

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

**I TE KŌTI MATUA O AOTEAROA
WHANGĀREI-TERENGA-PARĀOA ROHE**

**CRI-2016-029-652
[2019] NZHC 2088**

THE QUEEN

v

**STEVIE NORUA CULLEN
SELAIMA FAKAOSILEA**

Hearing: 21 August 2019

Appearances: R B Annandale for the Crown
A J Maxwell-Scott and N Mani for Defendant Cullen
M N Pecotic for Defendant Fakaosilea

Sentence: 21 August 2019

SENTENCING REMARKS OF GORDON J

Solicitors: Crown Solicitor, Whangarei
Counsel: A Maxwell-Scott, Barrister, Auckland
F Iggulden, Barrister, Auckland
M Pecotic, Barrister, Auckland

[1] Stevie Cullen and Selaima Fakaosilea, you both appear for sentencing on one charge of importing the Class A controlled drug methamphetamine¹ and one charge of participation in an organised criminal group.² A jury found you both guilty of those charges on 11 June 2019 after a six-week trial.

[2] The maximum penalty for importing a Class A controlled drug, such as methamphetamine, is life imprisonment. The maximum penalty for participation in an organised criminal group is 10 years' imprisonment. A key issue for today is whether I should impose a sentence of life imprisonment.

[3] In sentencing you both, I shall follow a three-step approach:

- (a) First, I will set a "preliminary starting point" based on the seriousness of your offending;
- (b) Next, I will consider whether to adjust the starting point to reflect your particular role in the offending, your personal circumstances and taking into account parity with your co-offenders; and
- (c) Third, I will consider whether it is necessary to impose a minimum period of imprisonment (MPI).

[4] In sentencing you, I must be guided by the purposes and principles of sentencing. In summary, I will have regard to the gravity of the offending including your culpability; the seriousness of these offences when compared to other types of offences; the need to ensure your sentences are consistent with other sentences for this sort of offending; and finally, the requirement to impose the least restrictive outcome appropriate in the circumstances.³

[5] The need to deter you and others from committing the same or similar offences is an important purpose in sentencing for drug-related offences. It has been described

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

² Crimes Act 1961, s 98A.

³ Sentencing Act 2002, s 8.

by the Court of Appeal as a “fundamental requirement”⁴ and a “primary sentencing objective”.⁵

[6] I must also have particular regard to the need to hold you both accountable for the harm your offending has caused to the community; the need to promote in you a sense of responsibility for, and acknowledgment of, that harm; the need to denounce the conduct in which you were involved; and the need to protect the community from your offending in future.⁶

[7] I must also ensure that your sentences are consistent with the sentences imposed by other Judges on your six co-offenders but adjusted to take into account your roles in the operation and thus your degree of culpability. Later in these sentencing remarks, I will refer to the sentences imposed on those six co-offenders, who all entered pleas of guilty; they are Mr M,⁷ Amoki Fonua,⁸ Ka Yip Wan,⁹ Malachi Tuilotolava,¹⁰ Ulakai Fakaosilea and Jeremiah Iusitini.¹¹

The facts

[8] I will return to those matters that I have just mentioned, but I first set out a summary of the factual background. In this regard, I note it is open to a sentencing court to accept as proved any fact that was disclosed by the evidence at trial.¹² What follows is a general summary. I will come to the specific roles played by each of you after this general summary.

[9] The charges arise out of the largest ever importation of methamphetamine into New Zealand: 501 kilograms of methamphetamine packaged in one-kilogram amounts. The importation dwarfs the next largest amount of 96 kilograms. The officer in charge, Detective Sergeant Beal, described the importation as a “momentous event”.

⁴ *R v Terewi* [1999] 3 NZLR 62 (CA) at [13].

⁵ *Sarah v R* [2013] NZCA 446 at [42].

⁶ Sentencing Act, s 7(1).

⁷ *R v [M]* [2016] NZHC 2881.

⁸ *R v Fonua* [2017] NZHC 718 [Fonua sentence indication]; and *R v Fonua* [2017] NZHC 1193 [Fonua sentencing remarks].

⁹ *R v Wan* [2017] NZHC 1255.

¹⁰ *R v Tuilotolava* [2017] NZHC 2621.

¹¹ *R v Fakaosilea* [2018] NZHC 3362.

¹² Sentencing Act, s 24(1)(a). See also *R v Connelly* [2008] NZCA 550 at [14].

[10] His evidence was that, if sold in kilogram amounts, the price range would have been between \$130,260,000 and \$150,300,000. It would have fetched a significantly greater sum when sold further down the chain in smaller amounts. The countervailing effect of course is that it would have inflicted enormous social and economic costs on the community.

[11] Four of those involved in the offending, Mr Tuilotolava (code name Mac), Mr M (code name Louie), Mr Fonua (code name Gravel) and you, Mr Cullen (code name Marvel), travelled to Pukenui in a hired campervan and in your Toyota Prado, Mr Cullen, on 23 May 2016. That evening, the plan was discussed amongst the four of you. Mr Tuilotolava explained there was a boat waiting out at sea and a smaller boat would be bringing 500 kilograms ashore at “the spot”. The plan was that the group up north would be waiting on shore for the smaller boat. Once the consignment arrived, the group would unload it. One half would go north (with Mr Fonua and you, Mr Cullen), and the other half would go south (with Mr Tuilotolava and Mr M) and be buried in the sand dunes.

[12] It seems that the consignment was expected to arrive within the next few days. For reasons that were never made entirely clear, that did not eventuate. There was a reference to the weather not being good enough. Later, Mr Tuilotolava explained the small boat had broken down or had difficulties and could not be used.

[13] An alternative means of bringing the methamphetamine ashore was required. To that end, Mr Tuilotolava and Mr Fonua purchased a fibreglass Bayliner boat, which had been advertised for sale by a member of the public, paying in cash provided by you, Ms Fakaosilea. The exact amount was not entirely clear, but it seems it was in excess of \$40,000. Mr Tuilotolava and Mr Fonua brought the boat back to the carpark of the motel where the group was staying, and a local resident was engaged to carry out repairs and maintenance work on it over the next couple of days.

[14] The assistance of another member of the local community was sought for the purposes of attempting to launch the Bayliner from Shipwreck Bay near Ahipara on 9 June 2016. By this time, Mr Wan and Mr Tsai had joined the group in Northland, having been driven up from Auckland by Mr Fakaosilea. Mr Cullen, you were the

point of contact for the local resident. He was told that the purpose of the launch was to scatter the remains of a relative or a friend at sea. This ruse was supported by a ritual on the beach when four of you (Mr Tuilotolava, Mr M, Mr Fonua and you, Mr Cullen) handed around an urn which the local resident was told contained the ashes of the deceased relative or friend.

