Truong v The Queen [2015] NTCCA 5

PARTIES:	TRUONG, David v THE QUEEN
TITLE OF COURT:	COURT OF CRIMINAL APPEAL OF THE NORTHERN TERRITORY
JURISDICTION:	CRIMINAL APPEAL FROM THE SUPREME COURT EXERCISING TERRITORY JURISDICTION
FILE NO:	CA 4 of 2015 (21448627)
DELIVERED:	30 September 2015
HEARING DATE:	28 July 2015
JUDGMENT OF:	RILEY CJ, BARR and HILEY JJ
APPEALED FROM:	SOUTHWOOD J

CATCHWORDS:

CRIMINAL LAW – Drugs – application for leave to appeal against severity of sentence – manifest excess – applicant contends sentence inconsistent with prior sentences for like offending – applicant's contention based on quantity of drugs involved – quantity not sole or principal determinant for sentencing in drug offences – Victorian sentences not valid comparatives – general deterrence of particular importance – starting point of six years before discount for guilty plea not outside bounds of sentencing discretion – sentence not manifestly excessive – application for leave dismissed.

Criminal Code 1983 (NT) s 492(2)

Misuse of Drugs Act 1990 (NT)

Drugs, Poisons and Controlled Substances Act 1981 (Vic)

Dinsdale v The Queen (2000) 202 CLR 321; *Hili v The Queen* (2010) 242 CLR 520; *Lacey v Attorney-General (Qld)* (2011) 242 CLR 573; *Green v The Queen; Quinn v The Queen* [2011] HCA 49; (2011) 244 CLR 462; *Wong v The Queen* (2001) 207 CLR 584, applied.

Hanks v The Queen [2011] VSCA 7; *MacDonnell* (2002) 128 A Crim R 44; *Pittman v The Queen* [2013] NTCCA 16, followed.

R v Baumgarten [2015] NTSC 21449142 (12 February 2015) Sentencing remarks; *R v Bretherton* [2015] NTSC 21430412 (30 January 2015) Sentencing remarks,; *R v Deutscher* [2014] NTSC 21409690 (31 July 2014) Sentencing remarks; *R v Indrikson* [2014] NTCCA 10; *Markarian v The Queen* (2005) 228 CLR 357; *R v Wayne Brown* [2014] NTSC 21415775 (17 December 2014) Sentencing remarks, referred to.

Arie Freiberg: Fox and Freiberg's Sentencing: State and Federal Law in Victoria, 3rd Ed, Lawbook Co (2014).

REPRESENTATION:

Counsel:

Applicant:	S Lee
Respondent:	D Morters

Solicitors:

Applicant:	Robert Welfare & Associates
Respondent:	Office of the Director of Public Prosecutions

Judgment category classification:	B
Number of pages:	18

IN THE COURT OF CRIMINAL APPEAL
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Truong v The Queen [2015] NTCCA 5
No. CA 4 of 2015 (21448627)

BETWEEN:

DAVID TRUONG
Applicant

AND:

THE QUEEN
Respondent

CORAM: RILEY CJ, BARR & HILEY JJ

REASONS FOR JUDGMENT

(Delivered 30 September 2015)

THE COURT:

Introduction

[1] This is an application for leave to appeal against a sentence imposed upon the applicant for unlawfully supplying a commercial quantity of methamphetamine. The application came before a single judge of this Court and was dismissed. The applicant then referred the application to be determined by this Court pursuant to s 429(2) of the *Criminal Code 1983* (NT).

[2] On 10 February 2015, the applicant pleaded guilty to having unlawfully supplied a commercial quantity of methamphetamine to another person on

21 October 2014. The maximum penalty for the offence is imprisonment for 25 years. The applicant was sentenced to imprisonment for a period of four years and 10 months with a non-parole period of two years and five months.

[3] The applicant initially sought leave to appeal against the sentence on the following grounds:[1]

> 1. Counsel for the applicant failed to seek an adjournment for the purpose of having prepared and presented to the sentencing judge evidence of the applicant's addiction to methamphetamine and his treatment for that addiction.
>
> 2. As a result of counsel's failure to provide evidence of the applicant's addiction to methamphetamine, the learned sentencing judge misapplied the sentencing discretion.
>
> 3. The learned sentencing judge failed to apply the principle of parity in sentencing the applicant.
>
> 4. The sentence awarded to the applicant was manifestly excessive.

