

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

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

**CRI-2021-009-8205
[2024] NZHC 1814**

THE KING

v

DAVID ALFREDO BONILLA CASANAS

Hearing: 4 July 2024
Appearances: B Hawes and A M Harvey for Crown
K Paima for Defendant
Judgment: 4 July 2024

SENTENCING REMARKS OF MANDER J

Introduction

[1] David Bonilla Casanas, you appear for sentence having pleaded guilty to representative charges of importing the Class A controlled drug cocaine;¹ attempting to import that drug;² and money laundering.³ You are also for sentence on a charge of participating in an organised criminal group.⁴

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

² Section 6(1)(a) and (2); Crimes Act 1961, ss 66, 72 and 311 — maximum penalty 10 years' imprisonment.

³ Crimes Act, s 243(2) — maximum penalty seven years' imprisonment.

⁴ Section 98A — maximum penalty 10 years' imprisonment.

The offending

[2] Your offending arises out of a significant police investigation into the importation of cocaine into this country from South America which involved co-operation with overseas drug enforcement authorities. The drug syndicate operated from at least January 2018 to December 2021. The syndicate imported an estimated 42.5 kilograms of cocaine with a street value of over \$19,000,000 into New Zealand. Another 59.1 kilograms of cocaine, worth more than \$26,000,000, was intercepted by authorities.

[3] One of your co-defendants had contacts with an overseas drug cartel and you were identified as one of his associates.

[4] Your offending occurred between October 2019 and December 2021. It involved money laundering. Your bank records showed total cash deposits amounting to \$205,367.57, being the syndicate's proceeds from supplying cocaine. You received that money from other members of the syndicate, and it was converted into cryptocurrency. You would receive a three per cent cut from those transactions.

[5] You also knowingly facilitated the importation of four packages of cocaine into New Zealand by forging falsified documents to create false identities as consignees. One of those packages, imported in December 2021, contained 11.4 kilograms of cocaine. It was sent via Hong Kong and was destined for an address in Canterbury, but once the arrest phase of the operation in New Zealand was underway, it was redirected to Auckland. The further three importations were of unknown quantities. The Crown proceeds on the basis they were commercial quantities of at least 500 grams each.

[6] You were also party to an attempt to import another package containing a further 23.6 kilograms of cocaine. That package was intended to enter New Zealand in a shipping container and was also for consignment to an address in Canterbury. However, it was intercepted in Spain.

[7] On 10 November 2021, police conducted a search of your home. You were not at the address which provided you with the opportunity to undertake a factory reset of

your phone. However, the police located three phones, a small amount of methamphetamine, cryptocurrency contacts and numerous driver licences and passports.

[8] When interviewed, you admitted to money laundering and receiving a commission. In explanation, you stated you were suspicious of the transactions but turned a blind eye. You acknowledged you received small amounts of cocaine for your personal use from time to time in exchange for your assistance.

Approach to sentencing

[9] 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.

[10] 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 that have been provided by the appellate courts.⁵ Broadly, your culpability is to be assessed by the quantity of the drug involved and the role you played in the offending.⁶ It is recognised a more limited role deserves a less severe sentence than a significant or leading role.⁷ I must then consider matters personal to you which may be of aggravating or mitigating effect to arrive at an appropriate end sentence.

Effects of offending

[11] 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

⁵ *Berkland v R* [2022] NZSC 143, [2022] 1 NZLR 509; *Zhang v R* [2019] NZCA 507, [2019] 3 NZLR 648; and *Cavallo v R* [2022] NZCA 276, (2022) 30 CRNZ 726.

⁶ *Zhang v R*, above n 5, at [104], [106]-[117] and [126]-[127].

⁷ *Zhang v R*, above n 5, at [123]. See also, *Berkland v R*, above n 5, at [12].

direct victim. But the distribution of cocaine, like other hard drugs, has countless victims within the community who often experience the very worst of outcomes. These include adverse mental health, criminal offending to fund addiction, the breakdown of personal and employment relationships, and social deprivation.⁸ Society as a whole is harmed.