[15] He told your group that the boat was not fit to go to sea. His warning was not heeded and the launch attempt (with the two Chinese men on board with the urn) was unsuccessful. The local resident was then requested to carry out repairs on the boat which was taken to his property for that purpose. He told the group that a week would be required to undertake the repairs.

[16] Mr Tuilotolava then directed that a replacement boat be purchased. On 11 June, Mr Tuilotolava and Mr Fonua travelled to Auckland in your vehicle, Mr Cullen, for that purpose. They purchased a rigid hull inflatable boat (RHIB), again paying in cash, on this occasion \$98,000. They took immediate possession of the boat and drove back to Northland.

[17] On the same day, the boat was driven to Ahipara Beach, north of Shipwreck Bay. On this occasion, the boat was launched successfully. Mr Wan and Mr Tsai were again on board. The same local resident who had assisted in the failed launch on 9 June also assisted on this occasion. Mr Tuilotolava, Mr M, Mr Fonua and you, Mr Cullen, were present at the launch.

[18] After the successful launch, the group returned to the motel. Mr Tuilotolava directed Mr M and Mr Fakaosilea to dig a hole in the sand dunes around a kilometre from the launch spot in which part of the consignment was to be buried. The two of them did so.

[19] Mr Wan and Mr Tsai eventually returned in the RHIB with the methamphetamine on board at approximately 1 am on the morning of 12 June 2016 and landed on the beach.

[20] Mr Tuilotolava, Mr M, Mr Fonua and Mr Fakaosilea were present on the beach when the RHIB arrived. Mr Cullen, you remained in one of the vehicles parked at the beach.

[21] After landing the RHIB on the beach, Mr Wan and Mr Tsai played no further part in the operation. Mr Cullen you drove them back to Auckland after they had alighted from the RHIB using the vehicle which Mr Fakaosilea had driven up north.

[22] Mr Tuilotolava, Mr M, Mr Fonua and Mr Fakaosilea unloaded the boat and put most of the bags containing the methamphetamine into the campervan. Approximately 50 kilograms was buried in the hole dug in the sand dunes.

[23] Later examination of the GPS equipment on board the RHIB showed that it had travelled approximately 12 kilometres from the shore before the GPS equipment was turned off.

[24] On 12 June 2016, the Police became directly involved. They had in fact been contacted earlier by the local resident who had assisted in the two launches because of his suspicions of what the group was up to.

[25] Mr Fonua and Mr Fakaosilea, who were using your vehicle, Mr Cullen, were arrested on the afternoon of 12 June. Inside the vehicle, the Police found various items connected with the importation.

[26] Later that evening, an off-duty police officer, who had been involved earlier in the day, stopped the campervan driven by Mr M. When the campervan was searched, approximately 449 kilograms of methamphetamine were found along with other items connected with the importation. Mr M subsequently showed the Police where the remaining methamphetamine had been buried in the sand dunes.

[27] I have already touched on the involvement of each of you in this general summary. I now set out my findings in relation to the role played by each of you in more detail, starting with you Mr Cullen, as you were the first-named in the charges.

Mr Cullen

[28] The Crown put its case against you on the basis that you were a secondary party in the importing charge.

[29] You gave evidence in the trial to the effect that you had no knowledge of the proposed importation of methamphetamine and that you were not a participant in the organised criminal group. You said that you met Mr Fonua and Mr Tuilotolava at a pub in Auckland when you were on your way up north from Hawkes Bay on a spiritual journey. You said that Mr Fonua and Mr Tuilotolava invited you to join them on their boys trip up north. You did so, arriving in Pukenui on 23 May 2016. From that time, you carried out a number of tasks as requested. But none of that was done with any knowledge of what the others in the group were up to. Your understanding was that you were assisting them, first in relation to their plan to go fishing and then with their plan to spread the ashes of their relative or friend at sea.

[30] Clearly, by their verdicts, the jury did not accept your evidence. I find on the evidence that you assisted in the importation with the necessary guilty knowledge in the following ways:

- (a) You purchased the Toyota Prado vehicle in Auckland on 20 May 2016 which you used to drive up north, carrying Mr Fonua as a passenger. You paid cash for the vehicle. The money was given to you by a person with the nickname Ratz for the purpose of buying a vehicle for use to assist in the importation.
- (b) On the evening of 23 May 2016, after arriving at the Pukenui Motor Hotel, you were present with Mr Tuilotolava, Mr M and Mr Fonua when the plan was discussed. You and Mr Fonua had already driven to the west coast that day and picked a landing spot before arriving at the Pukenui Motor Hotel.
- (c) From 23 May to 12 June, you were given various jobs to do, mostly under direction from Mr Tuilotolava (who in turn was receiving instructions principally from Mr Iusitini), for the purpose of assisting

with the proposed importation of methamphetamine. You carried out the following tasks:

- (i) You booked accommodation for members of your group at various motels in the Northland area, including accommodation for Mr Wan and Mr Tsai.
- (ii) You researched weather, tides and coastal conditions using the computer at the Te Ahu Information Centre.
- (iii) You checked the location of New Zealand Navy patrol boats.
- (iv) You participated with Mr Tuilotolava, Mr M and Mr Fonua when the walkie-talkies were tested.
- (v) You travelled back to Auckland in your Toyota Prado with Mr Tuilotolava, Mr M and Mr Fonua for Mr Tuilotolava to get some more money after he initially believed he had mislaid the money in his possession.
- (vi) You discussed weather and coastal conditions with members of the local community, including the staff at various motels, for the purpose of selecting a suitable place to launch a boat off the west coast.
- (vii) You recruited a member of the local community to assist with the attempted launch of the Bayliner and the successful launch of the RHIB. You were the point of contact for him.
- (viii) You paid that local resident and others who assisted in the attempted and successful launches (with cash given to you by Mr Tuilotolava).

- (ix) You participated in the unsuccessful launch of the Bayliner. You liaised with the local resident during the course of the attempted launch and afterwards to arrange the repairs to the Bayliner.
- (x) You participated in the “brainstorming” session after the failed attempt to launch the Bayliner for the purpose of coming up with another plan.
- (xi) You took part in the successful launch of the RHIB on 11 June.
- (xii) You participated in the meeting after the successful launch of the RHIB when you and Mr Fakaosilea swapped roles.
- (xiii) As a consequence of the change in roles, you acted as the getaway driver in transporting Mr Wan and Mr Tsai back to Auckland. You left the RAV4 in South Auckland for another person to collect.

