

**IN THE DISTRICT COURT
AT MANUKAU**

**CRI-2016-092-011987
[2017] NZDC 15644**

THE QUEEN

v

CHI-PUI LAU

Hearing: 11 July 2017

Appearances: C Howard for the Crown
R Mansfield for the Defendant

Judgment: 11 July 2017

NOTES OF JUDGE S MOALA ON SENTENCING

[1] Chi-Pui Lau, you are 45 years old and appear before me for sentencing on three charges of possession of methamphetamine for supply. The maximum penalty is life imprisonment.

[2] The facts are that the police commenced Operation Roller on 26 August 2014 after intercepting a parcel containing methamphetamine by Customs.

[3] On 28 August 2014 a surveillance device warrant application was granted by the High Court, the subject of the warrant was Yip Mu Lam, Mr Lam.

[4] On 18 September 2014 you visited Mr Lam at his home address in Bucklands Beach. On that date Mr Lam supplied you with approximately 280 grams

of methamphetamine. The next day on 19 September Mr Lam again supplied you with approximately 196 grams of methamphetamine.

[5] On 13 October Mr Lam flew out to Hong Kong, he returned to New Zealand on Monday 20 October.

[6] On 24 October Immigration records show that your brother flew into New Zealand from Hong Kong. However, he was unable to be located.

[7] Search warrants were executed at Mr Lam's home address at [address deleted] Remuera Road, Newmarket. That is an apartment that you and your brother frequently visited. There was another a search warrant executed at the address owned by you at Schnapper Rock. Mr Lam was present when the police searched his house. The police located 2.495 kilograms of methamphetamine and approximately \$7,000 cash. Mr Lam confirmed to the police that he supplied you with methamphetamine on 18 and 19 September. You and your brother were not present when the Remuera Road address was searched. The police found the following items in a padlocked cabinet in one of the rooms within the apartment. Two plastic bags containing 1.5 kilograms of methamphetamine, 946.5 grams of methamphetamine found in 34 re-sealable bags. It is unclear whether any of this methamphetamine was the same that you got from Mr Lam on 18 and 19 September. The police also found a suitcase in a sports bag containing 1.7 million dollars in cash. The police found fingerprints for both you and your brother on the items in the padlocked cabinet.

[8] At the search of your home address the police found \$18,540 in cash. The total quantity of methamphetamine found in the apartment on Remuera Road is 2.4465 kilograms.

[9] You have no relevant previous convictions. I have read a pre-sentence report prepared for your sentencing hearing. The report-writer says that the motivator for the offending is the financial gain enabled by your own ignorance. From reading that report I was of the view that you continue to minimise your role in the offending as if you are an easily led child. You put the blame on your co-offender Mr Lam. You say that he told you that the small amount of methamphetamine you were dealing was not

a big problem. You deny selling the methamphetamine and you said that you were simply holding the drugs and the money. Your risk of re-offending was assessed as low, as well as your risk of harm to others. Prior to your arrest you were working as a duty chef at an Auckland based Travel Lodge for seven years. The report-writer said that you presented as gullible; however, it was apparent that you knew what you were doing was wrong and continued down this track regardless of your concerns. You have a lack of insight and your failure to identify high risk situation is a concern. You deny having a drug dependency.

[10] Today, your lawyer said that he discussed this pre-sentence report with you at length. He says that you did not have an interpreter to assist in the interview with the probation officer. He said that you understand exactly what you became involved in. You acknowledge your role in it and you are remorseful. He tells me that you and your family were not involved in drugs at all before this offending and you did not understand the impact of methamphetamine until you were incarcerated. You now understand the impact of methamphetamine on the community and you are remorseful that you have been involved in this offending. I accept Mr Mansfield's submission that you do demonstrate some remorse despite the information in the pre-sentence report.

[11] Initially there was to be a disputed facts hearing, but that was resolved between you and the Crown. In short, it is accepted by you that the amount of methamphetamine and your role is similar to Mr Lam. Mr Lam was sentenced for possession of 2.495 kilograms of methamphetamine. A starting point of 14 years was adopted for him. He was given significant discounts for mitigating features, including assistance to the police and an early guilty plea. His end sentence was four years and seven months' imprisonment with no minimum non-parole.

[12] You accept that the starting point for you should be the same as Mr Lam. The only remaining issue in dispute for your sentencing is the impact of the 1.7 million dollars on that starting point. I am conscious that you face charges of possession for supply and you do not face any charge for actual supply.