Personal circumstances

[12] Mr Bonilla Casanas, you were born in Colombia and are now 32 years old. After your parents divorced, your mother moved to New Zealand. You arrived in New Zealand on 28 January 2008, from Chile. You were aged 15 and were issued a student visa. Together with your mother, her new husband and your sister, you settled in Dunedin. Your father remains in Colombia and is unaware of your offending. Following high school, you attended a polytechnic before moving to Queenstown. From there, you moved to Christchurch and secured managerial work in a restaurant. In Christchurch, you became acquainted with other South Americans, including a number of your co-defendants. It is through these acquaintances that you became involved in the drug syndicate.

Starting point

[13] The Crown and your counsel are agreed on a two-stage approach to be taken to setting the sentence starting point. First, I will assess a starting point for the successful importations. Secondly, I will increase that period to reflect the unsuccessful importations. This is consistent with the approach that has been adopted in respect of the sentencing of one of your co-offenders and reflects the lower maximum penalty of 10 years' imprisonment for attempted importation in comparison to life imprisonment for a successful importation.⁹

[14] The first issue is quantum. There is a known quantity of the first successful importation of 11.4 kilograms of cocaine. The Crown submits the further three packages successfully imported likely each contained between 500 grams and

⁸ *Zhang v R*, above n 5, at [78]-[79].

⁹ *R v J* [2024] NZHC 204.

two kilograms of cocaine. However, it accepts a conservative approach is appropriate and estimates each package as having contained 500 grams.

[15] The drug syndicate imported drugs on a commercial scale. The packages ranged in quantity from as little as 410 grams to as much as 24 kilograms. However, the syndicate largely employed the strategy of importing high volume, lower weights of cocaine. Weights less than 2 kilograms were common. There is no way to be sure of the quantities of the three additional packages you imported, and in the absence of evidence, you benefit from a conservative approach. I proceed on the basis the unknown quantum of the packages successfully imported to be of 500 grams each and that you should be sentenced on the basis that the total amount of cocaine you imported was 12.9 kilograms. Your counsel, Mr Paima, accepts that amount.

[16] The Crown correctly identifies that amount places you in band five of a case called *Zhang*, which indicates a starting point of 10 years' imprisonment to life.¹⁰ It submits a starting point of at least 12 years' imprisonment is warranted. Mr Paima accepts you fall within band five based on quantum but submits factors relating to your offending and your role justify moving you to within band four instead, which indicates a range of eight to 16 years' imprisonment.¹¹ He argued a starting point of eight years' imprisonment is appropriate. Alternatively, if the Court finds band five is the appropriate band, he argues a 10-year starting point is appropriate.

[17] I turn to the issue of your role. The Crown submits your role is between the lesser and significant categories. It submits that, while you did not share in the profits or have a managerial responsibility, you were aware of the scale of the operation and your role stemmed from the relationships you developed with other syndicate members, rather than addiction or need. You did not join the operation as a consequence of pressure or coercion. Mr Paima, on the other hand, submits you fit squarely within the lesser category. He maintains the motivation for your offending was addiction, that the risks you were exposed to far outweighed any reward, that you acted with an element of naivety and at the direction of others, and your awareness of the scale of the operation was limited.

¹⁰ *Zhang v R*, above n 5, at [125].

¹¹ At [125].