[31] Additionally, you were present when the methamphetamine was landed, but you did not take part in the unloading as your job was to return Mr Wan and Mr Tsai to Auckland.

[32] I accept that you were unwell from the time of the return journey to Northland after you travelled to Auckland with others to obtain more money. But you were nevertheless able to carry out tasks as directed from time to time.

Ms Fakaosilea

[33] Ms Fakaosilea, the Crown put its case against you on the charge of importing also on the basis that you were a secondary party. You called your brother, Ulakai Fakaosilea, as a witness in the trial on your behalf. His evidence was to the effect that you had no knowledge of his activities up north and you did not direct him to do anything. By its verdict, I consider the jury must have rejected that evidence given by your brother. I find that you carried out the following tasks with the requisite guilty knowledge to assist in the importation of controlled drugs:

- (a) You were connected with attempts to ensure that two Asian men would succeed in entering New Zealand on 5 June 2016 by liaising with your brother via a cellphone;
- (b) You were the person, Blaze, who provided the cash to Mr Tuilotolava and Mr Fonua to purchase the Bayliner;
- (c) You arranged the hire of a RAV4 rental vehicle, in the name of your uncle's friend, for your brother to use to take Mr Wan and Mr Tsai up north;
- (d) You provided instructions to your brother in connection with his trip up north and jobs he was to undertake, and continued to do so while he was up north;
- (e) You organised the hire of a second campervan, which travelled up north on 12 June 2016, carrying toolboxes to be used in connection with the methamphetamine;
- (f) You and an unnamed male had previously collected those toolboxes from a residential property where Mr M had stored them, and you loaded them into the campervan; and
- (g) You provided instructions to your cousin, who was one of those who travelled north in the second campervan with the metal toolboxes, about the delivery of those toolboxes and about the use of her phone on the trip up north.

[34] In relation to the charge of participating in an organised criminal group, the Crown led evidence over and above the evidence that specifically related to the importation. I find, in relation to the charge of participating in an organised criminal group, you did the following:

- (a) In March 2016, you handed over a box to Mr M. On two subsequent occasions you handed over sports bags to him. I accept those bags and

the box contained controlled drugs. I also accept the inference can be drawn that you knew that there were controlled drugs in the sports bags and the box.

- (b) On another occasion, you received a bag containing controlled drugs from Mr M which he had collected from Britomart.
- (c) You were involved in delivering and collecting large amounts of money on at least five occasions in the period prior to 12 June. The evidence of your cousin was that she assisted you with five drop offs or pick-ups. On the first occasion, when your cousin assisted you, there was \$300,000 cash in the bag that you dropped off. You paid your cousin \$500 for driving you.

The second occasion involved around the same amount of money, \$300,000.

The third occasion involved collecting money. Your cousin again drove you, and you went into a residential property and came out carrying a sports bag which your cousin describes as full of money and quite heavy. It is not clear how much money was in the bag.

The fourth occasion was described as a money drop. Your cousin was driving a vehicle which had been rented. You delivered a bag to a man waiting on the street. It is not clear exactly what was in the bag.

The fifth occasion, when your cousin was again present, involved you receiving money from Mr M. The money was in two white plastic buckets and two bags. The buckets were full of notes. On that occasion, you gave your cousin \$500 for assisting you with the pick-up.

- (d) Your cousin assisted you four times to count money. On one occasion, at her house, the two of you counted around \$400,000 in cash. It is not

clear how much was involved in the three other occasions, but it was a mixture of notes (20s, 50s and 100s). During the approximate four-week period your cousin assisted you to count money, you would give her \$1,000 a week. On each occasion, it would take around a couple of hours to count the amount of money that was involved.

- (e) You told your cousin the money that you dropped off, received and counted was from drugs.
- (f) You provided your cousin with a Blackberry device for the purpose of communicating with you and others.
- (g) In your various communications, you used Blackberry devices, a number of different cellphones and borrowed cellphones of others to avoid detection.

Setting a starting point

[35] You both face a possible maximum penalty of life imprisonment for the lead charge of importing methamphetamine. The Court of Appeal's guideline judgment in *R v Fatu* applies.¹³ Recently, a full bench of the Court of Appeal sat on consolidated appeals for the purpose of considering aspects of *Fatu*. However, until a judgment is given in those appeals, the principles in *Fatu* are binding on this Court. As was said by Moore J, when sentencing two of your co-offenders:¹⁴

[28] Within the *Fatu* framework, the quantity of methamphetamine is "of prime importance" in fixing starting points. But it is not the only consideration. As was recently stated after reviewing the relevant authorities it was observed:

"The culpability of an offender is influenced not only by the quantity of methamphetamine they supply but also by their role in a drug dealing operation and other aggravating or mitigating factors including whether they are addicted to drugs themselves."

[29] That judicial observation must be correct. The Courts are required to distinguish between the individual roles of offenders. Where, as in this case, multiple parties carry out different functions in successfully importing a large

¹³ *R v Fatu* [2006] 2 NZLR 72 (CA).

¹⁴ *R v Fakaosilea*, above n 11.

quantity of drugs, the sentences imposed must reflect the respective culpability of the players. The “brains” and directors carry a greater level of culpability than the “hands”. And the assessment of the culpability of the “hands” will depend on their particular role and involvement.

(footnotes omitted)

[36] The quantity of methamphetamine puts this case at the top end of Band Four of *Fatu*, which is described as “importing very large commercial quantities (500 grams or more)”, carrying a sentencing range of 12 years to life imprisonment.¹⁵

[37] To provide necessary background for a starting point, particularly for parity considerations which I address later in these remarks, I refer to the starting points for the importation charge adopted by the judges who sentenced your co-offenders.

[38] Fogarty J described Mr M as “a conscientious participant in the endeavour” and “[w]hile not at the very top of the pyramid of the New Zealand organisation [Mr M was] highly trusted”.¹⁶ The Judge noted that the bulk of the methamphetamine was in Mr M’s possession at the time of his arrest, which indicated a high level of trust within the group.¹⁷ The Judge also referred to Mr M travelling and staying in the Northland area for a period of time prior to the landing of the methamphetamine and that he was involved in the sourcing of significant and expensive equipment to assist in the importation.¹⁸ Fogarty J adopted a starting point of 30 years’ imprisonment.¹⁹

[39] Lang J, in sentencing Mr Fonua, described him as:²⁰

... a trusted lieutenant who was required to carry out physical tasks at the behest of those superior to him in the group. There were at least two of those, Mr Iusitini and Mr Tuilotolava, and there may have been more.

