

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

**CRI-2014-088-003309
[2017] NZHC 675**

THE QUEEN

v

BROWNIE JOSEPH HARDING

Hearing: 7 April 2017

Appearances: Michael Smith and Richard Annandale for the Crown
Mark Edgar for the Defendant

Judgment: 7 April 2017

SENTENCING NOTES OF MOORE J

Introduction

[1] Brownie Joseph Harding, at the age of 40 you appear today for sentence having pleaded guilty on 2 June 2016 to 11 charges brought under the provisions of the Misuse of Drugs Act 1975 and the Crimes Act 1961. You later applied to vacate some of those pleas. I dismissed that application earlier this week. I shall return to that application and the other application I heard on Wednesday, later in these remarks.

[2] The 11 charges relate, directly and indirectly, to the massive methamphetamine manufacturing and distribution network which you masterminded and directed in the latter part of 2014.

[3] The details of the charges are set out in a table which will appear in my sentencing notes.

Charge	Particulars	Dates of Offences	Maximum penalty
1	Manufacture methamphetamine	23 to 26 September 2014	Life imprisonment
2	Manufacture methamphetamine	30 September to 1 October 2014	Life imprisonment
3	Manufacture methamphetamine	8 to 9 October 2014	Life imprisonment
4	Manufacture methamphetamine	20 to 23 October 2014	Life imprisonment
5	Manufacture methamphetamine	28 to 31 October 2014	Life imprisonment
6	Supplied Evanda Harding with Pseudoephedrine	30 October 2014	14 years' imprisonment
7	Conspired to supply class A controlled drug	5 November 2014	14 years' imprisonment
8	Manufacture methamphetamine	6 to 14 November 2014	Life imprisonment
9	Possessed a class A controlled drug for supply	14 November 2014	Life imprisonment
10	Conspired to supply methamphetamine	15 November 2014	14 years' imprisonment
11	Participates in an organised criminal group	23 September 2014 to 16 December 2014	10 years' imprisonment

[4] The seriousness of your offending is underscored by the fact that seven of the 11 charges carry a maximum penalty of life imprisonment.¹ The 11 charges include six of manufacturing methamphetamine, two of conspiring to supply methamphetamine, possession for supply, supplying pseudoephedrine and participating in an organised criminal group. As I am sure Mr Edgar will have explained to you the real issue for me today is whether the extent and seriousness of your offending should be reflected by the imposition of a term of life imprisonment or whether, instead, I should impose a lengthy finite sentence, and if so, of what duration.

[5] A sentence of life imprisonment means just that. It means that you would be liable for imprisonment for the rest of your life. You would only be released if the Parole Board decided that you were a suitable candidate for release. Whatever the position, this could not happen before you had served a minimum period of 10 years.² And if parole was granted you would be subject to monitoring for the rest of your life and could be recalled to continue serving your sentence at any time.

[6] I have given long and careful thought to this question. I have reviewed the very helpful submissions filed by your counsel and by the Crown. I have listened carefully to what they have both said to me in their excellent oral submissions. And rather than leave you in a state of suspense and anxiety until the end of these sentencing remarks, which will be necessarily detailed and long, I believe it only fair to tell you now I have decided, by a fine margin, not to impose a sentence of life imprisonment. I shall explain why later in these remarks.

[7] However, before I do, it is necessary that I set out the relevant facts and background to your case. Much, if not all, of this will obviously be well known to you but I am, nevertheless, required to set it out. This is because the sentencing process is quintessentially a public function. It is important that sentencing is undertaken in an open Court such as this so that not only you, but also the wider community, knows what the sentence imposed is and the reasons why it has been imposed.

¹ Misuse of Drugs Act 1975, s 6(2)(a).

² Parole Act 2002, s 84(3).

[8] Although counsel attempted to reach agreement on a summary of facts this proved impossible. You were scheduled to be sentenced in early September. But after your previous lawyer, Ms Pecotic, informed me that the unresolved issue on sentence was both the amount of methamphetamine manufactured during the operation and the nature of your role, I had no option but to adjourn your sentencing to accommodate a disputed facts hearing. That was heard by me earlier this week. At the completion of that hearing I delivered my decision on what I found proved by the Crown. I found that you headed the methamphetamine manufacturing operation and that at least 6.5 kilograms of the drug was produced. By “at least 6.5 kilograms” I mean that 6.5 kilograms is the quantity I shall use for the purposes of this sentencing exercise. That is the amount I am satisfied beyond reasonable doubt was manufactured. It is likely a good deal more than 6.5 kilograms was produced but for reasons I will develop later in these remarks any quantity beyond 6.5 kilograms assumes less importance than the role you played relative to your co-defendants especially the principal cooks. I also determined you headed the manufacturing operation. I will return to both these topics later.

[9] With those preliminary comments I shall now move on to review the facts and then the law which governs your case. After that I will set the sentence. When it comes to formally hand down your sentence I shall ask you to stand. Until then you may remain seated.

Background

[10] In July 2014 the Organised and Financial Crime Agency of New Zealand (“OFCANZ”) commenced an investigation into the manufacture and distribution of large quantities of methamphetamine in Northland. The operation was codenamed “Easter”. Its focus was a group of patched members and associates of the Headhunters Motor Cycle Gang (“the Group”). I am satisfied you sat at the apex of the Group and I shall have more to say about the exact role you played later.

