

**IN THE DISTRICT COURT  
AT MANUKAU**

**CRI-2015-004-017104  
[2017] NZDC 25779**

**THE QUEEN**

v

**SHEN ZHANG  
ZHONG SHU HAN**

Hearing: 13 November 2017

Appearances: B Northwood for the Crown  
P Kaye for the Defendant Zhang  
M Lloyd for the Defendant Han

Judgment: 13 November 2017

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**NOTES OF JUDGE A J JOHNS ON SENTENCING**

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[1] Mr Zhang and Mr Han, you appear here for sentence today in relation to the following charges, after being found guilty by a jury after trial.

[2] You, Mr Zhang, were found guilty of two charges of possessing ephedrine for the purpose of supply and one charge of supplying ephedrine. All three charges carry a maximum term of 14 years' imprisonment.

[3] You, Mr Han, were convicted of one charge of possession of ephedrine for supply and one charge of supplying ephedrine. Again, both charges carry 14 years' imprisonment.

[4] Very briefly, the facts are that the police became aware of ephedrine sales and possible offenders involved in a group importing and distributing ephedrine, and at 7.00 am on Wednesday 25 November 2015 the police executed a search warrant at [address deleted] in Three Kings and located Mr Yap inside the address. The warrant was to search for ephedrine and the search found 1.5 kilograms of ephedrine in Mr Yap's motor vehicle. He was arrested and taken to the Harlech House Police Station.

[5] He was spoken to by the police and advised them that he was working under the direction of his boss, whom he knew K, and the Crown case, Mr Zhang, was that the person was you, and the jury's verdict obviously means that they were satisfied, on the facts they heard, that you were in fact the person named as K.

[6] It was established that Mr Yap was organising to supply 1.5 kilograms of ephedrine to an unidentified person referred to as J, and that another unknown male was catching parcels of ephedrine for this person named K. He advised police he was due to meet K on Marewa Road in Greenlane at midday on the 25<sup>th</sup>. Under police surveillance, Mr Yap contacted you on the phone and organised to meet you at that road at 12.30 pm. While continuing under police supervision Mr Yap parked his motor vehicle in the Countdown, Greenlane carpark near Marua Road in Greenlane. A little after 1 o'clock the police observed an Asian male approaching Mr Yap's car from Greenlane East Road. He identified this person as the man he knew as K and it was in fact you. You became aware that something was not right when you saw the officer in the back of the car and attempted to walk away. You were stopped by police, you said you were going to go to Countdown to buy some water and declined to make any other comment. A search of you showed that you did not have any money on you with which to purchase any water.

[7] Subsequent analysis of data obtained showed that in 2014 you were involved with a person by the name of [name deleted], and that there was supplies of ephedrine by you to this person.

[8] In terms of you, Mr Han, it was also arranged that later on the afternoon of the 25<sup>th</sup> that you would deliver an amount of ephedrine in the Greenlane Countdown area.

The police were also advised of this and they located you sitting on a power box with a plastic bag and inside the plastic bag was a large Korean vermicelli food bag and inside that was located approximately 1.2 kilograms of ephedrine. When you were arrested, you said that you had made two previous drop-offs, you said you were forced to do it because your son's life is in danger after receiving a threat from your letterbox.

[9] You both gave evidence at trial and you, Mr Han in your evidence, admitted that you knew that the drugs were ephedrine that you had on that day in Greenlane, but that you did not intend to keep, and that you were going to give them to the police and you only went there because of your concerns for threats made against your family.

[10] You, Mr Zhang, maintain that you had nothing to do with the offending at all, that you had simply delivered a cellphone to Mr Yap at the request of a friend, and that was all your involvement in it.

[11] I have to say, that having listened to the evidence during the trial, it was clear to me, Mr Zhang, that you were in fact organising both Mr Yap and Mr Han.

[12] For the purpose of sentence today, I have full submissions from each of your counsel, I have submissions from the Crown and I have two pre-sentence reports. Attached to each of your counsel submissions are a number of references because neither of you have ever appeared before the Court.

[13] The first step for me today is to set a starting point for each of you and then to see what discounts from that starting point are available to lower that starting point.

[14] The Crown, in their submissions, submit and I accept, that you were essential to the offending on 25 November and that both Mr Han and Mr Yap were working under your direction. Obviously, the quantities involved were substantial, the total amount of ephedrine involved on the 25<sup>th</sup> was 2.7 kilograms.