[40] Lang J went on to say that Mr Fonua was not involved in financing the operation or the overall planning of it. There was no suggestion that he was responsible for, or involved in, the sourcing of the product.²¹ Lang J determined that,

¹⁵ *R v Fatu*, above n 13, at [36](d).

¹⁶ *R v [M]*, above n 7, at [4].

¹⁷ At [19].

¹⁸ At [13](b).

¹⁹ At [21].

²⁰ Fonua sentence indication, above n 8, at [24].

²¹ At [25].

viewing the facts overall, Mr Fonua's culpability was similar to that of Mr M. While there were some differences in the tasks they undertook, they carried out broadly similar acts.²² Lang J selected a starting point of 30 years' imprisonment.

[41] Lang J also sentenced Mr Wan. The Judge referred to Mr Wan meeting with those higher up the organisation in Hong Kong; that he agreed to come to New Zealand and to become directly involved in the importation of methamphetamine for monetary gain; and that, once in New Zealand, he became a fully-fledged member of the group providing interpretation services to Mr Tsai.

[42] Lang J stated that the most important feature of Mr Wan's role was that he was sufficiently trusted to be part of the crew to go out to sea in order to pick up the drugs.²³ The Judge considered that this element of trust in him by the organisers meant that he performed a role that was particularly important to the overall success of the importation.²⁴ The Judge also noted that Mr Wan and Mr Tsai were removed from the scene as soon as the boat landed and were therefore immediately protected from the danger of being caught in possession of the drugs.²⁵ Lang J was satisfied that Mr Wan's culpability was significantly beyond that of Mr Fonua and certainly beyond that of Mr M.²⁶ The Judge adopted a starting point of 32 years' imprisonment.²⁷

[43] Downs J sentenced Mr Tuilotolava. The Judge considered that his culpability was equivalent to that of Mr Wan. The Judge referred to Mr Tuilotolava's critical role in overseeing the successful landing of the methamphetamine and readying it for distribution. The Judge described Mr Tuilotolava's role as that of Mr Iusitini's lieutenant. For reasons of parity, the Judge adopted the same starting point as Lang J did for Mr Wan, that is 32 years' imprisonment.²⁸

[44] Moore J sentenced Mr Fakaosilea and Mr Iusitini. The Judge assessed Mr Fakaosilea's role as similar to that of Mr Fonua. However, he accepted that

²² At [27].

²³ *R v Wan*, above n 9, at [23].

²⁴ At [23].

²⁵ At [24].

²⁶ At [25].

²⁷ At [36].

²⁸ *R v Tuilotolava*, above n 10, at [26].

Mr Fonua was involved in more stages of the operation than Mr Fakaosilea. The Judge therefore assessed Mr Fakaosilea’s culpability as slightly less than that of Mr Fonua.²⁹ He adopted a slightly reduced starting point of 29 years’ imprisonment.

[45] In relation to Mr Iusitini, Moore J concluded that he, Mr Wan and Mr Tuilotolava “played important leadership roles at various points in the operation”.³⁰ The Judge noted that a marked feature of the operation was the division of labour and organisation at various discrete stages. The Judge concluded that Mr Iusitini “held some level of seniority in the group” and that his culpability was on a par with that of Mr Wan and Mr Tuilotolava.³¹ He therefore adopted the same starting point as was adopted for those two offenders, namely 32 years’ imprisonment.

[46] I should make it clear that although finite starting points were ultimately adopted in all six cases, the Judges were of the view that a preliminary starting point of life imprisonment was appropriate as the offending was within the most serious of cases. Pleas of guilty, personal circumstances and parity considerations resulted in finite starting points being adopted.

Mr Cullen

Preliminary starting point

[47] Mr Annandale, for the Crown, submits that s 8(c) of the Sentencing Act has relevance given the quantity of methamphetamine and the scale of operation.

[48] Section 8(c) provides that a Court is required to 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 the circumstances relating to the offender make that inappropriate.

[49] Mr Annandale submits that your role was the same as that of Mr Fonua and refers to the sentencing remarks of Lang J where the Judge observed that Mr Fonua’s

²⁹ *R v Fakaosilea*, above n 11, at [38].

³⁰ At [56].

³¹ At [56].

role met “the criteria for the imposition of life imprisonment by a relatively small degree”.³² Mr Annandale accordingly submits that, given you and Mr Fonua performed the same role, your culpability must also meet the criteria for the imposition of life imprisonment.

[50] Ms Maxwell-Scott, on your behalf, submits that although quantum is relevant, it is not the only determinative factor for sentencing purposes. She submits the Court needs to evaluate your culpability and should not place undue emphasis on the amount of methamphetamine. Ms Maxwell-Scott refers to the comment by Lang J regarding Mr Fonua that I have mentioned and submits that your culpability, while not significantly less, could be said to be at a relatively smaller degree than of Mr Fonua. She therefore submits that s 8(c) is not engaged. In other words, while your offending falls at the high end of drug offending, you are not at the highest level of criminality for which life sentences should be reserved.

[51] I do not agree. For reasons that I will refer to shortly, I assess your culpability to be the same as that of Mr Fonua. I also note that, in sentencing Mr Fakaosilea, Moore J assessed his culpability as slightly less than that of Mr Fonua.³³ The Judge nevertheless adopted life imprisonment as a preliminary starting point.³⁴

[52] I see no reason to make a distinction between you and your co-offenders in relation to the preliminary starting point. I therefore adopt life imprisonment as the preliminary starting point, following the approach adopted by the Judges sentencing your co-offenders.³⁵

[53] I next need to consider whether, having regard to the precise nature of the role you played, your wider personal circumstances and parity with your co-offenders, a sentence of life imprisonment would be inappropriate.

³² Fonua sentence indication, above at n 8, at [25].

³³ *R v Fakaosilea*, above n 11, at [38].

³⁴ At [32].

³⁵ Fonua sentencing remarks, above n 8, at [3]; *R v Wan*, above n 9, at [14]; *R v Tuilotolava*, above n 10, at [14]; and *R v Fakaosilea*, above n 11, at [32].

Culpability

[54] In making her submissions on culpability, Ms Maxwell-Scott submits that, although you were clearly involved in assisting the importation to occur, your roles were relatively menial. The tasks you undertook meant that you were highly exposed; they did not relate to the setting up of the drug importation nor the onward distribution; they were for relatively modest financial gain (in comparison to others and the drug value); and you were, ultimately, easily replaceable, Ms Maxwell-Scott submits. Additionally, she says your involvement in any offending was only for around three weeks.

