

**ORDER PROHIBITING PUBLICATION OF MATERIAL CONTAINED IN  
PARAGRAPH [32]**

**IN THE DISTRICT COURT  
AT WELLINGTON**

**CRI-2015-085-008066  
[2016] NZDC 4148**

**THE QUEEN**

v

**SHUN YAN MATTHEW YUEN**

Hearing: 10 March 2016  
Appearances: R de Silva for the Crown  
A Clarke for the Defendant  
Judgment: 10 March 2016

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**NOTES OF JUDGE P A H HOBBS ON SENTENCING**

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[1] Mr Yuen, you appear today for sentence on three charges: importation of a Class A controlled drug, methamphetamine, conspiracy to supply that same drug, and possession of methamphetamine for supply.

[2] The facts are that on 24 July 2015, New Zealand Customs staff working at the Auckland air-cargo facility intercepted a DHL Express package that had arrived from China. The consignee details recorded on the package were yours, with an address in Johnsonville. The consignee's phone number was listed and the consignor's details were recorded as Eric Woo with an address in Macaw, China. The contents of the package were described to be "a milk bottle for my baby". The parcel had a track and trace number attached to it.

[3] The package, in fact, contained approximately 980 grams of methamphetamine concealed in four Chinese-branded soup packages. The remainder of the package was made up of various baby products and toys. The methamphetamine has an estimated street value of NZ\$1 million. As a result of this interception a controlled delivery of the package was arranged between New Zealand Police and the Customs Service.

[4] On 29 July 2015 the police began intercepting your phone communications. This was the cellphone used by you. You were expecting the suspect package and you had tracked its progress through the mail system, via the Internet, using the package's track and trace number. At 10.15 am on 29 July 2015 the package was delivered to the address in Johnsonville. The majority of the methamphetamine in the original package had earlier been removed by New Zealand Customs.

[5] The female occupant of the address was advised there was a package for you and the female asked if it had to be signed for. A signature was required so you came to the door to sign for it. You took the package inside the address and opened it. You were then seen on the driveway outside the address on a number of occasions speaking on your mobile phone.

[6] You were communicating with the suspected Hong Kong-based supplier of the methamphetamine, using the consignee's cellphone number recorded on the package. You were instructed by the Hong Kong-based supplier to open one of the smaller packets which contained the methamphetamine, take a photograph of it, and send it to him, which you did. You received and made numerous calls throughout the day, some of which were intercepted. From the contents of these calls, it was clear that you were following instructions from the Hong Kong-based supplier and you were aware of the contents of the package.

[7] On 30 July a number of phone calls were made between you and the male in Hong Kong which were intercepted. These communications related to a possible purchaser of the methamphetamine. On the same day, a call between you and an unknown male, based in Auckland, was intercepted. It related to a proposed meeting

between you and the Auckland male, who was going to test a sample of the methamphetamine.

[8] You were driven into Wellington City by your flatmate. Prior to this meeting, you removed a sample from the package to be tested by the unknown Auckland buyer. You believed the Auckland-based buyer was in Wellington. However, it appears that the Auckland buyer was driving around Central Auckland looking for you. As a result of this confusion about the respective locality of you and the potential buyer, this transaction did not take place.

[9] On 31 July 2015 a search warrant was executed at your Johnsonville address. You were present at the time, together with your flatmates. You were arrested and your cellphone was located. After your arrest, the cellphone received numerous calls from the same Hong Kong telephone number that I have previously referred to.

[10] In sentencing you today, I have considered the principles and purposes of sentencing. I have also had regard to the leading guideline or appellate judgment for offending of this kind, *R v Fatu*<sup>1</sup>.

[11] At the time of the sentencing indication, which preceded your guilty pleas, Mr Woods for the Crown and Mr Clarke for you filed comprehensive and helpful written submissions.

[12] It is clear that deterrent sentences are required for offending of this kind. Methamphetamine is a pernicious drug which causes misery in our community and often fuels further criminal offending. I cannot, however, focus on deterrence and denunciation alone at the exclusion of other relevant principles and purposes of sentences.

[13] Often the Courts deal with those described as “drug mules” or “catchers”. The Crown, in its submissions, submit that you were more than a catcher because of the steps you took after the package was delivered that I have referred to. It is always important to try as best one can to identify the real role played by somebody

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<sup>1</sup> [2006] 2 NZLR 72 (CA)

in such a situation in an effort to accurately assess the gravity of the offending. That is not always an easy task as inevitably it has to be based on the summary of facts provided and the submissions made by counsel.

[14] Mr Clarke has submitted that you were nothing more than a catcher. Mr Clarke submits that your offending was borne out of naivety and a desire to fund further musical studies here in New Zealand.

[15] The pre-sentence report confirms your desire to study music against the wishes of your parents who wished you to study business. You thought it necessary to obtain funds to pursue your desire to study music in the hope of proving to your parents that you were sufficiently independent to find and follow your own course.

[16] You had been in New Zealand previously as a school boy for some five years at a New Zealand college. You had returned to New Zealand to undertake further tertiary study. At the time of this offending you were only 18 years of age and had, during your time in New Zealand, never come to the attention of the authorities. You are now only 19 years of age.

[17] In addition to the leading case of *Fatu*, the Crown referred me to *R v Nguyen*<sup>2</sup>, *Chen v R*<sup>3</sup> and *Lam v R*<sup>4</sup>, among other cases. Mr Clarke also referred to a number of appellate decisions including an important one, which I will come to in due course.