[4] In relation to proposed ground 1, the applicant foreshadowed seeking leave to adduce fresh evidence in relation to the applicant's addiction to methamphetamine and treatment for his drug abuse.[2]

[5] In this Court, however, the applicant did not press grounds 1, 2 and 3, and the application for leave to appeal was ultimately argued on the ground that the sentence was manifestly excessive. The applicant's principal argument as to manifest excess was a submission that the sentence was inconsistent with other sentences imposed by single judges of the Supreme Court for like

[1] AB 48: Affidavit in support of application for leave to appeal, par 9.
[2] AB 49: Affidavit in support of application for leave to appeal, par 6.

offending. The applicant also argued that the sentence was out of kilter with sentences imposed for like offending in Victoria.

[6] Before considering the parties' arguments on the hearing of the application, we summarise the offending.[3]

Facts of offending

[7] The applicant, who was then aged 27 years, flew from Sydney to Darwin carrying a sealed cryovac bag containing methamphetamine hidden inside his underwear. Detectives at Darwin airport searched him and found the methamphetamine. The drugs were subsequently found to weigh 55.81 grams. The commercial threshold for methamphetamine under the *Misuse of Drugs Act 1990* (NT) is 40 grams.

[8] When interviewed by police, the applicant admitted to knowingly being in possession of the drugs for the purposes of supply. He said that he was only a courier, transporting the drugs for others in order to satisfy a gambling debt. He said that he was in fear of the persons who had arranged for him to transport the drugs. He claimed that his role required him to call a nominated person when he arrived in Darwin and then drop off the drugs at a location to be indicated to him. He refused to 'name names'.

[9] Further investigation by police revealed that the applicant had recently received regular payments of large sums of cash from persons in Darwin: amounts totalling $16,800 received via Western Union in the period

[3] AB 2 - 3: Agreed Facts.

3 September 2014 to 15 October 2014, and $2,500 via Australia Post. Further, the mobile phone found in the applicant's possession contained numerous messages indicating he was involved in the supply of dangerous drugs.[4]

[10] In the Supreme Court, the applicant admitted that he was involved in the business of drug supply for commercial gain and was bringing the methamphetamine to Darwin in furtherance of that purpose. The applicant's admission to being a principal is to be contrasted with statements he made in his police interview that his role was limited to being a courier.

[11] The street value of the methamphetamine in his possession was agreed to be $83,400.[5]

The applicant's antecedents

[12] The applicant was born on 17 January 1987 and was 27 years and nine months old at the time of offending in October 2014. On 10 November 2013, in New South Wales, he had committed the offences of possession of equipment for administering prohibited drugs, dealing with property suspected to be the proceeds of crime and possessing a prohibited drug. On 13 October 2014, he was sentenced by the Local Court and fined $300, $500 and $300 respectively for those offences. The applicant thus had three convictions for drug-related matters.

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[4] The prosecution ultimately submitted that the significant number of financial transactions put into context the nature of the applicant's engagement in commercial activity: AB 23.9.
[5] AB 3: Based on a sale price of $150 a 'point' (0.10 gram).

[13] In addition, however, on 18 December 2013, he had committed the offences of supplying a prohibited drug in a quantity greater than an indictable quantity and possessing a prohibited drug. When those matters came before the Local Court on 24 July 2014, he was committed for sentence to the District Court.

[14] The recorded facts[6] in relation to the applicant's offending on 18 December 2013 indicated that he was apprehended by Police Officers in his vehicle in the Waterloo area of Sydney, said to be a known drug location. When Police searched the vehicle they found, inter alia, a Glad snap lock plastic bag containing methylamphetamine, which the offender said was for personal use only. The package containing the drug weighed 14 grams, and the record indicates that police believed that the drug itself would weigh approximately 8 grams. Messages found on the offender's multiple mobile telephones indicated that he was involved in the supply of prohibited drugs.