[18] The following considerations that are relevant to the assessment of your culpability are:¹²

- (a) Firstly, limited function under direction: You provided the syndicate with false identities through lost ID cards at bars and falsely completed client code applications as required. This cannot be described as managerial in any sense, and you acted at the direction of others.
- (b) Whether your involvement was through naivety: While your counsel submits your offending was naïve in that you signed falsified documents that were traceable to you, I view this differently. You knew you were involved in illegal activity and knowingly turned a blind eye. You continued your involvement and in doing so were willing to take the risk of being caught. That is what happened. This is not a situation where you were unaware of the risk, or your innocence or ignorance was taken advantage of. I do not place any weight on this factor.
- (c) Your motivation: You report you used methamphetamine and considered you needed the money from your offending to fund your drug habit and that this was more important than ending your involvement in the syndicate. This is supported by the evidence of methamphetamine located at your address by police upon arrest. However, it seems to me you first became involved in the syndicate through your social relationships with its members and were developed more as a result of your shared Latin nationalities than anything to do with drug use. You decided to join the syndicate for the financial rewards. That you did not choose to be paid solely in drugs, as at least one of your co-defendants did, weighs against the submission your offending was caused by addiction. In my view, your motivation was a mixture of financial gain and drug use.
- (d) Payment: I accept your evidence you had a drug problem and were sometimes paid small amounts of cocaine for personal use in return for your services. However, this was not your primary method of reward. You

¹² *Berkland v R*, above n 5, at [71].

received a three per cent cut in commission from each transaction you completed.

- (e) Actual financial gain: As just noted, you received commission, as agreed, for each transaction. While this does not represent a large commercial return considering the overall scale of the operation, it does not necessarily follow your monetary payment was not commensurate with the risk you assumed. It is commonplace in drug syndicates for those lower in the hierarchy to receive a lower level of compensation.
- (f) Some awareness and understanding of the scale of the operation: It is not in dispute you had some awareness of the scale of the operation, but I accept your counsel's submission this may not have been to the fullest extent given the amounts you dealt with were less than the total amount imported, or attempted to be brought into the country by the syndicate. That you did not disclose the extent of your offending to your partner, who was distressed by what little she did know, indicates you understood the seriousness of it.

[19] In my view, your involvement in the offending places you at the lower end of the significant category or towards the top of the lesser category. You had an awareness of the scale of the operation, received a financial return, and the continuity of your role in falsifying documents over a lengthy period means your level of involvement was high.

[20] The Court in *Zhang*, when clarifying the approach to methamphetamine offending, held that the role an offender plays may result in them moving not only within a band but also between bands.¹³ However reduced 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.¹⁴ Your role, as I have found, falls within the lower end of the significant category. The 12.9-kilogram amount of cocaine is over six times the quantity at the lower end of the range of band five, that being two kilograms. As a result, I do not accept your counsel's submission that your case

¹³ *Zhang v R*, above n 5, at [118].

¹⁴ At [123].

is one which warrants movement between the bands. I find band five remains the appropriate category.

[21] I have been referred to a number of broadly comparable cases in an endeavour to refine the starting point.

[22] In a case called *Agwu v R*, the offender had a leading role as the head of the operation in importing and supplying 4.5 kilograms of cocaine.¹⁵ A starting point of 18 years' imprisonment was adopted. The offender in *de Macedo v R* was a courier in the importation of approximately 2.4 kilograms of cocaine.¹⁶ That offender was assessed as playing a lesser role and an 11-year starting point was adopted. In *Cook v R*, the Court of Appeal reduced the starting point for the less culpable offender, who had been the hired help for the syndicate and provided practical and logistical support, from 19 years' imprisonment to 17 years.¹⁷ However, that offending involved the importation of some 35 kilograms of cocaine.

[23] The amount of cocaine involved in your offending is almost three times the amount than in *Agwu*, but you played a much lesser role and a significantly lower starting point is justified. Your role is slightly higher than in *de Macedo* and the amount of cocaine is much greater here. Your level of involvement is similar to that in *Cook*, although I note that case concerned a single importation, but the amount of cocaine was significantly higher.

[24] I consider a starting point for your importation offending is **11 years and six months' imprisonment**.

[25] There is then the uplift for the attempted importation of 23.6 kilograms of cocaine. I take into account the quantity, your level of assistance, and that it occurred over a period of time. Taking into account totality, I uplift **the starting point by one year** for that offending which is within the range submitted by both counsel.

