ORDER PROHIBITING PUBLICATION OF NAME, ADDRESS, OCCUPATION OR IDENTIFYING PARTICULARS OF DEFENDANT PURSUANT TO S 200 OF THE CRIMINAL PROCEDURE ACT 2011. SEE http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360346.html

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CRI-2024-004-009271
[2025] NZHC 651

THE KING

v

F

Hearing: 27 March 2025

Counsel: HDL Steele and BN Kirkpatrick for Crown
TM Cooper KC and SJ Bird for Defendant

Judgment: 27 March 2025

SENTENCING REMARKS OF DOWNS J
(Redacted)

Solicitors/Counsel:
Crown Solicitor, Auckland.
TM Cooper KC, Auckland.
SJ Bird, Auckland.

Introduction

[1] [F], you are for sentence on five charges: supplying methamphetamine; possessing methamphetamine for supply; importing that drug; possessing methamphetamine for the purpose of supply; and participating in an organised criminal group. Each of the methamphetamine charges is punishable by life imprisonment.[1]

[2] All your offending occurred while you were serving a sentence of imprisonment for importing methamphetamine and participating in an organised criminal group.

[3] The Crown argues the only appropriate penalty is life imprisonment. On your behalf, Ms Cooper KC contends a cumulative but finite sentence of imprisonment is warranted. Unlike a finite sentence, life imprisonment may not be imposed cumulatively on your existing sentence.[2]

[4] I say something about the facts.

Facts

[5] On [redacted], a Judge of this Court sentenced you to a term of [redacted] imprisonment with a minimum period of [redacted].[3] That sentence concerned your importation of [redacted] kilograms of methamphetamine to this country, and your related participation in an organised criminal group.

[6] This brings me to your current crimes. In August 2022, you used a mobile phone to arrange, from within prison, the sale of a kilogram of methamphetamine for $160,000, and independently of that transaction, the sale of a further five ounces of methamphetamine for $25,000. Both transactions are governed today by a single charge of supplying methamphetamine.

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1 Misuse of Drugs Act 1975, s 6(1)(a) and 6(2)(a)
2 Sentencing Act 2002, s 23.
3 *R v F* [redacted].

[7] Later that month, you possessed a kilogram of methamphetamine for supply, and corresponded with another about whether he had a purchaser.

[8] I move to 2023. On 5 June that year, a container arrived at the Ports of Auckland. In it were four threshers, which are large pieces of agricultural equipment. They seemingly came from Dubai. Examination revealed "a sophisticated concealment of controlled drugs" inside each thresher.[4] These hid a total of 198.2 kilograms of methamphetamine, with 80 percent purity.

[9] You orchestrated that importation from prison. You did so using a mobile phone and an application that encrypted your messages. As would be expected, others were involved too. I say more about your role shortly. For the moment, it is sufficient to observe that in addition to importing that drug, you were in control of it for the purpose of supply to others.

[10] The remaining charge of participating in an organised criminal group is directed at the broader conspiracy to import and deal methamphetamine, in your case, from prison.

Aggravating factors

[11] There is no contest about the aggravating factors of your offending, which are threefold.

[12] First, the amount of the drug, which is governed by the most serious band in the case law.[5]

[13] Second, your leading role in the offending.[6] The agreed summary of facts makes it clear that you and another, whom I shall call S, gave instructions to a group of men lower down the chain who were not incarcerated. Ms Cooper argues your role might not have been greater than S, in relation to whom the District Court adopted a starting point of 24 years' imprisonment.

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4 Summary of facts, p 7.

5 *Zhang v R* [2019] NZCA 507, [2019] 3 NZLR 648 and *Berkland v R* [2022] NZSC 143, [2022] 1 NZLR 509.

6 See *Zhang v R* and *Berkland v R*, above n 5.

[14] I am unable to accept that submission. You occupy a more senior role than S in the [redacted] gang; indeed, you are very senior member within that organisation. The agreed summary of facts refers to you being the conduit between the person(s) who exported the methamphetamine to New Zealand and the other members in your group with whom you were corresponding digitally. The agreed summary also records S as "clearly subservient" to you within the prison environment.[7] He would, for example, perform menial tasks on your behalf. You also told the probation officer who prepared your pre-sentence report that you were "the main organiser, 100 percent".

[15] It follows you had a leading — and more senior role than S in the enterprise — including as the critical link with the drug's exporter.

[16] The third aggravating factor is obvious — and grave. You did all this relatively early into a long sentence for what was [redacted] methamphetamine to this country.[8]

[17] Given these features, the Crown contends life imprisonment is warranted or failing that, a global starting point of between 30 and 31 years' imprisonment. As observed, Ms Cooper contends for a finite sentence attracting a global starting point of about 28 years' imprisonment. For reasons that will become apparent, it is not necessary to reconcile these figures.

