

**IN THE DISTRICT COURT
AT MANUKAU**

**CRI-2017-092-002904
[2017] NZDC 25688**

THE QUEEN

v

LEI CHENG

Hearing: 13 November 2017
Appearances: R Gibbs for the Crown
M Hislop for the Defendant
Judgment: 13 November 2017

NOTES OF JUDGE A J JOHNS ON SENTENCING

[1] Mr Cheng, you appear here for sentence today in relation to five charges of importing methamphetamine. By way of a background the matter came before [Judge McNaughton] for a sentence indication in August of this year, it was accepted but at sentence there were matters raised which meant that His Honour felt that it was not appropriate that he sentence you and I have now taken over the sentencing.

[2] The summary of facts is that you and your co-offender Mr Zhang, who has already been sentenced, faced two charges in common, that is importations of methamphetamine on 5 and 6 March of this year. In total, you imported 8.524 kilograms of methamphetamine in five individual importations. Mr Zhang is charged together with you in relation to two, those importations involved methamphetamine weighing just over 2.8 kilograms. The two packages in respect of which both of you were charged were addressed to “Wendy” at [address deleted] in

New Lynn, the first package contained just over .95 kilograms of methamphetamine and the second one just over 1.8 kilograms of methamphetamine. There were then three packages imported in January 2017 addressed to “[details deleted]” in Glenfield, these three packages contained a total of 5.71 kilograms of methamphetamine.

[3] The submissions I have today are the original submissions for your sentence indication, supplementary submissions from your counsel Mr Hislop and from the Crown. I also have a copy of the sentence indication notes of Judge McNaughton together with the sentencing of your co-defendant Mr Zhang.

[4] In terms of the Sentencing Act 2002 and *R v Fatu*¹ it is accepted for today’s sentencing that a starting point of 15 years is appropriate. The obvious purposes and principles of the Sentencing Act I need to take into account is the harm done to the community by large importations of methamphetamine which is a drug causing huge amounts of problems in our community. I need to denounce your offending and hope through the sentencing process to deter you and other people from involving yourself in the drug industry. Against that I need to take into account the seriousness of the charges you face and also impose the least restrictive outcome that I can.

[5] Sentencings of these nature are covered by the lead case of *R v Fatu* which sets bands for importation of commercial quantities of drugs and, as I say, it is clear from all the information before me and it is accepted by your counsel that given the amount of the drugs imported, your role as a “catcher”, that a starting point of 15 years’ imprisonment is warranted.

[6] I have read your pre-sentence report and in the report you clearly express your disappointment at getting involved in this offending, you also express your remorse and say you are deeply ashamed. You came to New Zealand originally to study and of course then got yourself involved in this offending. The situation is that your family lives in China and you will have very little contact with people when you serve your time in prison because you do not have family in this country.

¹ *R v Fatu* [2006] 2 NZLR 72 (CA)

[7] In the supplementary submissions filed by Mr Hislop he is inviting the Court to further discount the starting point of 15 years for assistance given by you to the police and by your particular personal circumstances which I have already referred to, that is that you are a Chinese national serving what is going to be a relatively long sentence in a foreign prison, you have no family support here. Further, you did not come to New Zealand solely for the purpose of being involved in methamphetamine, you had studied here and that you are deeply remorseful for your actions. He also submits that you did assist the police and that the law allows a further discount if the assistance warrants it. The Crown here have submitted in their supplementary submissions that your co-operation with the police is not sufficient to warrant a further discount because they did not need you to prosecute Mr Zhang because Customs have enough information to ultimately arrest Mr Zhang. Mr Hislop, on your behalf, has submitted that when you were arrested you were extremely co-operative, you gave them details from your phone and the name of your co-defendant and it did apparently take some three months to arrest him, that your co-operation with the police meant that you were always going to plead guilty, and you made a full statement which could have been used at trial if necessary.

[8] In deciding what further discounts from the 25 percent for your guilty plea I have taken into account the issue of the discount given to your co-defendant Mr Zhang which was not factored into the sentence indication by Judge McNaughton. As the Courts have said, in cases involving significant drug offending personal circumstances have very little weight, but in relation to your co-offender Mr Zhang His Honour felt that because of the matters I have already alluded to that that warranted a further 12.5 percent discount from the 25 discount given for his early guilty plea also.

[9] I am satisfied that your situation is the same as your co-defendant and the same mitigating factors will allow me to further discount your sentence. I am not however persuaded that any further discount can be given for your assistance to the police, in essence it was co-operation and there is nothing before me to show that it materially led to the prosecution of Mr Zhang.

[10] So in the end from that starting point of 15 years' imprisonment I am prepared to discount that by 25 percent which brings you down to 11 years and three months with a further discount of 12.5 percent which is what Mr Zhang got for those personal circumstances I have already referred to which leaves me with an end sentence of nine years, 11 months.

[11] The issue then arises of whether or not I should impose a minimum term of imprisonment and your co-defendant did receive a minimum term of imprisonment of half the sentence. In deciding whether or not to impose the minimum term of imprisonment the Court needs to consider whether the purposes and principles would be met if you were to be released at the first available opportunity after you have served a third of your sentence.

[12] I am of the view that clearly given the amount involved here that a minimum non-parole period is appropriate and I now convict and sentence you to nine years, 11 months' imprisonment and half of that is to be served before you are eligible for parole.

A J Johns
District Court Judge