[55] I assess your culpability as the same as both Mr M and Mr Fonua. To adopt the words of Lang J, “you were a trusted lieutenant” who was required to carry out physical tasks as directed by those superior to you. Mr Tuilotolava was directly above you and he was receiving his instructions from Mr Iusitini. While some of the tasks you carried out were different from those carried out by Mr Fonua and Mr M, you had broadly similar roles.

Personal circumstances

[56] Mr Cullen, you are 36 years old and of Māori descent. In your favour, you have no previous convictions, so you are able to point to previous good character. Ms Maxwell-Scott refers to your personal circumstances, submitting that they form a basis for further discounts in terms of personal mitigation. I will refer to those circumstances shortly in that context. However, for present purposes, I am considering whether your personal circumstances would make a sentence of life imprisonment inappropriate.

[57] The writer of the Provision of Advice to Courts (PAC) report says that you continue to deny your offending. You said, to the writer of that report, that you were not aware of the offending intent of the others involved. You told the report writer that, at the time, you were on your own spiritual journey and that you happened to meet up with two of the offenders and developed a friendship. You said that if you had been in better health, you may not have been ignorant to the signs of their ill intent.

However, you said, at the time, you were naïve to this and saw your actions as supporting your newfound friends.

[58] That continued denial quite frankly does not assist you. However, you seem to have adopted a different stance when speaking to Shelley Turner who has prepared a s 27 cultural report on your behalf. I say that because, after referring to your family's land and your plans to develop a vineyard on it, she states in her report:

Stevie's dream to develop their whenua was short-lived. At the time of his studying, he was presented with an opportunity to earn some fast money. The temptation was too great ...

[59] As at this morning, Ms Maxwell-Scott says that you now accept all that occurred.

[60] In your favour, you have accepted your current circumstances and plan to use the experience and utilise the time in custody and not waste it. The writer of the PAC report says that you are motivated to engage in any opportunities made available to you by Corrections such as programmes, education, employment and supporting and mentoring others in understanding and utilising the time they have in custody. Ms Turner also mentions these opportunities for you. She notes your intelligence. That, coupled with your ambitious nature, means that you will make the most of your time in prison, in her view.

[61] I also take into account the letters from various family members and friends which have been provided to the Court today. They are supportive of you.

[62] Taken overall, your personal circumstances count in your favour in determining whether or not a sentence of life imprisonment is inappropriate. Although you do not have the benefit of a guilty plea, I do not consider that this is a reason to make a distinction between you and Mr M and Mr Fonua in determining whether a sentence of life imprisonment would be inappropriate. For the reasons I have mentioned, I consider it would be inappropriate.

Starting point

[63] The Crown submits that if the Court concludes that a finite sentence should be imposed (which is my conclusion) then the appropriate starting point is 30 years' imprisonment. Ms Maxwell-Scott agrees.

[64] Those submissions coincide with my own view. I adopt a starting point of 30 years' imprisonment. I do so principally having regard to a long-standing and well-recognised principle of parity between co-offenders which constrains my sentencing response. I also take into account your personal circumstances.

Personal mitigating factors

[65] Adjustments for personal circumstances in very serious cases of drug offending are less than they might be in other areas of the criminal law. That is especially so where the offending is for commercial gain, which is the case here. However, the Court does have a discretion to give a modest discount to reflect mitigating factors. For example, in sentencing Mr Fonua, Lang J was persuaded that a modest discount of six months was appropriate having regard to Mr Fonua's prospects of rehabilitation.

[66] In your case, I have had the assistance of Ms Turner's report. She says that, unlike most people she works with in the criminal justice system, you have not been severely disadvantaged throughout your life. At worst, your parents separated when you were a young child and the absence of your father meant that you grew up without a strong male role model. However, Ms Turner says that your mother more than provided for you and nurtured you through life in a stable environment. Ms Turner says that in many ways, by comparison to many of the men she works with in prison, you have lived quite a privileged life.

[67] But Ms Turner says there is one factor about your background that is common to practically every other man in prison whom she has worked with, and that is that you are Māori. Your personal experience of being a disadvantaged Māori centred on economic deprivation. You were disheartened by the inability to secure financial capital to pursue your aspirations for commercially viable businesses. In your view, this came down to the colour of your skin. In order for you to achieve bigger things

in your life, you told Ms Turner it was 100 times more difficult than anyone else. Your white friends did not have the same struggles.

[68] Ms Turner says it is that unique experience of cultural disadvantage that she presents as the causal nexus of your offending. She says the connection between your background and your offending is not simply about making fast money through the illicit drug trade. It is about disadvantage brought about by cultural, social and economic deprivation. She says ultimately the underlying cultural factor of your offending was your desire to strengthen your cultural identity and cultural connectedness to your whenua through a commercially viable and sustainable vineyard business.

[69] Ms Turner draws on a health model devised by Sir Mason Durie that talks about the four cornerstones of wellbeing: taha tinana (physical), taha wairua (spiritual), taha hinengaro (mental) and taha whānau (family). If any of these cornerstones is deficient, a person's wellbeing is impacted and that can manifest as poor decision-making, poor behaviour, and cultural and family disconnectedness. Ms Turner says, for you, all four cornerstones have been damaged and, as a consequence, your wellbeing has diminished. She says all of those factors are relevant when considering the causal nexus of your offending. She says this explanation does not serve to condone your offending, instead it offers a rationale to help mitigate your culpability.

[70] I consider that Ms Turner's report, which establishes a relevant causal nexus, enables me to exercise my discretion to give a modest discount of two years to reflect those mitigating circumstances.

[71] Additionally, in your case, there is a factor that I have not yet referred to and which I am required to take into account. That is the time you have spent on electronically-monitored (EM) bail.³⁶

[72] I am told that this was for a period of two years and eight months and that there were no breaches during this period. As to absences from your address, I am told there was one occasion when you left to go to a funeral and other occasions for WINZ

³⁶ Sentencing Act, s 9(2)(h).

appointments. On account of those factors, I give you a 12-month discount for the time you have spent on EM bail.

[73] With a total discount of three years, that brings your end sentence on the importing charge to 27 years' imprisonment.

Minimum period of imprisonment

[74] An MPI is the minimum period you are required to serve before you are eligible for parole. An MPI is imposed to reflect the inadequacy of ordinary parole provisions for any or all of the purposes of accountability, denunciation, deterrence and community protection.³⁷ In your case, it seems unlikely that you will pose a risk to the community in the future.

