationships, and social deprivation.⁴ Society as a whole is harmed by drug activities.

Starting point

[9] The first stage in the calculation of an appropriate sentence is the setting of a starting point. The Crown submits a starting point in the region of seven to eight years' imprisonment is appropriate, having regard to the amount of cocaine you took possession of and paid significant amounts of money for. The Crown cites other cases of Class A drug offending for comparison to which I will return.⁵

[10] Your counsel submits a starting point of six to seven years' imprisonment is appropriate. He acknowledges that, based on quantum, you are at the lower end of what is referred to as band four of the appropriate guideline judgment, and that your role falls within the higher end of "lesser" or the lower point of "significant" which are the descriptions again referred to in the appropriate guideline judgment. Mr Wimsett KC further submits a lower starting point is justified because your offending involved cocaine, rather than methamphetamine.⁶

[11] The Court of Appeal in *Zhang v R*, which is a case that involves methamphetamine offending, sets out bands for Class A drug offending that provide a

³ *Zhang v R*, above n 2, at [104], [106]-[117] and [126]-[127].

⁴ At [78]-[79].

⁵ *R v RG* [2022] NZHC 3207; *Williams v R* [2023] NZCA 156; and *Clark v R* [2020] NZCA 641.

⁶ *Cavallo v R*, above n 2, at [63].

range of starting points depending on the amount of drugs involved.⁷ Your offending in total involved between 650 and 700 grams of cocaine. That places you in band four, which has a starting point range of between eight to 16 years' imprisonment. You would be at the lower end of that band. However, the Crown acknowledges that some modification is required to reflect that sentence starting points for cocaine should generally be slightly below comparable methamphetamine starting points.⁸

[12] Band three in *Zhang*, which is for amounts more than 250 grams but less than 500 grams provides a starting point range of six to 12 years' imprisonment. The Crown accepts you may come within the lower to middle of that range if the two transactions were examined individually. However, it is noted the total amount of cocaine you purchased was double the amount, or potentially three times the amount at which band three commences.

[13] Whether you fall into band three or four, the starting point is also informed by your role in the distribution hierarchy. The considerations that are relevant to that assessment are:⁹

- (a) Firstly, you were effectively a customer of this drug syndicate who purchased cocaine on two discrete occasions for further distribution.
- (b) Secondly, at the time of the offending, you were 31 years old and well familiar with the drug scene. You therefore had some experience.
- (c) Thirdly, you yourself were using cocaine. You needed to fund your addiction but your involvement was primarily a financial one.
- (d) Fourthly, you expected financial gain from dealing in cocaine at a lower level in the distribution chain.
- (e) And fifthly, you had no influence over others in the drug syndicate. It is not apparent you knew anyone else apart from the men with whom

⁷ *Zhang v R*, above n 2, at [125].

⁸ *Cavallo v R*, above n 2, at [63].

⁹ *Berkland v R*, above n 2, at [71].

you dealt. As I have already observed, you were a dealer operating at a lower level.

- (f) Finally, it is not suggested you had any detailed knowledge of the drug syndicate. However you must have had some general knowledge of the necessary scale of the operation from which you were sourcing the cocaine.

[14] The categorisation of your role largely depends upon whether your involvement is viewed as being part of the wider drug syndicate or is assessed on the basis of your own independent actions. Overall, I consider your counsel's description of your offending as straddling the higher end of the lesser category and the lower end of significant probably best captures your role proceeding as I must on the known facts of your involvement with members of the wider syndicate.

[15] The Court in *Zhang*, when clarifying the approach to methamphetamine offending, held the role an offender plays may result in them moving not only within a band but also between bands.¹⁰ However, access to the lower sentence starting points may be expected only by those whose role is found to be lesser in degree, and where quantities are at the lower end of the relevant range.¹¹ You do not meet that criteria. Accordingly, you fall within band four, although I note there is significant overlap between bands three and four.

[16] The Crown has cited a number of cases in support of its submission of a seven to eight year starting point.

[17] In *R v RG*, this Court held that if it was to sentence the defendant on the charge of possessing approximately 142 grams of cocaine for supply, a starting point of four years' imprisonment would have been adopted, although role was not discussed.¹² In *Williams v R*, the Court of Appeal considered a starting point of nine years two months' imprisonment was appropriate.¹³ The offender there had supplied at least

¹⁰ *Zhang v R*, above n 2, at [118].

¹¹ *Zhang v R*, above n 2, at [123].

¹² *R v RG*, above n 5.

¹³ *Williams v R*, above n 5.

392.55 grams of methamphetamine and offered to supply a further 70.6 grams. She was assessed as having a significant role. In *Clark v R*, the offender had been found in possession of 583 grams of methamphetamine and conspired with others to obtain a further 137 grams, amounting to a total of 720 grams.¹⁴ The Court of Appeal there agreed the offender had played a significant role and upheld the starting point of nine years and six months' imprisonment.

[18] I have also considered the case of *Dalwood v R*.¹⁵ There, a starting point of four years' imprisonment was upheld on appeal for offering to supply a total of 87.45 grams of methamphetamine. The offending similarly occurred over two offence periods and the offender was considered to be between the lesser and significant categories.