¹⁵ *Agwu v R* [2015] NZCA 619.

¹⁶ *de Macedo v R* [2020] NZCA 132.

¹⁷ *Cook v R* [2020] NZCA 469.

[26] It is accepted a separate uplift is also warranted for the money laundering. The Crown submits a six to 12-month uplift is appropriate, while your counsel submits a six-month uplift would be sufficient. The Court of Appeal have commented that “those who launder money for drug dealers are nearly as culpable as those who actually participate in the dealing”.¹⁸ Sentences for money laundering should bear a relationship to sentences for the particular principal offending, so the more serious the principal offending, the more serious the laundering.¹⁹

[27] The amount of money laundered here was just over \$200,000. Another offender was recently sentenced for her role in laundering \$102,500 of the syndicate’s money and a 20-month starting point was adopted.²⁰ The amount of money you laundered was double that and would, on a stand-alone basis, have attracted a higher starting point. However, allowing for totality, I find a **six-month uplift is appropriate**.

[28] I do not consider a separate uplift for the organised criminal group charge is necessary because it is captured in the starting point for the representative importation charge and is inherent to that offending.

[29] The end starting point is therefore **13 years’ imprisonment**. In setting that starting point I have taken into account the extent to which your drug habit may have contributed to your offending. The starting point would otherwise have been higher.

Personal mitigating features

[30] Your counsel has reviewed a number of personal factors which he submits should mitigate your sentence. I address your guilty pleas first.

Guilty plea

[31] You pleaded guilty on 15 March 2024 following resolution with the Crown approximately two months before your trial after being charged in 2021. The Crown

¹⁸ *R v Wallace* CA415/98, 16 December 1998 at 8.

¹⁹ At 9.

²⁰ *R v Escorcía Marin* [2024] NZHC 996.

submits a discount of 10 to 15 per cent is appropriate, while Mr Paima seeks a discount of 15 per cent.

[32] It was open to you to enter your guilty plea at a much earlier stage. The prosecution case against you was strong. Consistent with the approach I have taken with your co-defendants whose pleas were entered around the same time, I consider a **discount of 10 per cent** for your guilty plea is appropriate. That is arguably generous.

Personal background and drug addictions

[33] Mr Paima submitted your drug addiction was the operative cause of your offending. In addition, he submitted your mental health difficulties and upbringing are further factors for consideration.

[34] As I found in my assessment of your role in the offending, I accept you had a drug habit at that time. This began at an early age with MDMA and cannabis and over time progressed towards the use of methamphetamine. You were using it on a full-time basis during the offending period. You report your use continued until entry of your guilty pleas only some months ago. Your partner has corroborated your own reporting of your drug use, as did the evidence located at your address by police.

[35] You report suffering from a deep depression leading up to the offending period following a relationship breakdown. Since your arrest, you have received a diagnosis and treatment for ADHD. A letter from your clinical psychologist has been filed to the Court which supports this. Considering the impact your undiagnosed ADHD has on impulse control and risk-taking, it likely played a factor in you turning to drugs. You described methamphetamine as helping you to “slow your brain down” and organise your thoughts.

[36] I have accepted there is some causal link between your drug use and your offending but, as I have said earlier, I do not consider it the only, nor likely the primary cause of your involvement in the drug syndicate. Recognition is still warranted for this factor and I have taken it into account in setting a starting point for the sentence.

In that regard, I note the Court of Appeal have upheld discounts of 10 to 15 per cent where offending is partly driven by addiction and partly by desire for financial gain.²¹

[37] Your section 27 report also canvasses your upbringing. You reported to the pre-sentence report writer that you were exposed to extreme violence at an early age, including witnessing several of your relatives being killed, while growing up during the cocaine wars in Colombia. You were also exposed to the drug trade as a child when your uncles moved into your home. These experiences were traumatic and this early exposure may have normalised drug use for you. On the other hand, you got away from that experience and came to this country. The relevance of a person's upbringing and background to sentencing turns on how it may have impacted on the degree of agency or choice they were able to exercise in becoming involved in offending and therefore their level of personal culpability. Given your migration to this country as a teenager, it is very difficult to see how your ability to avoid becoming involved in the commercial drug trade was compromised by your past experiences in South America.