[11] The initial stages of Operation Easter involved the collection and collating of intelligence. The surveillance and evidence gathering phase began in

September 2014 and the operation was terminated about three months later in mid-December 2014.

[12] The focus of OFCANZ's attention was an otherwise unremarkable brick and tile bungalow situated in a rural setting at 278 Taipuha Road near Waiotira ("the address"). This is about 30 kms southwest of Whangarei City. That house, apparently, belonged to your sister and her husband who were living in Australia. It was unoccupied and presumably that fact, combined with the remoteness of the location, led you to identify it as a suitable place to set up your methamphetamine factory. I use the word factory deliberately because that is what it turned out to be. Its sole purpose was to provide a clandestine environment to accommodate your sophisticated and well-equipped laboratory to manufacture massive quantities of methamphetamine.

[13] OFCANZ's initial surveillance of the address was undertaken using a single movement-activated remote video camera. This scanned part of Taipuha Road and the northern aspect of the side of the house. Due to the limitations of the view a second camera was later installed which scanned the front driveway and eastern profile of the address. This gave much improved and closer views and permitted the investigation team to make positive identifications of people arriving at and moving around the outside of the address.

[14] On four occasions during the operation the Special Tactical Group ("the STG") undertook covert nocturnal entries into the address when no one was in the house. This allowed them to record and photograph the materials and equipment inside. Swabs were also taken from the interior. Within a day or so of the operation starting the STG conducted a covert search and swabs were taken which revealed levels of methamphetamine consistent with a manufacturing operation.

[15] Most significantly, on 17 October 2014, after a surveillance device warrant was issued by a Judge of this Court, the Police successfully installed an audio listening device in the kitchen area of the house.

[16] Through this combination of investigative techniques, together with intercepted cellphone communications, it was revealed that manufacturing took place on six discrete occasions during the three months of Operation Easter. Those occasions, or phases as I shall refer to them, took place at the following times:

- (a) 23 to 26 September 2014;
- (b) 30 September to 1 October 2014;
- (c) 8 to 9 October 2014;
- (d) 20 to 23 October 2014 (although in relation to 20 October 2014 there is an issue which I shall return to);
- (e) 28 to 31 October 2014; and
- (f) 6 to 14 November 2014.

[17] What is of particular significance, and unusual in cases of this sort, is that the recordings from the listening device enabled the Police to roughly calculate the amounts of methamphetamine produced in the last three manufacturing phases after the listening device was installed. I say “roughly” because unless the actual quantities are seized by the Police it is next to impossible to quantify precise production levels. On any analysis the amounts were huge and measured in kilograms.

[18] There is some dispute over the amounts which were produced in the first three manufactures. At one stage you did, however, accept that between 1960 and 2100 grams were produced during those first phases although you later retracted this.

[19] That brings me to the fourth manufacturing phase between 20 and 23 October 2014. The Crown says that this phase produced 2545 grams of methamphetamine. You say you were only involved between 21 and 23 October 2014. You had nothing to do with what occurred on 20 October 2014. You say that on 20 October 2014 Jaydean Hura and Mark Lang were starting a cook at the house. You said you let

Jaydean Hura use the house for manufacturing purposes for a fee of \$1,000. So you were aware of the manufacturing on that day. You provided the premises, the equipment and the reagents. There does not appear to be a dispute that 1700 grams of methamphetamine were produced on 20 October 2014. Your provision of the house and its facilities makes you a party to that manufacture. You accept 770 grams were produced over the following three days. If that is added to the 1700 the total comes to 2470 grams which is very close to the amount the Police say was manufactured over the whole of phase 4. For the purposes of sentencing I am prepared to give you the benefit of the doubt. But even on your admission nearly a kilogram was produced in Phase 4 under your immediate superintendence.

[20] For the fifth phase the Crown says that 1900 grams of methamphetamine was produced. You say that although it was intended to manufacture 56 ounces or 1568 grams the cooks made a mistake in the process and ended up producing only 36 ounces or 1008 grams. This is another example of why defining the actual amount is not determinative in assessing your culpability. Whatever the amount, even on your version, more than a kilogram was produced under your control and influence for phase 5.

[21] Then there is the sixth cook. You initially accepted the Police's figure of 2800 grams. You had no alternative but to accept it. The Police intercepted 80 ounces and it is obvious from the transcripts that a further 20 ounces was manufactured on the afternoon of 14 November 2014. On the disputed facts hearing you tried to resile even from that. But I am satisfied on the evidence I heard that another 20 ounces were manufactured and so on this last cook a massive 2800 grams were manufactured.

[22] And so reviewing the amounts just on what you initially accepted, the total comes to a little more than 6.5 kilograms.

[23] The Crown says the amount was much greater and was in excess of 9 to 14 kilograms. They are probably right but I am required to be satisfied beyond a reasonable doubt. And in any event, as I have said, in my view it makes no material

difference to your culpability whether the actual total amount manufactured under your control and direction was closer to 7 kilograms than to 9.