Mitigating features

[18] I now turn to things that may make your offending less serious.

[19] You were charged 28 September 2023. You pleaded guilty 24 October 2024. There appears to be agreement your pleas would ordinarily warrant full discount, but I am bound to observe I have been given limited information about this aspect. I, therefore, assume, without deciding, you should have full credit for your guilty pleas.

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7 Summary of facts, p 9.
8 Sentencing Act 2002, s 9(1)(c).

[20] Your personal circumstances are revealed through a comprehensive cultural report, and a similarly comprehensive pre-sentence report.

[21] I begin with some basics. You are now [redacted] years of age. Your family life was stable, but your father appears to have been alcoholic and violent, including to you and your mother. You used alcohol, cannabis and other intoxicants from a young age. You were sent to prison at the age of [redacted] for committing an aggravated robbery. You have a not insignificant criminal history in [redacted]. [redacted]. When you returned, you joined the [redacted] gang. You are a senior member of that gang, and were so when you committed these crimes. That is unlikely to be a coincidence. You have not tried to leave the gang, nor do you intend to. You have two children. I record the obvious: they deserve better from you.

[22] You have been in prison now for [redacted] years. Your [redacted] family continue to visit you. Several character references make it clear that you continue to have support.

[23] Your background provides some explanation for why you joined a gang. To borrow the language of the case law, I accept it contributed causatively to your decision to do so.[9] I accept also your background has contributed causatively to your general criminal lifestyle. I think that appears uncontroversial. However, I am not persuaded your background really explains your dealings in very large amounts of methamphetamine from within prison, which is somewhat bespoke. I may be wrong about that; judges are fallible like everyone else. But even if I am, this is a case in which a causative contribution from your background, should it exist, must give way to other sentencing imperatives.[10] Put bluntly, your offending is far too serious for your background to continue to have any real purchase as a mitigating feature.

[24] I now come to the letter you wrote me as sentencing Judge. You say you are seeking attention for rehabilitative programmes. You say your "morals and values are in the right place". I respectfully disagree. Methamphetamine is a dangerous, addictive drug. It destroys lives. We, the courts, see that on a daily basis. You have

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9 See *Berkland v R*, above n 5, and the cases cited therein.
10 *Berkland v R*, above n 5, at [94].

repeatedly dealt that drug, in very large quantities, without concern for others. You add you are committed to change. You told the earlier High Court Judge just that, or at least something similar. Indeed, the Judge recorded "your good prospects of rehabilitation".[11] Yet within five years of the sentence imposed by that Judge, you committed all of the present offending. Ms Cooper today described you as "smart and dynamic". One of the great pities of this case is that you have used your attributes for the wrong purposes.

[25] It follows the only significant mitigating feature is your guilty plea, and less significantly, your age. Any sentence will, of course, be long because of it.

[26] Only a handful of people have received life imprisonment for dealings in controlled drugs, and even fewer for dealings in methamphetamine.[12] I received not in-extensive written submissions about these cases, and whether yours is more or less serious than theirs. It is not necessary to address these submissions, at least directly. It is beyond argument your offending lies within the gravest category of drugs cases.[13] This, I add, is not something to be proud of.

[27] This brings me to the ultimate question: a determinate sentence or life imprisonment?

[28] Your age and guilty plea favour a determinate sentence. But everything else about your case favours life imprisonment. Indeed, the focus must now be denunciation; the deterrence of others; and community protection.[14] Any other focus would send quite the wrong signal, including to prisoners contemplating dealing drugs from prison on behalf of gangs.

[29] This leaves one point. Ms Cooper argued, forcefully, that only a finite sentence would recognise your guilty pleas, and a life sentence would disincentive those who might otherwise plead guilty to very serious drug charges. It is a reasonable point.

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11 *R v [F]* [redacted].

12 *Cheung v R* [2021] NZCA 175; *R v Leung* [2019] NZHC 3299; *R v Wong* [2020] NZHC 1654; *R v Ramos* [2020] NZHC 2257; *Chen v R* [2009] NZCA 445; and *R v Valent* [2023] NZHC 1432.

13 Sentencing Act 2002, s 8(c).

14 Sentencing Act, s 8.

But the answer to this contention is that your guilty pleas are relevant to the assessment of risk which the Parole Board must undertake, a task it would have irrespective of whether the sentence were determinate or otherwise. Another answer is that your offending is extraordinarily serious. Indeed, it is difficult to imagine a graver case given your history.

[30] Mr [F], please stand. On each of the methamphetamine charges, you are sentenced to life imprisonment. Your minimum period is, by operation of law, 10 years.[15] On the organised criminal group charge, you are sentenced to the maximum penalty of 10 years imprisonment. These sentences are concurrent, meaning they run at the same time as your existing sentence.

[31] Stand down, thank you.

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Downs J

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[15] No greater period is permissible, as to which see *R v Valent*, above n 12.