[15] The facts referred to in the previous paragraph would not necessarily be the final facts for sentencing in the District Court of New South Wales. However, it is clear that, at the time the applicant brought 55.81 grams of methamphetamine to Darwin on 21 October 2014:

- Only eight days previously, he had been sentenced by the Local Court, for his drug offending on 10 November 2013.

- He was still awaiting sentencing by the District Court for his offending on 18 December 2013 (possession of approximately

[6] AB 7; AB 57; exhibit P3.

8 g of methamphetamine and presumed supply of methamphetamine).

[16] The learned sentencing judge was aware of the pending sentencing proceedings in New South Wales and referred in his sentencing remarks to the fact that the applicant "was on bail for unresolved drug charges in New South Wales" when he committed the Northern Territory offence.

Sentencing proceedings in the Supreme Court

[17] In the course of submissions on 10 February 2015, defence counsel informed the court of the applicant's background. He was born in Sydney, to parents of Vietnamese-Chinese descent. He was from a well-respected family. He could speak both Mandarin and Cantonese. He had attended St Brigid's Primary School and Casimir Catholic College in Marrickville. He had completed Year 12. He was said to be intelligent and articulate. After leaving school he had commenced an apprenticeship as a mechanic, but did not continue. He had then worked occasionally for Dick Smith electronics. It is unclear when, and for how long, he had engaged in such employment. Defence counsel informed the court that the applicant had subsequently been "between jobs and transient", consistent with the history of drug use provided by the applicant to his lawyers.

[18] Defence counsel also informed the court in relation to the applicant's use of methamphetamine. The applicant started using methamphetamine when he was about 17 or 18 years old. After using the drug for a couple of months,

the applicant found he needed it "every day to function".[7] He had used it consistently for about 10 years. The applicant had "raging drug issues".[8] Defence counsel said that (at the time of submissions) the applicant had been drug-free for some months and that this was "the first time in a long time".[9]

[19] Defence counsel informed the court that the applicant funded his use of 'ice' by selling drugs, and that he gambled any surplus money he made from the sale of drugs. Defence counsel described the applicant as a mid-level drug supplier.

[20] The prosecutor informed the court that the Crown did not accept that the applicant's criminal activity was motivated by the need to generate cash to support an addiction, and that there was no evidence to support that claim.[10] The prosecutor submitted that the evidence demonstrated that the applicant's possession of methamphetamine on 21 October 2014 was not an isolated incident, and that the applicant had been involved in the commercial activity of drug supply for a significant period of time.[11] The judge then asked defence counsel whether he wanted an opportunity to obtain evidence about the applicant's addiction. An adjournment for this purpose was granted and,

[7] AB 6.
[8] AB 19.5.
[9] AB 22.2
[10] AB 23.2.
[11] AB 23.5.

upon resumption of the hearing, counsel said that the applicant did not wish to give evidence, and that he would like the matter completed.[12]

[21] In his sentencing remarks on 12 February 2015, the judge identified a starting point of imprisonment of six years, which was reduced to four years and 10 months to reflect the plea of guilty. A non-parole period of two years and five months was set. His Honour made the following statements in the course of his sentencing remarks:[13]

> The offending is serious offending. The offender was on bail for unresolved drug charges in New South Wales when he committed this offence. Methamphetamine is a particularly dangerous drug and the offending occurred in the context of an ongoing business of supply for commercial gain. The offender was aware of both the kind and quality of the drug that he supplied. Couriers such as the offender play a vital role in the supply of dangerous drugs. The supply of methamphetamine is becoming increasingly prevalent in the Northern Territory.
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> By way of mitigation, Mr Maley told the court that the offender had engaged in the supply of drugs because he had incurred significant gambling debts and to support his own use of methamphetamine. Mr Morters, the Crown Prosecutor, told the court that the Crown did not accept what the offender had asked Mr Maley to put to the court and the offender declined to provide any evidence to support the submissions that were made on his behalf. In the circumstances, I find that the main reason the offender committed this offence was for commercial gain.
>
> The main sentencing goals in this case are denunciation, punishment and deterrence. The offender and others must be deterred from committing the same or similar crimes in the future. While the offender has accepted responsibility for his conduct, I am not satisfied that he is genuinely remorseful, and his prospects of rehabilitation remain highly problematic. He has been engaging in the supply of drugs for a significant period of time. He committed

[12] AB 27.2.
[13] AB 31.