[24] On any view 6.5 kilograms is a massive quantity. To put it in perspective, it is the largest single case of manufacturing to have come before the Courts in New Zealand, and that is by a very substantial margin indeed. Neither counsel nor I have found any other cases of methamphetamine manufacture which are even comparable in terms of quantity. This puts you in an unenviable league all of your own.

[25] The audio intercepts during the last phase of manufacturing reveal that you told your cooks that if the numbers were good you would be “going again”. Given that comment, and the frenetic activity which was going on in that house during the last cook particularly, I am left in no doubt that had the Police not intervened when they did, you and the Group would have continued to produce methamphetamine in these massive quantities. On the last day of cooking, even after your son Evanda took the 80 ounces to Auckland, your cooks carried on and produced another 20 ounces or 560 grams.

[26] But it is not only the quantities of the drug produced which is notable. It is also the quality. And this says something about the sophistication and skill of the operation you headed. We know this from the methamphetamine found in Evanda’s possession on 14 November 2014. The 80 ounces he took from the address and which were packaged into 80 sealed bags and transported at your direction to Auckland prove this. The Police intercepted the car Evanda was driving just north of the harbour bridge. Testing revealed that the purity sat at 73 per cent. To produce quantities of methamphetamine at purity levels very close to the maximum technically achievable required the application of high levels of skill and experience. Standing back and looking at the operation as a whole there can be no doubt whatsoever that this was drug manufacturing on a grand scale. On any view yours was a huge and highly successful commercial undertaking.

[27] What is also striking about your operation was the multiplicity and diversity of the roles of the various participants. In September the operation was relatively

modest but grew larger and more sophisticated over the period of interceptions. Different members of the Group carried out different functions. There were those who worked inside the house either as lead cooks or as assistants to the cooks. There were those involved in the weighing and packaging of the drug for distribution and sale. Others, including your family members, provided assistance by delivering essential equipment and materials or by driving the main participants to and from the address. I have also sentenced those who were involved in the distribution of the drug or helped in hiding or concealing the profits generated by the Group's activities. Some participants assumed multiple roles. Some were involved at the beginning; others later. The cooks and their assistants worked in shifts. The manufacturing was undertaken in batches rather like a factory assembly line with different phases being run by one cook and other phases by different cooks. All, to a greater or lesser extent, worked together in a co-ordinated fashion which ensured the success of the wider operation. And you were the co-ordinator of it all.

Your role

[28] I do not intend to summarise your role in relation to each of the 11 charges. As I have said and as I have determined, you sat at the apex of this enterprise. That is reflected in the fact you have been charged in relation to all six manufactures and also the other related charges to which you have pleaded guilty. The supply of pseudoephedrine to Evanda was for the purpose of manufacturing methamphetamine. Your possession of methamphetamine for supply on 14 November 2014 reflects the organisational role you played in arranging for the first 80 ounces of the phase 6 production to be collected from the address, returned to your home, re-packaged and taken by Evanda for delivery to Auckland. This alone emphasises the role you played not only as the purveyor and supplier of the precursors but also as the logistics controller for the finished product getting to the Auckland market.

[29] It is also plain you are well versed, competent and experienced in the art of methamphetamine manufacture. You have admitted this. There are many examples of you instructing your cooks on how to improve their techniques. You told them how to do it. You inquired of them the quantities they were producing. You made

references to boiling beads, scales and making sure they had enough toluene, caustic soda and other reagents. I accept that in some of the conversations it is apparent that relatively small quantities of the drug were being put aside for the cooks' personal use. But that is how most of the cooks were rewarded. The evidence is plain on that issue and was equally obvious when Lang J and I sentenced the four principal cooks.

[30] It has been suggested you were not "hands on" in the manufacturing process. While I agree that you were not as "hands on" as the cooks you employed, there was not one aspect of what was going on in this operation of which you were unaware. For example, when you were present during a cook you shared your knowledge and expertise in methamphetamine manufacturing with the cooks and directed them on how their processes should be improved and then left them to carry out your instructions. This feature was at its most noticeable during that unforgettable occasion on 28 October 2014 when you discovered that valuable product had been lost from a leak in the apparatus. You went out to the address. You were incandescent with rage at Elijah Rogers and Jaydean Hura. You berated them for their ineptitude and clumsiness. You told them they could not stop until they had finished. You told them how much it was costing you. You mentioned having to explain a \$200,000 loss "down in Auckland". You told them the lost product had to be found and they were to find it even if this meant pulling up the floor boards. On your behalf it has been submitted that these conversations indicate that you were answerable to someone higher up the ladder in Auckland. That you might have been required to explain to those back at the Headhunters' headquarters in Auckland how valuable product had been lost, does not remove you from being at the very top of this manufacturing and distribution pyramid.

[31] No series of conversations more compellingly confirms your total command of the operation better than those of 28 October. Jaydean Hura, the man you say was higher up the chain of command than you, was plainly scared by you. He was subservient and submissive. He did what you told him. Elijah Rogers was the same. No one listening to those conversations could get any impression other than that you were the unchallenged leader. They even called you "the boss".

[32] When equipment, chemicals and cooling agents were needed you simply instructed others to attend to it. Plainly you were looked to for technical and resourcing advice. The cooks turned to you for instruction and direction. And you called them for progress reports. You also arranged which combination of cooks would undertake which manufacturing phase. And you arranged their transport out to the address. In that sense you were very “hands on”.