[19] Your offending involved five times the amount of cocaine than in *R v RG*, and significantly more than the methamphetamine in *Dalwood*. A starting point much higher than the four years' imprisonment in those two cases is warranted. While *Williams* and *Clark* involved more similar amounts, I must take into account the offending in those two cases was methamphetamine while yours concerned cocaine.¹⁶

[20] From this assessment, I find a starting point of **seven years' imprisonment** is appropriate. In setting that starting point, I have taken into account the extent to which your drug habit contributed to your offending.

Personal mitigating features

[21] Your counsel submits there are a number of mitigating features personal to you that should result in a reduction from the indicated starting point.

Guilty plea

[22] You were charged in July and October 2021. You pleaded guilty on 3 March 2024, approximately two months before the trial was to commence, following

¹⁴ *Clark v R*, above n 5.

¹⁵ *Dalwood v R* [2022] NZHC 2683.

¹⁶ *Cavallo v R*, above n 2, at [63].

a resolution with the Crown in February 2024. There is a memorandum advising the Court of your intention to plead guilty dated 14 February 2024.

[23] The Crown submits a discount of no more than 15 per cent is appropriate. Your counsel submits a discount of 20 per cent is appropriate. Mr Wimsett has argued that the investigation involved several delays in receiving disclosure, particularly regarding overseas material. He submits this was outside your control and is relevant to the timing of your guilty pleas. However, the case against you did not involve allegations of involvement in the importation. I consider the prosecution case you faced was overwhelming. Consistent with the approach I have taken with your co-defendants, whose pleas were entered at approximately the same time as yours, I apply the same **discount of 10 per cent** for your guilty pleas.

Personal mitigating factors

[24] Mr Wimsett submits you are entitled to credit for your previous good character.

[25] You are 33 years old — 30 years old at the time of this offending. Your prior criminal history is limited to two driving related convictions in 2012 for which you received fines and disqualifications. They are not relevant to your present offending.

[26] You have been employed since you left high school at the age of 15. Your previous and current employers have written letters in support of you. You are described as a responsible, trustworthy, and diligent worker with an exceptional work ethic who is popular amongst co-workers and clients. You are described by your current employer as an invaluable member of his team and as honest and professional. I have also read a letter of support from your mother.

[27] You left school early because of learning difficulties and have had a successful career as a tradesman. Your family and your employers speak highly of you. It is evident your offending can accurately be described as a fall from grace. The pre-sentence report writer has assessed you as at low risk of reoffending and you have obvious rehabilitative prospects.

Remorse and rehabilitation

[28] You say you are deeply ashamed and remorseful for your offending. You regret that it has embarrassed not only you but your family and that it has contributed to the ongoing harm drug use causes in our communities.

[29] You described getting charged with this serious offending as “a major wake-up call” and that you realised you “needed to sort your life out”. You say you removed yourself from anyone involved in drug use or any criminal activity, including leaving a four-year relationship. You completed a drug and alcohol assessment at the Augustus Clinic and were assessed as suffering from severe substance abuse disorder. You engaged with the Community Alcohol and Drug Service (CADS) and aim to be completely drug and alcohol free.

[30] As noted, you were assessed as being in the dependent category for alcohol consumption, and as having a severe substance use disorder. You are described as having experienced depression due to your current situation. A letter from the CADS Abstinence Programme confirms you regularly attended group sessions in February this year and started a relapse prevention plan.

[31] I accept your drug habit was part of the reason you became involved in this offending. Addiction is relevant where there is some causative linkage with the offending, although it need not be the only cause.¹⁷ In your case, I view it as having contributed to your offending, but it was not, by any means, the sole cause and it is a factor that I have already taken into account in setting the starting point.

[32] I take your remorse as genuine and that you have sought to address your drug issues. However, I note you were on bail for some time and did not engage with rehabilitative services until relatively recently. That said, I acknowledge that you were focused on your employment, particularly over the period following the flooding in Auckland in 2023.

¹⁷ *Cavallo v R*, above n 2, at [67], citing *Zhang v R*, above n 2, at [139]-[150].

[33] In considering the appropriate discount, I am mindful that rehabilitative potential is part of what underpins the discount for previous good character and double-counting should be avoided. In combination, I consider a **discount of 15 per cent** for those personal mitigating factors is appropriate.

Other mitigating features

[34] Mr Wimsett raised on your behalf another factor that he asked me to take into account in mitigation. However as matters transpired, I do not consider that is of material relevance to the sentencing exercise or that any additional discount is warranted.

Summary

[35] In summary therefore I adopt a starting point of **seven years' imprisonment**. From that, I deduct:

- (a) 10 per cent for your guilty plea; and
- (b) 15 per cent for your previous good character, remorse and rehabilitative efforts.

[36] That amounts to a total discount of 25 per cent and results in an **end sentence of five years three months' imprisonment**.

Forfeiture order

[37] The Crown seeks an order under s 32 of the Misuse of Drugs Act 1975 for the forfeiture of all cash located by police. I grant that order, noting the forfeiture is not a factor that mitigates your sentence.¹⁸

[38] There will also be an order for the destruction of the cell phones located and seized from your address at the time of the police search.

¹⁸ *McKechnie v R* [2018] NZHC 1811 at [20], citing *Henderson v R* [2017] NZCA 605 at [32].

Sentence

[39] Mr Jordan would you now please stand.

[40] On the two charges of possessing a Class A drug for supply, you are **sentenced to five years three months' imprisonment.**

[41] You may stand down. Thank you.

Solicitors:
Crown Solicitors, Christchurch

Counsel:
S N B Winsett KC, Auckland