[13] On 28 June I heard oral submissions from your lawyer and from the Crown. In short, your lawyer says there is no legal basis for me to uplift that starting point based on the presence of the cash. He says there is no authority for doing so and I would fall into error if I did. Although he accepts that the starting point of 14 years is appropriate, your lawyer says that you were the naïve party and Mr Lam was still more culpable than you. He relies on a number of factors, including that Mr Lam was the original target of the interception warrant. He was the one that supplied you with methamphetamine and Mr Lam was referred to as “Boss.” He says that you were holding the money for Mr Lam.

[14] Having carefully considered the issue I am satisfied that the starting point should be higher for you than for Mr Lam. This is to take into account the significant sum of money found with the methamphetamine. I do this by treating the cash as an aggravating feature of your offending indicating a high level of commerciality. The \$1.7 million dollars in cash tells me a lot about the commerciality of the operation and your role in it.

[15] I accept the Crown submission that this money is probably a “float” intended to fund future purchases of methamphetamine.

[16] My research counsel could not find any drug dealing sentencing decisions where such a large amount of money was found with methamphetamine. I accept that the bands in *R v Fatu*,¹ already recognises a level of commerciality involved, but the bands set in *R v Fatu* are reliant on primarily, the amount of methamphetamine. I can take into account the substantial amount of money as an aggravating feature warranting a higher starting point for you than for Mr Lam. Methamphetamine dealing is all about the money. That is why you and Mr Lam were prepared to risk so much in order to deal in it.

[17] I find that the way you continue to minimise your role and rely on your naivety is incredible when you were in possession of 2.4 kilograms of methamphetamine and \$1.7 million dollars in cash. I also note that you had \$18,000 at your home address when it was searched by the police.

¹ *R v Fatu* [2006] 2 NZLR 72 (CA)

[18] In adopting the appropriate starting point today, I take into account the bands in *R v Fatu*, the case of *R v Huang*,²*R v Soleymani*,³*R v Lin*,⁴ and of course *R v Lam*⁵. The aggravating features of your offending are the premeditation, the total amount of methamphetamine involved, the harm to the community for methamphetamine and the substantial amount of cash located.

[19] In light of those aggravating features, keeping in mind that Mr Lam had a starting point of `14 years' imprisonment, I adopt a starting point of 15 years' imprisonment for you. When I consider the authorities before me I am satisfied that 15 years is appropriate given the aggravating features of your offending and in particular the money.

[20] In terms of your personal circumstances, I have read all of the letters and certificates provided to me. It tells me that you have been a good father and a good family man. You have worked hard to provide for your family, including your daughter. You have no previous convictions for drug dealing offences. I accept that this is a fall from grace for you and that you and your family will suffer. I note the family support that you have here today, as well as at your last appearance. I note their staunch support of you and I have read the letter from your father and the heartfelt letter from your daughter, who is studying at university in Sydney. I also note that you have been on bail for some 24 months, including a curfew. For those mitigating features I give you a discount of 27 months and for your guilty plea I give you a discount of 25 percent. That is a total of 38 months for your guilty plea. The end sentence is one of nine years and five months' imprisonment.

[21] I now come to consider whether I should impose a minimum non-parole period. The law says I can impose a minimum period of imprisonment if I am satisfied that the usual parole period is insufficient for any or all of the following purposes: holding you accountable for the harm; denouncing your conduct; deterring you and others from committing similar offending; and protecting the community from you.

² *R v Huang* HC Auckland 9/11/2010, CRI-2010-092-014540

³ *R v Soleymani* [2014] NZHC 2088

⁴ *R v Lin* [2016] NZDC 3419

⁵ *R v Lam* [2015] NZHC 1713

The Court of Appeal has said that in cases of very serious drug offending this criteria is likely to be met.

[22] In *R v Anslow*⁶ the Court observed that minimum periods of imprisonment had seldom been ordered for drug related offending when the end sentence is less than nine years' imprisonment, but had been commonly imposed when the finite term had been nine years or more. That tells me that sentences of nine years or more where you have very serious drug offending, a minimum term is almost inevitable. I take into account the Court's comments in *R v Zu*⁷. Having regard to the scale and commerciality of your offending and the potential for significant harm to the community, I am of the view that a minimum term of imprisonment of 50 percent is required to recognise the principles of accountability, deterrence, denunciation and protection.

[23] I note that Mr Lam did not receive a minimum non-parole period, but his end sentence was much lower than yours and he gave considerable assistance to the police, including giving evidence in respect of a co-offender.

[24] So the end sentence is nine years five months with a minimum period of imprisonment of 50 percent.

S Moala
District Court Judge

⁶ *R v Anslow* Court of Appeal, 18/11/2005, CA/82/05

⁷ *R v Zu*