[33] Your lawyer’s submissions repeat what you told the authors of the pre-sentence report and the psychological report, namely that you made little or no money out of this enterprise and you remain indignant that you are still owed money. However, none of that makes sense when the contents of the conversations between you and those who were holding very substantial quantities of cash on your behalf are considered. They secreted tens of thousands of dollars on your behalf. They concealed the ownership of your black Falcon so it would not be connected back to you. No one made money like you did.

[34] It also does not explain how it was that you and your former partner, Jasmine Green, were able to purchase \$14,000 worth of jewellery from a store in Sylvia Park in Auckland. You told me on Wednesday you were on the dole and the funds came from gambling. That explanation, when viewed against all the other evidence, is plainly untrue.

[35] Even after your home detention sentence confined you to your home, you continued to direct operations from there. The intercepted audio communications make that clear.

[36] And when things started to go pear shaped for you on 14 November 2014 and your two boys were arrested and charged in relation to the 80 ounces of methamphetamine you sent them to Auckland with, you seemed more concerned about yourself and your own predicament than what you had done to your own kids. And even then you carried on and made arrangements the next day to supply the remaining 40 ounces of the drug to others.

[37] And it was not only your own children you recruited. You used your father, Jasmine Green, your former partner Casey Rewha, both your sons and a number of your cousins to do your work. I sentenced Evanda in November. I gave him a substantial discount, partly in recognition of the influence his dominating father played in his very serious offending. It was plainly apparent from the intercepted conversations that you ran your operation through domination, threats and fear.

[38] And so, in summary, you were the undisputed and unchallenged kingpin of this operation which operated on what can fairly be described as a highly organised industrial enterprise. You not only led it but you participated, to a greater or lesser extent, in every facet of its activities in order to ensure its enduring success. And until the Police intruded it was a very successful enterprise indeed.

Procedural background

[39] I now need to cover why, when you pleaded guilty on 2 June 2016 it has taken 10 months to get to sentence. This is relevant to the question of what weight should be given for your pleas of guilty.

[40] Following your arrest on 16 December 2014 you were charged with a large number of offences; by my calculation some 35 charges. However, as is frequently the case, the Crown agreed with your lawyer that if you were to plead guilty to the 11 charges the rest would be withdrawn.

[41] On 2 June 2016 you pleaded guilty and were convicted and remanded for sentence.

[42] On 27 June 2016 the jury trial of your co-defendants who did not plead guilty started before me. That trial took approximately five weeks. Your sentencing, which was scheduled to take place during that trial, was twice adjourned. It was finally set down for 1 September 2016.

[43] On 1 September 2016, before you were called into Court to be sentenced, Ms Pecotic asked for time to take instructions from you on the contents of the summary of facts. Ms Pecotic then spent two full days with you which resulted in

you signing a statement and endorsing the summary of facts with some notations, principally in relation to your role in the enterprise and the amounts of methamphetamine produced. The sentencing had to be adjourned. Given the potential importance of quantity and role in assessing your culpability I determined that a disputed facts hearing was required. This was set down for 23 November 2016 with the sentencing expected to follow the next day.

[44] However, three weeks before the scheduled sentencing, Ms Pecotic applied to adjourn the disputed facts hearing and the sentencing because she was involved in a complex trial in Rotorua. I refused that adjournment and as a result Mr Niven was instructed to appear on your behalf at the disputed facts hearing and sentencing.

[45] The disputed facts hearing commenced on 23 November 2016. However, in the course of the hearing, it became apparent that a central aspect of your challenge on quantity was that no methamphetamine was produced during the first two manufactures. In discussions with counsel it emerged that you also asserted that no methamphetamine was produced on the fifth manufacture either.

[46] Because you refused to sign any written instructions Mr Niven suggested that I should hear directly from you, which I did. You told me you wished to make an application to vacate your pleas of guilty on the first, second and fifth manufactures. I directed that you were to file an application, together with an affidavit in support the following day.

[47] The Crown urged me to dismiss your application on the basis that against the background of delay and prevarication, it was apparent you were gaming the system.

[48] However, because you claimed that you had consistently told your former lawyer that you had extracted only ephedrine in the first two manufactures and that you had pleaded guilty to the manufacturing charges by reason of a mistake of law I determined it was necessary to hear evidence from your lawyer and directed that the application to vacate your pleas of guilty should be set down for a hearing. At that time the Crown put you on notice that it would be submitting that in the light of

these developments any guilty plea discount had evaporated and the Crown would be pressing for an imposition of a sentence of life imprisonment.

[49] Earlier this week I heard your application to vacate your pleas of guilty. I refused it. The following day I presided over the disputed facts hearing and delivered my results decision on that.

[50] I have covered these procedural matters in detail because the Crown submits that any discount you might previously have earned for your guilty plea has been all but completely eliminated through your conduct in taking these procedural steps. I shall return to that issue later.