[75] However, as was said by Downs J when sentencing Mr Tuilotolava:³⁸

... the imperatives of denunciation and deterrence in conjunction with the unprecedented scale of your offending and insidiousness of the drug concerned require an emphatic response. More particularly, this jurisdiction must not be viewed as "soft" by those who may otherwise bring large amounts of controlled drugs here, especially a drug as pernicious as methamphetamine.

[76] Those words apply with equal force in your sentencing, together with the imperative of accountability. Courts routinely impose MPIs in the region of 50 per cent in drugs cases but that is not possible here, as the maximum MPI that can be imposed is 10 years.

[77] The Crown submits that a minimum period of up to the statutory maximum of 10 years is appropriate.

[78] Ms Maxwell-Scott, on your behalf, accepts that the statutory maximum should apply.

[79] I approach this issue in a slightly different way. MPIs were imposed when some of your co-offenders were sentenced: Mr Fonua (eight years and nine months);³⁹

³⁷ Section 86(2).

³⁸ *R v Tuilotolava*, above n 10, at [36].

³⁹ Fonua sentencing remarks, above n 8, at [19].

Mr Wan (nine years and six months);⁴⁰ Mr Tuilotolava (10 years);⁴¹ Mr Fakaosilea (eight years and nine months),⁴² and Mr Iusitini (10 years).⁴³

[80] In principle, I do not see a reason to make a distinction between you and Mr Fonua and Mr Fakaosilea on this issue. However, to adopt the same MPI would be to impose an MPI of less than the period you would be required to serve in any event, that is nine years (being one-third of 27 years).

[81] Equally, I do not consider a 10-year MPI is justified. While I have emphasised the principles of denunciation, deterrence and accountability, especially in the context of large-scale offending for commercial gain, I take into account the contents of the cultural report, in particular your whānau support, which in my view indicates that you are unlikely to pose a risk to the community in the future.

[82] I intend to impose an MPI of nine years' imprisonment. While, on the basis of the law as it stands, that might be seen to be academic, I do so in case there are any law changes in the future.

Participating in an organised criminal group

[83] I also need to consider the appropriate sentence on the charge of participating in an organised criminal group. The Crown case at trial was that, between 1 January 2016 and 17 June 2016, an organised criminal group existed which had as an objective the obtaining of material benefits from the importation and distribution of controlled drugs. Mr Annandale refers to it as a "drug syndicate" with New Zealand and international components.

[84] In your case and in terms of your role, the Crown relied on the same evidence which it relied on to support the importing charge. The Crown does not suggest you had a wider role. Your participation was limited to the importation. I propose to impose a sentence of five years' imprisonment to be served concurrently, in other

⁴⁰ *R v Wan*, above n 9, at [44].

⁴¹ *R v Tuilotolava*, above n 10, at [37].

⁴² *R v Fakaosilea*, above n 11, at [45].

⁴³ At [60].

words, at the same time as your period of imprisonment on the importing charge. I do so for parity reasons. This was the sentence imposed on this charge concurrently for Mr Fonua, Mr Tuilotolava, Mr Fakaosilea and Mr Iusitini.

Final sentence

[85] I now impose your final sentence.

[86] Mr Cullen, please stand:

- (a) On the charge of importing methamphetamine, you are sentenced to 27 years' imprisonment;
- (b) You must serve a minimum period of imprisonment of nine years; and
- (c) On the charge of participating in an organised criminal group, you are sentenced to five years' imprisonment to be served concurrently with your sentence on the lead charge of importing methamphetamine.

[87] Stand down, Mr Cullen.

Ms Fakaosilea

Preliminary starting point

[88] Mr Annandale submits that the importing charge should be considered as the lead charge and that s 8(c) of the Sentencing Act is also engaged in your case. He says that while there is no evidence that you were ever present in Northland, the evidence demonstrates that you played an important role especially when the Northland-based group encountered difficulties in getting the methamphetamine ashore. Mr Annandale submits that just because you were not physically present in Northland that does not detract from your culpability.

[89] He further submits that your role was more extensive than that of your brother. While your brother was up north, you were doing things from afar to make sure that the methamphetamine would be imported. Mr Annandale says that was the position

also for Mr Iusitini. Mr Annandale submits that your role was akin to that of other offenders who performed logistical tasks such as Mr M and Mr Fonua.

[90] Ms Pecotic, on your behalf, submits that the Court should not place undue emphasis on the amount of methamphetamine involved. It is important, Ms Pecotic submits, for the Court to examine your role in order to determine your culpability. She submits that you played a minor role in the importation. She says that you could have easily been replaced by someone else. She submits that the second charge, participation in an organised criminal group, demonstrates a higher degree of culpability on your part and therefore that charge ought to be regarded as the lead offence.

[91] In support of her submission that you played a minor role, Ms Pecotic refers the following:

- (a) You did not go to Northland, nor did you make any arrangements in relation to any of the activities of the individuals whom she refers to as the main participants in Northland.
- (b) You were not listed as a contact on a Blackberry phone used by Mr M for the Northland job, nor were the names of Blaze or Bobbie featured. There was no communication between you and the main participants. Your only point of contact was your brother up north.

[92] Ms Pecotic submits there was no evidence that you provided money to assist the group. I have already made a factual finding rejecting that submission in connection with the purchase of the Bayliner.

[93] Ms Pecotic submits that at the most you were responsible for assisting your brother with the hireage of the second camper van, the collection of the toolboxes and the delivery of those to Northland. But, she says, there were others involved in the hireage and transportation. Ms Pecotic therefore says your role was insignificant right up until the time the methamphetamine landed on the beach.

[94] In my view, Ms Pecotic significantly understates the importance of your role and consequently which charge should be the lead charge. Once it was apparent that an alternative means of landing the methamphetamine was required, the purchase of a boat was necessary. Members of the Northland group travelled to Auckland for that purpose. I have determined, on the evidence, that you were the person, Blaze, who provided the money for the boat. That indicates a high level of trust in you. You were not the naïve pawn as Ms Pecotic submitted.

[95] In carrying out all the tasks I have referred to, I consider that you played an important part in ensuring that the methamphetamine was imported.

[96] I see no reason to make a distinction between you and your co-offenders in relation to the preliminary starting point. I therefore adopt life imprisonment as the preliminary starting point, following the approach by the Judges in sentencing your co-offenders.⁴⁴

[97] I next need to consider whether, having regard to the precise nature of the role you played, your wider personal circumstances and parity with your co-offenders, a sentence of life imprisonment would be inappropriate.

Culpability

[98] The tasks you undertook were designed to ensure the success of the importation just as much as the jobs performed by Mr Cullen, Mr Fonua and Mr M, who were on the ground up north.