[38] It is reported your life in New Zealand as a teenager was challenging, not fitting in at school and experiencing learning difficulties, which is common for children and teenagers with undiagnosed ADHD. You did not get along with your step-father and no longer have a relationship with your biological father, who remains in Colombia. These factors may have made you more susceptible to drug use and criminal offending but they are somewhat generic factors.

[39] Having regard to all these matters including, again, your drug issues, which I have already taken into account in setting the starting point, I consider a **discount of 12 per cent** is appropriate.

Previous good character, remorse, parental incarceration and rehabilitative potential

[40] Mr Paima submits further credit should be extended to you for previous good character, remorse and rehabilitative potential. He also refers to the effect of your incarceration on your two-year-old daughter. I recognise discounts for such personal

²¹ *Clark v R* [2020] NZCA 641; *Cullen v R* [2022] NZCA 308; and *Martin v R* [2020] NZCA 318.

matters may be available. However, there is some overlap between them and they need to be assessed in combination.

[41] You have no criminal history apart from one breath alcohol conviction from 2016 which is irrelevant. The pre-sentence report writer assesses you as low risk of reoffending and low risk of harm. Letters provided in support of you describe you as a caring individual, a good father, and an able student and worker. When your daughter was born in 2022, you stopped working in hospitality and commenced an apprenticeship as an electrician. You say you would like to complete this when possible. You report having stopped using methamphetamine prior to being remanded in custody and you are now in a good place mentally. Your partner is committed to you and will support you through your sentence and after. All of these factors support your counsel's submission that your rehabilitative prospects are strong. You are reported to be remorseful for your offending and claim you have insight into the impact of drugs on the community.

[42] Linked to your rehabilitative potential is your two-year-old daughter, in respect of whom you have expressed concerns about the effect of your incarceration.²² Your family and others have filed letters in support of you which I have read. They describe you as a dedicated father to your daughter, with whom you have a strong bond, and that your remand in custody has had a significant impact on her. As is apparent from the letter you have written, I am sure you regret your offending and the consequent effect on your relationship with your family, in particular your partner and young daughter.

[43] For all matters that have been brought to my attention and these broadly positive rehabilitative considerations, I consider **a further 15 per cent discount** is appropriate.

²² Sentencing Act 2002, s 8(h) and (i).

Sentence

[44] In summary, from a starting point of 12 years' imprisonment, I make a 37 per cent deduction for personal mitigating factors which results in an end sentence of **eight years and two months' imprisonment.**

[45] The Crown do not seek a minimum period of imprisonment and I do not consider one is necessary.

Destruction order

[46] Mobile devices seized at the time of the execution of the search will be the subject of a destruction order.

Court paused

[47] Can you just pause there please.

[48] Now I just need to make an adjustment, so I am just going to take a short retirement. Just in the course of this sentencing hearing, I have made some adjustments to the figures, so I apologise for the delay, but I need to get that right.

[49] Mr Bonilla Casanas, I apologise for the delay. But I clarify my sentencing remarks as follows.

Sentence

[50] In summary, from a starting point of 13 years' imprisonment, I make a 37 per cent deduction for personal mitigating factors and that results in an end sentence of **eight years and two months' imprisonment.**

Result

[51] If you could formally stand now please.

[52] I sentence you to **eight years and two months' imprisonment**. The Crown does not seek a minimum period of imprisonment and I do not consider one is necessary.

[53] You may stand down.

Solicitors:
Crown Solicitors, Christchurch

Counsel:
K Paima, Barrister, Christchurch