Purposes and principles of sentencing

[51] I now turn to the second part of my sentencing remarks and that is to discuss the purposes and principles of sentencing. In cases of this sort involving commercial drug dealing, the Courts have repeatedly emphasised that the most important purposes of sentencing are to hold the defendant accountable, denounce their conduct and deter them and others from engaging in similar behaviour. This is particularly necessary where the drug concerned is methamphetamine. Put bluntly, it is the most dangerous and destructive drug in this country. To describe it as a scourge is an understatement. It captures those who use it, even if only for a short period, and inevitably leads them down a path of personal ruin and destruction. Mr Smith addressed me on the particular effects in this community and how whole communities are devastated by this substance. Otherwise decent people are robbed of their dignity and, eventually, their self control. The frequent consequence is that those addicted resort to crime and violence to feed their ever growing habits. Not only are they left dreadfully physically and psychologically damaged but their cohort of family and friends are caught up in the maelstrom of their misery. The unadorned truth is that no part of our community is left untouched by the effects of this awful substance.

[52] All of this is well known to you. You told the probation officer who interviewed you that you hate methamphetamine and you have tried to influence those you know to stop using it. Despite that knowledge you seem to have held no

qualms about supplying the drug to others and unlike many of those I have sentenced in Operation Easter, particularly those higher up on the ladder, you are not and never have been addicted. You have never been a user of the drug. This means that the only reason you embarked on this exercise was to accumulate wealth.

[53] The relevant principles of sentencing require me to take into account the gravity and seriousness of the offending and maintain consistency with appropriate sentencing levels. Having said that, I accept that despite the seriousness of your offending I must also impose the least restrictive outcome appropriate and assist you in your rehabilitation.

Analysis

[54] I now turn to consider the appropriate sentence. The lead charges, as accepted by all counsel, are obviously the six charges of manufacturing methamphetamine. However, in your case I agree with the Crown that it would be somewhat arbitrary and artificial to separate out your remaining offences and apply discrete uplifts for each of these. They are all closely connected to the manufacturing charges and your role as head of the Group. Instead, I shall assess your offending “globally” and select a starting point which reflects your total culpability. Furthermore, because the charges are of a “similar kind” and “connected” the appropriate approach is to impose concurrent sentences.³

[55] The maximum penalty for manufacturing methamphetamine is life imprisonment. Section 8(c) of the Sentencing Act 2002 (“the Act”) dictates that:

“... [the Court] must impose the maximum penalty prescribed for the offence if the offending is within the most serious of cases for which that penalty is prescribed, unless circumstances relating to the offending make that inappropriate.”

[56] However, s 8(c) of the Act does not require the Court to find that the offending is the most serious of its kind. As the Court of Appeal observed in *R v Zie*, it is always possible to conceive of more serious cases. If the maximum penalty was

³ Sentencing Act 2002 s, 85(2).

reserved for only the most serious cases imaginable no one would ever be sentenced to the maximum and plainly that is not the intention of Parliament.⁴

[57] Yours is one of the rare cases, other than murder, where life imprisonment must be a serious and real consideration.

[58] I now turn to first consider whether s 8(c) is engaged and whether your case fits within the “most serious” of cases involving the manufacture of methamphetamine and thus whether life imprisonment is the correct starting point. If I determine it is, I shall then move on to consider whether the circumstances relating to you would make life imprisonment inappropriate and whether a finite sentence should instead be imposed.

[59] In determining whether your case fits within the “most serious” of cases of this sort I note that in respect of methamphetamine offending the sentencing regime is now well settled. In the guideline judgment of *R v Fatu*, the Court of Appeal set out four sentencing bands largely defined according to the quantity of the drug involved.⁵ Band 4 applies to the most serious offending where very large commercial quantities of methamphetamine are produced. “Very large” is defined in that case as being 500 grams or more. Cases which fall within Band 4 attract starting points of between 13 years and life imprisonment. Plainly your offending sits at the highest end of this band. The quantities involved, on any analysis, are very substantial indeed and I have already said I shall use the 6.5 kilogram figure for the purposes of the present exercise. The question is thus whether this and other factors place your offending in the “most serious” range for cases where life imprisonment is the proper starting point.

[60] In examining that issue it is helpful to consider other cases which share some comparable features. Despite the evident seriousness with which the legislature and the Courts regard class A drug offending, it is telling that life imprisonment has only been imposed in five cases to date. Three of these involved the importation of heroin and so are of limited use in the present exercise, although, significantly, all but one

⁴ *R v Zie* [2007] 2NZLR 240 at [26].

⁵ *R v Fatu* [2006] 2 NZLR 72 at [36], (2005) 22 CRNZ 410 at [41]-[42].

of those involved recidivist drug dealing offenders.⁶ Of the “non-heroin” cases one involved the importation of approximately 96 kilograms of methamphetamine.⁷ And although that case is closer to the present, the fact it involved importation and the fact the quantity was so vast, means it must stand alone.

[61] There is only one case where life imprisonment has been imposed for manufacturing methamphetamine. That was the case of *R v Rhodes*.⁸ Rhodes was the “kingpin” in a major methamphetamine syndicate and was personally responsible for producing 1.4 kilograms of the drug as well as offering 365 grams for supply. What distinguishes *Rhodes*, however, is the persistence of his offending. Prior to establishing his methamphetamine operation he had just completed a 14½ year sentence in Australia for serious drug offending. At the time he was still on parole in that jurisdiction and remained subject to a \$20m pecuniary penalty order for cannabis offending and a \$1m order for methamphetamine offending. In sentencing Rhodes, Winkelmann J quite rightly described him as a “menace to society”.