[99] I accept that, in respect of the importation charge, you were involved over a shorter period than four of the group up north. They travelled from Auckland on 23 May 2016. The evidence was that your assistance with the importation started on 5 June 2016. Your brother, who arrived up north closer to the date of the importation, was assessed as having a slightly lesser role than the group who had been there for a longer period. I take into account the fact that you did not physically take part in the

⁴⁴ Fonua sentencing remarks, above n 8, at [3]; *R v Wan*, above n 9, at [14]; *R v Tuilotolava*, above n 10, at [14]; and *R v Fakaosilea*, above n 11 at [32].

importation. But you provided important logistical support from 5 June including, as I have mentioned, providing the money to pay for the boat to be used in the importation.

[100] For all the above reasons, I assess your culpability as less than Mr M, Mr Fonua and Mr Cullen, and slightly less than your brother.

Personal circumstances

[101] The Court has the assistance of a report from a registered psychologist and a s 27 cultural report by Josephine Nickel as well as the usual PAC report.

[102] Ms Fakaosilea, you are of Tongan descent, you are 31 years of age and the oldest of eight siblings. You have four brothers and three sisters. Your 30-year-old brother is the co-offender whom I have mentioned in the course of these sentencing remarks. You have two children, one of whom lives with a family member, either your mother or sister (there seems to be inconsistent advice to the Court in that regard), and one who was adopted out to an uncle and aunt who have moved from New Zealand to Australia. Their present whereabouts is not known.

[103] The psychological report offers the opinion that you suffer from post-traumatic stress disorder. It provides an evidential basis for that conclusion. I do not go into the details as I understand you wish your privacy in this regard to be respected. The s 27 cultural report refers to cultural and social disadvantage and sets out factors which the writer considers contributed to your offending. I will go into more detail about that report when I come to personal mitigating factors.

[104] Turning to other personal circumstances relevant to whether a sentence of life imprisonment would be inappropriate, you do not have any previous convictions for offending that occurred prior to this offending. However, in my view, the subsequent offending for which you were sentenced in December 2018 indicates that the present offending was not an isolated period of offending, but part of a pattern of conduct of dealing in large amounts of Class A controlled drugs for the purpose of material

benefits during 2016. Accordingly, any mitigation arising from the fact that you had no previous convictions at the time of the offending before the Court is negated.⁴⁵

[105] You were sentenced on 18 December 2018 following your pleas of guilty shortly before trial. You pleaded guilty to one charge of supplying 1.9 kilograms of cocaine on or about 29 September 2016 and one charge of supplying 9 kilograms of methamphetamine on 8 November 2016. On the lead charge, you were sentenced to 14 years and six months' imprisonment with concurrent sentences of 11 years' and seven years' imprisonment imposed on the other two charges. Evidence of your conduct in relation to that offending was admitted as propensity evidence in your trial.

[106] The Crown submits that in the context of the Court having to sentence you for the present offending, your subsequent offending and convictions mean that the Court cannot step back from life imprisonment. Mr Annandale submits that aspect of your personal circumstances demonstrates that it is not inappropriate to impose the maximum penalty of life imprisonment. There would be no double-counting in doing so as the present offending was not taken into account by Palmer J when he sentenced you in December 2018. Mr Annandale further submits that the reports available to the Court do not reveal any other personal circumstances that would render the maximum penalty of life imprisonment inappropriate.

[107] Notwithstanding your other convictions, and principally because of the contents of the psychologist's report and the s 27 cultural report, I have reached the conclusion that a sentence of life imprisonment would be inappropriate having regard to your personal circumstances. In particular, I note the opinion of the psychologist that you may struggle with a long sentence of imprisonment. As with Mr Cullen, although you do not have the benefit of a guilty plea, I do not consider this is a reason to make a distinction between you and your co-offenders in determining whether a sentence of life imprisonment is inappropriate.

[108] I will return to the other offending for which you have been sentenced in the course of constructing the appropriate sentence.

⁴⁵ *R v Barrett* [1999] 1 NZLR 146 (CA) at 150–151.

Starting point

[109] Having determined that I should impose a finite sentence of imprisonment, I turn to the starting point. The Crown submits that if the Court determines that a finite sentence should be imposed, the appropriate starting point is in the range of 30 to 31 years' imprisonment. That is reflective of your culpability and role within the organised criminal group.

[110] Ms Pecotic submits the appropriate starting point is one of three years' imprisonment. There is a vast gulf between the parties' submissions. In my view, Ms Pecotic's submission is completely unrealistic. I have assessed your culpability as slightly less than that of your brother in relation to the importing charge. The starting point adopted for him was 29 years' imprisonment. In your case, I adopt a starting point of 28 years' imprisonment on the importing charge.

Participating in an organised criminal group

[111] Reflecting the principles in s 84(2) and (3) of the Sentencing Act and consistent with the way in which your co-offenders were sentenced on the charge of participating in an organised criminal group, I intend to impose a concurrent sentence for this offence.

[112] However, because your role in the organised criminal group encompassed activities on your part in addition to your conduct in connection with the importation on 12 June 2016, the starting point on the importing charge needs to be adjusted upwards to reflect the totality of your offending.⁴⁶

[113] In his decision determining facts for sentencing purposes, Palmer J found:⁴⁷

[15] ... The evidence establishes, beyond reasonable doubt, she had a vital role as a trusted communications link, was willing to play that role and knew what she was doing. As she admits, she was also trusted to count large sums of money, amounting to millions of dollars. ... She was more than a minor cog in the methamphetamine supply operation.

⁴⁶ Sentencing Act, s 85(4).

⁴⁷ *R v F* [2018] NZHC 2602.

[16] But I do not consider the Crown has proven, beyond reasonable doubt, Ms F was the kingpin or in charge of directing or organising the operation. ...

[114] I consider that the above findings accurately summarise your role in participating in the organised criminal group. There was no evidence that you were the kingpin but your role, as I have earlier summarised, was vital and you were trusted to deliver, receive and count very large sums of money as well as delivering controlled drugs.

[115] I therefore add a further 12 months' imprisonment to the starting point of 28 years to reflect the totality of your offending. That brings your sentence to 29 years' imprisonment before I consider other factors.

[116] As I have already noted, your co-offenders who were sentenced on this charge, each received concurrent sentences of five years' imprisonment. Given the evidence of further conduct on your part underpinning this charge, I impose a concurrent sentence of seven years' imprisonment.

Personal mitigating factors

[117] As I mentioned when sentencing Mr Cullen, adjustments for personal circumstances in very serious cases of drug offending, are less than they might be in other areas of criminal law. I also mentioned, however, that the Court does have a discretion to give a modest discount to reflect mitigating matters.