[15] The aggravating features obviously are the quantity, that clearly there was a commercial element, and the Crown described you as in essence, being wholesalers

supplying about one kilogram bags of methamphetamine, which would obviously have been broken down and on sold. They also submit in any drug dealing situation, there is premeditation and planning in moving the goods. They submit, taking into account the purposes and principles of the Sentencing Act 2002, together with the tariff case I will refer to in a moment and those aggravating features, that a starting point for you, Mr Zhang, should be in the range of eight and a half to nine years' imprisonment. Mr Kaye, in his submissions has submitted that that is far too high and that an appropriate starting point would be about the five year mark.

[16] For you Mr Han, the prosecution for the same reasons, have suggested a starting point of six years' imprisonment is warranted. Mr Lloyd, on your behalf, has suggested somewhere between four and four and a half years' imprisonment.

[17] In terms of the purposes and principles of the Sentencing Act the most powerful one here is to hold you accountable for the harm done by being involved in importing and distributing ephedrine, which is used to make methamphetamine, which is causing huge damage within our society. I need to denounce your conduct and attempt, through the sentencing process, to deter you and others from involving yourselves in this type of drug offending. I need to take into account the serious nature of these offences, as I have said, each carries 14 years' imprisonment, whilst being consistent in sentence and imposing the least restrictive outcome.

[18] The tariff case which sets out ranges of sentences, depending on the aggravating features, is the case of *R v Wallace and Christie*<sup>1</sup> and essentially the top band carries a starting point of between eight and 14 years. The second band carries starting points of between five and eight.

[19] To be in the top band the Court said at paragraph 30 of that decision of *R v Wallace and Christie*:

That cases reflect a considerable range in the seriousness of offending. They show that for commercial activity on a major scale that the starting point before any allowance for mitigating factors for the principal offender will be in excess of eight years, and in very bad cases, up to 14 years, especially where repeat offending is involved. For major offending of this kind there will likely

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<sup>1</sup> *R v Wallace and Christie* [1999] 3 NZLR 159 (CA)

be numerous separate offences so that the 14 year maximum penalty will have little direct relevance to the total offending.

[20] In terms of the next band down, band 2 the Court said:

That would involve commercial manufacture importation on a substantial scale reflecting sophistication, organisation with operations extending over a period of time, though not involving mass quantities of drugs or prolonged dealing, calls for a starting point of five to eight years.

[21] All counsel have referred the Court to a number of decisions involving offending with similar factual scenarios. There is always variance in starting points, but I am satisfied, in terms of the offending here for you, Mr Zhang, that it is in band 2 and not in band 1, as the Crown have suggested, and that Mr Han's offending also falls into band 2.

[22] In terms of what I ultimately find as an appropriate starting point for you, Mr Zhang, is one of seven years' imprisonment. Mr Kaye has suggested that you should have the same starting point as Mr Yap, who had a five year starting point, but of course he only pleaded guilty to a charge of possessing that 1.5 kilograms of ephedrine that was located in his car on the 25<sup>th</sup> and you of course are being sentenced in relation to 2.7 kilograms, together with the other offending involving [name deleted]. On that basis, I am satisfied that a starting point of seven years' imprisonment is warranted.

[23] You, Mr Han, were involved, as I say with the second amount of ephedrine located on that day in Greenlane and it was 1.2 kilograms. My view is that the starting point adopted for Mr Yap for his 1.5 kilograms is the appropriate starting point for you, and I see nothing before me that would mean that a lessor starting point is warranted here. I also take into account that starting point that you acknowledged being involved in two other drop-offs.

[24] It then falls to me to look at what discounts are available to you. I take into account that neither of you have previous convictions. There are wonderful references attached to each of your counsel submissions. Up until your involvement in this offending you had lived productive lives and you, Mr Han, have given a lot to your community through your music and as the Crown indicated, everyone seems to be at

a loss to explain why you had become involved as a courier at this stage of your life. You do all have family in New Zealand and you, Mr Han of course have cancer, and you were awaiting a liver transplant, I think it was prior to trial, that had to be put off. You are not in a position to know when that is going to occur, but your cancer is advancing and it saddens the Court to have to sentence you to a term of imprisonment which may mean that you end up dying in prison. However, the fact of the matter is the law is quite clear that there is only a certain amount of discounts for personal circumstances that Judges can give in sentencing people in relation to serious drug offending.

[25] I am prepared to give each of you a 10 percent discount for your lack of previous convictions, for your genuine remorse for involving yourselves in this offending.

[26] So, for you, Mr Zhang, you are now convicted and sentenced to six years three months' imprisonment.

[27] Mr Han, you are now convicted and sentenced to four years six months' imprisonment.

A J Johns  
District Court Judge