[62] In the later case of *Clifton v R*⁹ the Court of Appeal reviewed a sentence of life imprisonment for manufacturing methamphetamine that had been imposed in the District Court.¹⁰ Mr Clifton had manufactured 1.35 kilograms of methamphetamine over a period of five months. He had an extensive history of serious drug offending. In 2009, while still on parole for his earlier offending, Mr Clifton spent five months manufacturing methamphetamine. After his arrest he pleaded guilty. He was granted bail pending sentence. Despite this he immediately resumed his manufacturing activities. Judge Wade in the District Court at first instance, described him as “one of this country’s most significant methamphetamine manufacturers” and imposed a sentence of life imprisonment. The Court of Appeal concluded this was manifestly excessive but, in doing so, made the following comments:

⁶ *R v Beri* [1987] 1 NZLR 46 (CA); *R v King* (1998) CA442/96, 27 May 1998; *R v Curtis* [1980] 1 NZLR 416 (CA) (life imprisonment substituted for a sentence of 16 years imprisonment on appeal, the offender in that cases did not have previous convictions for serious drug offending).

⁷ *R v Chen & Ors* HC Auckland 10 December 2008; affirmed in *R v Chen v R* [2009] NZCA 445, [2010] 2 NZLR 158.

⁸ *R v Gollop & Ors* HC Auckland CRI-2006-092-016424, 13 February 2009; affirmed in *R v Rhodes* [2009] NZCA 486.

⁹ *Clifton v R* [2013] NZCA 85.

¹⁰ At [35].

“... a life sentence for drug offending is exceptional even for determined band four manufacturers with previous convictions. Mr Rhodes was only sentenced to life imprisonment because nothing less would have served. He was extraordinary in the sheer scale and in the persistent intensity of his drug offending. He was completely undeterred even by very lengthy terms of imprisonment.”

[63] The Crown has referred me to a number of cases where kilogram quantities of methamphetamine were manufactured by offenders without previous convictions for serious drug offending. In all these cases lengthy finite sentences were imposed. While I record my gratitude to the Crown for providing these references, their usefulness is limited by the simple fact the quantities produced in those cases do not get anywhere near the quantities you and your Group were manufacturing. For this reason I will not discuss the cases in detail but will footnote them for the benefit of others.¹¹

[64] Set against this background your offending makes for an unfavourable comparison. You sat at the head of this enterprise and the tentacles of your influence reached into every facet of its operation as I have previously described.

[65] For those reasons I am satisfied s 8(c) of the Act is engaged in your case because your offending does fit within the most serious of cases of methamphetamine manufacture for which life imprisonment is prescribed.

[66] I now turn to consider your personal circumstances and whether they are such as to make a life sentence inappropriate.

[67] Your pre-sentence report sheds some, albeit incomplete, light on how you came to be where you are today. You have seven children aged between two and 19 years. Your relationship with your former long term partner and co-defendant, Casey Rewha, was tumultuous and characterised by domestic violence on your part. Your relationship with some of your children is strained as a result.

[68] You grew up in this area and left school at the age of 16. Initially you worked as a rubbish collector and later as a milk hand on dairy farms. However, you

¹¹ *R v Webb* [2008] NZCA 487 (1 kilogram); *Peters v R* [2012] NZCA 252 (2.9 kilograms); *Beckham v R* [2012] NZCA 603 (2.36 kilograms).

came into contact with the criminal justice system and you report being a member of the Headhunters for 12 years. Unsurprisingly, this connection has led to your lengthy criminal list. You have 43 convictions most of which are for driving offences. You have a number of convictions for domestic violence, kidnapping, injuring with intent to injure and common assault. Relevantly you have no previous convictions for drug-related offending. It is concerning that such is your lack of insight that you told the probation officer you did not think being part of the gang impacted on your actions.

[69] Alcohol abuse, rather than illicit drug abuse, appears to be a feature of your life. You report you often drink to excess. You report that you are a heavy gambler but you do not consider that to be a problem.

[70] But what is most disturbing is your attitude to your offending. There are some serious distortions in your views. On the one hand you admit your involvement but then you attempt to minimise it by saying you played only a minor role in providing the house where the manufacturing could take place. But even more concerning is your total lack of remorse for what you have done despite your comment that you “hate meth”. You insist you did nothing wrong and even more startling you are recorded as saying that you would do it all again. That is a breathtaking statement which unsurprisingly led the probation officer to conclude that your risk of re-offending is high and your risk of harm to others is also high.

[71] At Ms Pecotic’s request I ordered a psychiatric report. That report and your explanations for your offending to the consultant forensic psychiatrist who interviewed you are puzzling. You told him that you were “just at the scene” and that you rented the address to the real cooks. You said that your co-offenders selected you as the “ringleader” and that you participated in order to earn money which you intended to “donate” to others. Significantly, the psychiatrist concluded you do not suffer from any mental illness but, unsurprisingly, you fulfil the criteria for an antisocial and narcissistic personality disorder as well as an alcohol abuse disorder. He also unsurprisingly assessed you as being at high risk of re-offending.

[72] Your failure to accept responsibility combined with your lack of motivation to sever your relationship with the Headhunters mean that any prospects for rehabilitation must be considered as low.