[18] The Crown submit that there are a number of aggravating features, including premeditation and planning. The Crown submits that you played a key role in contributing to the offending and that you were a key link between the supplier in China and the market for methamphetamine here in New Zealand. Of course, the Crown refers to the significant amount of methamphetamine (980 grams). Neither Mr Clarke nor the Crown dispute the fact that this offending sits squarely within band 4 of *Fatu*.

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<sup>2</sup> [2009] CA 239

<sup>3</sup> [2010] NZCA 552

<sup>4</sup> [2012] NZCA 280

[19] The Crown submits that a starting-point, having regard to the aggravating features and the cases referred to, is 15 years' imprisonment. Mr Clarke contends for something considerably less. He submits 11 years would be the appropriate starting-point for offending of this kind taking into account its gravity and your role.

[20] Having considered *Fatu*, the fact that the offending falls within band 4, the cases that have been referred to me, together with the aggravating features of the offending, I am satisfied that a starting-point of 14 years' imprisonment is appropriate.

[21] This brings me to mitigating and aggravating features. There are no aggravating features to be applied in your case.

[22] There are several mitigating features. As I have already noted, you are still a very young man, only 19 years of age, 18 years at the time of the offending. Mr Clarke has referred to one of the leading appellate decisions in relation to the issue of youth, *Churchward v R*<sup>5</sup>. He also referred to another appellate authority, *BB v R*<sup>6</sup>, on the issue of discount for you. As the Court of Appeal said in *Churchward* at paragraph [84]:

... where the offending is grave, the scope to take account of youth may be greatly circumscribed. This is because of the very factors that may lead young people to offend may cause concern about future public safety. There is also the need for denunciation and deterrence, both specific to the offender and in general.

[23] The Court, however, did also recognise that long sentences for young people who may have the capacity for rehabilitation can be crushing. The Court also canvassed in some detail the differences between young offenders and adult offenders in terms of their decision-making, their maturity, and their ability to perhaps recognise serious consequences from offending such as this.

[24] It does seem apparent from the pre-sentence report that you were naïve about the potential consequences and naivety did play a significant role, together with your motivation to obtain money to pursue your further goals.

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<sup>5</sup> [2011] NZCA 531

<sup>6</sup> [2013] NZCA 139

[25] While this is serious offending without doubt, I am satisfied that those factors referred to by the Court of Appeal giving rise to concern about future public safety are not prominent in this case, bearing in mind the nature of this offending compared to the offending in the *Churchward* case, and also bearing in mind the fact that you will undoubtedly be deported once you have completed your prison sentence.

[26] There must be some hope of rehabilitation for a young man who has otherwise had an unblemished record to date. I have no doubt that for a young Chinese National, time in a New Zealand prison will be difficult and I need to be careful not to impose a sentence that is crushing and removes any chance of rehabilitation.

[27] *BB v R* noted that discounts between 20 and 40 percent are available for youth. That same case did acknowledge that 40 percent was at the very top of the range for youth discounts.

[28] Before I conclude on the issue of youth and the credits you should obtain for guilty pleas, it is to be noted that since the sentencing indication, Mr Clarke has filed further submissions suggesting that further discounts should be available to you. I have also been provided with additional information from the Crown that was not available to me at the time of the sentencing indication.

[29] Mr Clarke has submitted to me that this additional information warrants further credit in the form of a 10 to 15 percent reduction. Mr Clarke has also suggested that you have now shown or expressed what he calls “extraordinary” remorse, warranting a further discount over and above that which is ordinarily available as a result of a guilty plea – referring as he does to the *Hessell v R*<sup>7</sup>.

[30] I have read your letter that you have provided to me. I have read the pre-sentence report. It appears that you are indeed remorseful for this offending and appreciate the grave error of judgement that was committed by you that has now had serious consequences for you as a young man. However, at the sentencing indication, I indicated significant discounts for your youth, which takes into account,

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<sup>7</sup> [2010] NZSC 135, [2011] 1 NZLR 607

of course, the prospects of your rehabilitation and the fact that you are still young and have no previous convictions.

[31] The Crown contended for a credit of somewhere in the vicinity of 15 to 20 percent for your guilty pleas, bearing in mind the timing of those pleas. I, however, at the indication, indicated that I would give you the full 25 percent credit for guilty pleas because it removed the need for a long and complex trial which had benefits for all manner of reasons. I am therefore satisfied that you will obtain sufficient credit for your remorse which is recognised through your guilty pleas and no further discount is warranted for the remorse other than the full discount you will receive for your guilty pleas, which acknowledges that remorse as well.

[32] [Details deleted].

[33] I have already canvassed the issue of credit for your youth. As I previously indicated and confirm today, I am satisfied that you are entitled to the maximum credit available to you for youth, which is 40 percent, which further reduces the sentence of imprisonment significantly to one of seven years and seven months' imprisonment.

[34] Finally, as I have already indicated, you are entitled to full credit for your guilty pleas of 25 percent, which reduces the sentence further to one of five years and eight months' imprisonment.

[35] The end sentence therefore, Mr Yuen, on all three charges, is one of five years and eight months' imprisonment. Your release date will be a matter for the parole board.

PAH Hobbs  
District Court Judge