[118] I refer in more detail to Ms Nickel's report. It is structured on a Fonofale model of health which examines a person's wellbeing from a holistic perspective using the fale (house) as a metaphor. Ms Nickel said the family, including the extended family, are the fundamental foundations for all Pacific Island cultures. She says that in your case, the foundation of your family was dysfunctional from a very young age. Your culture failed to protect you, and expectations placed on you as the eldest daughter compromised your ability to learn, develop and transition to adulthood. Ms Nickel says that the spiritual dimension was also lacking in your life. She says that your behaviour may be viewed as the epitome of dissonance from cultural and spiritual life and guidance.

[119] In terms of the physical dimension, Ms Nickel says events in your past disconnected you from your culture and your family. Your extended family did not protect you in the way that they should have in accordance with a traditional Tongan family. Ms Nickel refers to certain dramatic events in your life that she says undoubtedly impacted on your mental wellbeing and consequently your ability to make the right decisions at various times throughout your life.

[120] Ms Nickel says that when she asked you about any plausible link between your background and your offending, you spoke to her primarily about being in survival mode, an approach to life that had been ingrained in you from an early age. Ms Nickel says to use the Fonafale model of wellbeing to analyse your poor judgment that led to your offending; you are mentally, physically, spiritually and culturally impaired. She says that you have experienced a lot of trauma in your life — racism, bullying and abuse. Spiritually, your Christian values are weak to the point of being non-existent in some of the decisions that you have made in your life. The absence of strong Christian and cultural values has limited your ability to make rational decisions.

[121] Ms Nickel says the Fonafale analysis provides a way of understanding your personal experience and disadvantage and how that disadvantage can be the impetus for offending. In her view, your personal experience of disadvantage is relevant when considering the causal nexus to your offending. She says this explanation does not serve to condone your offending but instead it is offered as a rationale to help mitigate your culpability.

[122] I am satisfied that Ms Nickel's report, which establishes a relevant causal nexus, enables me to exercise my discretion to give a discount to reflect those mitigating circumstances. I also take into account the opinion of the psychologist that you may struggle intensely with a long term of imprisonment. Taking into account the evidence of the psychologist and the writer of the s 27 report, I give a discount of four years.

[123] That brings the sentence down to 25 years' imprisonment.

Other offending

[124] I return to the other offending for which you have already been sentenced. The Crown submits that in the event this Court were to impose a finite sentence on you, it ought to be imposed cumulatively on the existing sentence of imprisonment.

[125] Mr Annandale submits that if a concurrent sentence of imprisonment were to be imposed, then both would run at the same time. The effect would be that the sentence expiry date would be the finite sentence imposed for the present offending. In other words, the existing sentence of 14 years and six months' imprisonment would be consumed within the finite sentence imposed for the present offending. The Crown submits that in that case, the totality of your offending in 2016 would not truly be reflected. The Crown submits that it is not in the interests of justice especially when considering the scale and nature of the offending in September and November 2016.

[126] On the other hand, the Crown submits that if a cumulative approach is adopted, then both sets of offending will be reflected along with your culpability. The Crown notes that the Court has the ability to temper the total period of imprisonment by reference to the totality principle.⁴⁸ Mr Annandale submits if the Court were for example to adopt a 30-year sentence of imprisonment as a finite sentence in this case and then were to impose that cumulatively on a sentence of 14 years and six months' imprisonment, that would result in a total sentence of imprisonment of 44 years and six months' imprisonment. The Crown accepts that there would need to be an adjustment down to recognise the totality principle. But to adopt an end sentence that is comparable to your co-offenders, by imposing a concurrent sentence, would not reflect the totality of your actions in 2016.

[127] Ms Pecotic accepts that a cumulative sentence is appropriate and submits that it should be for a period of two years' imprisonment. That submission is based on her starting point which I have already rejected.

[128] Where there is a series of offences that results in sentencing by two different Judges, the proper approach at the second sentencing is for the Judge to determine

⁴⁸ Sentencing Act 2002, s 85(1).

what the appropriate overall sentence would have been if the offender had been sentenced on all charges at the same time, and to adjust the sentences imposed for the second group of offences accordingly.⁴⁹

[129] I agree that a cumulative sentence is appropriate. In my view the offending for which you are now being sentenced is a part of a course of offending involving Class A controlled drugs during 2016. Had you been sentenced for all the offending at the same time, I consider that the appropriate end sentence would have been 27 years' imprisonment, taking into account the totality principle. That is made up of 28 years on the importing charge as the lead charge, with a 12 month uplift for the charge of participation in an organised criminal group, a two year uplift for the offending which you have already been sentenced and a four year reduction for mitigating factors.

[130] Your earlier sentence was one of 14 years and six months' imprisonment. The result is a sentence of 12 years and six months' imprisonment on the two charges before this Court to be served cumulatively on your existing sentence.

Minimum period of imprisonment

[131] The Crown submits that a minimum period of imprisonment of up to the statutory maximum of 10 years is warranted.

[132] Ms Pecotic submits that a minimum term is not required and refers to the remarks of Palmer J that a MPI was not required in relation to that offending.⁵⁰ Palmer J considered that a particularly long non-parole period was not necessary to protect the community from you.

[133] I also note the protective factor that the psychologist refers to and that is that you have support from your family. It is also apparent from the letters provided to the Court that you have the support of friends.

⁴⁹ *R v Nuku* [1969] NZLR 343 (CA); and *Opetaita v R* [2013] NZCA 434.

⁵⁰ *R v F* [2018] NZHC 337 [*R v F* sentencing] at [31].

[134] However, in this case, while I acknowledge those comments, there are also the aspects of accountability, denunciation and deterrence. This was offending for commercial gain.

[135] I consider that an MPI is appropriate in your case. The statutory period of one-third is not sufficient to reflect the principles of accountability, denunciation and deterrence. I impose a minimum term of seven years' imprisonment.

Final sentence

[136] Ms Fakaosilea, please stand.

- (a) On the lead charge of importing methamphetamine, uplifted to reflect the additional charge of participating in an organised criminal group, you are sentenced to 12 years and six months' imprisonment. This sentence is to be served cumulatively on the sentence imposed on you on 18 December 2018;
- (b) You must serve a minimum period of imprisonment of seven years; and
- (c) On the charge of participating in an organised criminal group, I sentence you to seven years' imprisonment, to be served concurrently with the lead charge.

[137] Stand down please, Ms Fakaosilea.

Gordon J