[73] However, I do consider it significant that you have no previous convictions for drug-related offending. In both *Rhodes* and *Clifton* (at first instance) their previous convictions for serious drug offending were given as the primary justification for imposing sentences of life imprisonment. Both those decisions focused on the importance of incapacitating recidivist drug manufacturers. Yours is a different case. Although the amount of methamphetamine you and your Group manufactured far exceeds the amounts in either of those two cases you do not have an offending history which suggests you require such a heavy deterrent.

[74] The other factor in your favour is your plea of guilty. In *R v Shailer & Haerewa* Katz J's decision not to impose a sentence of life imprisonment was largely based on the offenders' pleas of guilty which came at a relatively late stage. I agree with her Honour when she observed the Court has no power to set a minimum term of imprisonment where life imprisonment is imposed for offending other than murder. The only mechanism by which credit can be given for guilty pleas is to reduce the starting point of life imprisonment to a finite term of imprisonment.¹² Similarly, in *R v Waipuka* an offer to plead guilty to manslaughter before the committal process formed part of Miller J's reasons for not imposing a sentence of life imprisonment.¹³

[75] The question for me is really whether your lack of previous drug-related offending, combined with guilty pleas, makes a sentence of life imprisonment inappropriate. In my judgement it does but by a fine margin. Your criminal record does not reveal that you are a persistent or serious drug offender of the sort involved in the cases of *Rhodes* and *Clifton*. I am not convinced your offending, while undoubtedly serious, has risen to the level which calls for a sentence of life imprisonment on its own.

¹² *R v Shailer & Haerewa* [2016] NZHC 1414 at [61].

¹³ *R v Waipuka* [2013] NZHC 221 at [36]; upheld on appeal in *Waipuka v R* [2013] NZCA 661.

[76] It follows then that I must now determine what an appropriate finite sentence would be in your case. Given I took a starting point of life imprisonment I cannot simply apply a percentage discount from the starting point to reach an appropriate end sentence. The end sentence must reflect the fact that I have placed your offending at the very highest rungs of manufacturing cases and the need to maintain parity with the sentences imposed on your co-offenders. In determining your finite sentence, I will adopt what the Court of Appeal referred to in *Shailer & Haewera* as a “notional starting point”.¹⁴ I will then consider whether any deductions should be made by way of mitigation. This was also the approach Miller J took in *R v Waipuka*.¹⁵

Starting point

[77] So I now turn to consider what finite sentence should be imposed. First, the starting point.

[78] Mr Edgar submits that your level of culpability sits at, or a little below, that of Jaydean Hura’s. In other words a maximum starting point of around 21 years. Jaydean Hura pleaded guilty to five manufactures and Mr Edgar submits that the evidence from the transcripts reveals he tended to operate independently and was much more actively involved in the actual manufacturing process than you.

[79] I do not accept your culpability can be ranked at or below Jaydean Hura’s. I have already determined that you sat at the apex of this operation. I agree with the Crown that you “spearheaded” it. I am satisfied that you supervised and directed the activities of the Group and at times you actively assisted in the manufacturing process. It was you who co-ordinated the activities of the others and I have already discussed this in some detail earlier in my remarks.

[80] What this necessarily means is that I place your culpability above of that of Elijah Rogers who was involved in all six of the manufactures and was involved in some distribution of the product. His starting point was 25 years. Lang J set Jaydean Hura’s starting point at 21 years. He was involved in five manufactures but

¹⁴ *Shailer & Haerewa v R* [2017] NZCA 38 at [82].

¹⁵ *R v Waipuka*, above n 13, at [37]-[39].

was not involved in the distribution of the product or precursors. Neither did he share in the profits. I set the starting point for Anthony Mangu at 20 years. He was involved in three manufactures. In two of those I was satisfied he played a relatively minor role although he was actively engaged in the sixth phase. He was a minor distributor. Finally, I set Mark Lang's starting point at 19 years. He was involved in two manufactures. He played a minor role in the fourth phase and was a good deal more active in the sixth. He was not involved in distribution and he did not share in any profits.

[81] The description of the roles of the four principal cooks highlights the difference in their levels of culpability as compared to yours. They took their orders and directions from you. They were paid, at least in part, in the product they produced. They turned to you for advice and to secure whatever was needed for the manufacturing operation. You determined which cooks would be used in each phase. Through your position at the top of the tree you were also able to maintain something of a safe distance from the actual manufacturing and its implicit risks while at the same time ensuring that everything was being done to your satisfaction.

[82] Given your lead role and involvement in all six of the manufacturing phases and by reference to parity with your co-defendants, a starting point for the six manufactures of between 25 and 26 years' imprisonment is appropriate. That figure would need to be uplifted to take into account the supply of large quantities of pseudoephedrine and the possession for supply of large quantities of methamphetamine. Bearing in mind that the possession of methamphetamine and conspiring to supply methamphetamine charges on 14 and 15 November 2014 involved over 100 ounces of methamphetamine this would place the offending at the very upper limits of Band 4 of *Fatu*. An uplift of the order of four to five years would be appropriate to bring the starting point to one of 30 years' imprisonment.¹⁶

[83] In setting that figure I have also had regard to a number of cases involving large importations of methamphetamine. In *Fatu* some comment was made about methamphetamine manufacturing being in a worse class of offending than importation. This reflects the dangers implicit in manufacture and the period over

¹⁶ *R v Fatu*, above n 5.

which it takes place. Furthermore, it is rare for the primary organisers in importations to be caught. Those apprehended tend to be lower in the hierarchy.

[84] With those caveats in mind I turn to consider three cases of methamphetamine importation which involved large quantities. In *R v Sze*¹⁷ and *R v Yuen*¹⁸ a husband and a wife oversaw the importation of 40 kilograms of methamphetamine into this country. The pair flew from Hong Kong to New Zealand for this purpose. An overall starting point of 23 years was adopted for the husband and 22 years for the wife. Similarly, in *R v Kam*,¹⁹ a starting point of 25 years was adopted for a defendant who took delivery of over 60 kilograms of methamphetamine into this country.

[85] In another recent case,²⁰ a starting point of 30 years' imprisonment was adopted for an offender who was a "conscientious participant" in a syndicate which imported nearly 500 kilograms of methamphetamine into New Zealand, the largest importation case to come before our Courts. The participant was entrusted with the possession of the methamphetamine when it arrived in New Zealand.

[86] It was the lesser roles played by these offenders that precluded sentences of life imprisonment despite the massive quantities involved. I consider that your role as superintendent of the largest methamphetamine manufacture to come before our Courts places your culpability somewhere near the "conscientious participant" in New Zealand's largest importation case. In my view, this reinforces the correctness of the 30 year starting point I have adopted.

Personal circumstances

[87] I turn now to mitigation. I have already explained your personal circumstances in some depth. It suffices to say there is nothing in your personal circumstances which could attract a sentencing discount. This leaves only your guilty plea.

¹⁷ *R v Sze* [2016] NZHC 1703.

¹⁸ *R v Yuen* [2016] NZHC 571.

¹⁹ *R v Kam* [2016] NZHC 110.

²⁰ The details of this offender have been suppressed.

[88] Your pleas of guilty were entered on 2 June 2016, roughly a month before the trial. They came in the face of an extremely strong case against you. In my view you had little or no hope of successfully defending any of the charges. However, sight must not be lost of the fact that in pleading guilty there was some shortening of the trial, although not a great deal in my view. Most of the intercepted conversations played to the jury were also relevant to the case against you. And so if you had been included as a defendant the trial might have been extended a little. I must also consider the extent to which the time and cost savings of your guilty pleas have been diminished by your applications to vacate pleas as well as the disputed facts hearing. These applications were time consuming and costly. Both were, to a large extent, fruitless in terms of materially reducing your culpability.

[89] I have considered the case of *R v Kupkovic* where three defendants pleaded guilty to charges of manufacturing methamphetamine but denied the offending to the extent alleged by the Crown. The result was that Brewer J was required to carefully review the evidence in order to reach individual conclusions as to the culpability of each defendant. The first defendant had only been prepared to accept he had manufactured 600 grams. Brewer J found he had participated in the manufacture of 2025 grams. In those circumstances, the Judge limited the guilty plea discount to 10 per cent.²¹

[90] In your case, I have found you were a party to the manufacture of at least 6.5 kilograms of methamphetamine. You attempted to argue that no methamphetamine was produced in three phases of manufacture despite the cooks pleading guilty to these charges. You also disputed the role you played in the operation. I entirely rejected your minimisation of involvement.

[91] In those circumstances, and given the delay, cost and prevarication which these steps involved, I consider you are entitled to only a five per cent discount for your guilty pleas.

²¹ *R v Kupkovic* [2014] NZHC 1946.

Effective end sentence

[92] Taking all these factors into account I consider the appropriate sentence in your case is one of 28½ years' imprisonment.

Minimum period of imprisonment

[93] Finally I turn to consider whether I should order a minimum term of imprisonment. Your co-offenders, with the exception of Evanda, all received minimum periods of imprisonment of 50 per cent. Mr Edgar responsibly accepts there is no basis to differentiate you but for the fact that s 84(4) of the Act specifies that a minimum period of imprisonment in respect of a finite sentence may not exceed the lesser of two thirds of the full term or 10 years' imprisonment. Obviously, the lesser of these figures is 10 years. That is the minimum period of imprisonment I therefore impose.

[94] I also make an order under s 32(3) of the Misuse of Drugs Act 1975 for the forfeiture of the \$120.

Disposition

[95] Mr Harding please stand.

[96] The sentences I am about to impose are to be served concurrently. That means that your term of imprisonment will end as soon as you have served the longest single term.

[97] On the six charges of manufacturing methamphetamine I sentence you to 28½ years' imprisonment.

[98] On the charge of supplying pseudoephedrine I sentence you to nine years' imprisonment.

[99] On the charge of possessing methamphetamine for the purpose of supply I sentence you to nine years' imprisonment.

[100] On the two charges of conspiring to supply methamphetamine I sentence you to six years' imprisonment.

[101] On the charge of participating in an organised criminal group I sentence you to seven years' imprisonment.

[102] I also impose a minimum term of imprisonment of 10 years.

[103] Stand down.

Moore J

Solicitors:

Crown Solicitor, Whangarei

Ms Pecotic, Auckland

Mr Niven, Auckland