> this offence while he was on bail and he was caught with the drugs on his person. The Crown case was a very strong case and the offender had no realistic option other than to plead guilty.
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> The community must be protected from the supply of such dangerous drugs.

Consideration of applicant's arguments

[22] The applicant's principal argument as to manifest excess was a submission that the sentence was inconsistent with other sentences imposed by single judges of the Supreme Court for like offending.

[23] The term "consistency" generally refers to the treatment of unrelated cases that may have similar characteristics, whereas "parity" is generally used in a narrower sense to refer to the sentencing of co-offenders. Consistency, like parity, generally requires that similar sentences should be imposed for similar offences committed by offenders in similar circumstances.

[24] The principles of parity and consistency derive from, and reflect, the notion of equal justice, or equality before the law, explained by the High Court in *Green v The Queen*; *Quinn v The Queen*:[14]

> "Equal justice" embodies the norm expressed in the term "equality before the law". It is an aspect of the rule of law. … It requires, so far as the law permits, that like cases be treated alike. Equal justice according to law also requires, where the law permits, differential treatment of persons according to differences between them relevant to the scope, purpose and subject matter of the law. As Gaudron, Gummow and Hayne JJ said in *Wong v The Queen*:[15]

[14] [2011] HCA 49; (2011) 244 CLR 462, [28], per French CJ, Crennan and Kiefel JJ.
[15] (2001) 207 CLR 584, [65].

> "Equal justice requires identity of outcome in cases that are *relevantly* identical. It requires *different* outcomes in cases that are different in some relevant respect." [Emphasis in original]

> Consistency in the punishment of offences against the criminal law is "a reflection of the notion of equal justice" and "is a fundamental element in any rational and fair system of criminal justice".[16] It finds expression in the "parity principle" which requires that like offenders should be treated in a like manner.[17] As with the norm of "equal justice", which is its foundation, the parity principle allows for different sentences to be imposed upon like offenders to reflect different degrees of culpability and/or different circumstances.[18]

[25] The learned author of "Fox and Freiberg's Sentencing: State and Federal Law in Victoria" explains the differences between the concepts of consistency and parity as follows:[19]

> Though the concepts of consistency and parity are related, and are underpinned by the principle of equal justice, the questions they raise are not identical. Consistency will look generally to statistical sentencing ranges and comparable sentences among other factors, to determine whether a sentence is manifestly excessive or inadequate. Parity will look to the relationship between sentences imposed upon co-offenders to determine whether there is such a difference in the sentences imposed upon co-offenders as to engender a justifiable sense of grievance.

[26] In *Hili v The Queen,*[20] the High Court discussed general concepts of "systematic fairness" and "reasonable consistency" in sentencing, as an aspect of the administration of federal criminal justice. Those concepts apply to persons charged with similar offences arising out of unrelated

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[16] *Lowe v The Queen* (1984) 154 CLR 606 at 610, per Mason J.
[17] *Leeth v Commonwealth* (1992) 174 CLR 455 at 470, per Mason CJ, Dawson and McHugh JJ.
[18] *Postiglione v The Queen* (1997) 189 CLR 295 at 301, per Dawson and Gaudron JJ.
[19] Arie Freiberg: *Fox and Freiberg's Sentencing: State and Federal Law in Victoria*, 3rd Ed, Lawbook Co (2014), p 438 [6.190].
[20] *Hili v The Queen* (2010) 242 CLR 520 at [47] - [56], per French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ.

events. The consistency they require is "consistency in the application of the relevant legal principles, not some numerical or mathematical equivalence".[21] Further, as Heydon J observed in a separate judgment in *Hili*:

> [77] Sentences must be reasonably consistent. But it does not follow that disparities between them may not exist. … where marked disparity renders sentences vulnerable on appeal, it cannot be said that any particular disparate sentence is necessarily wrong merely because it is disparate. Indeed, even within a single jurisdiction, one court … may arrive at sentencing results in particular cases which are different from those reached by earlier courts in that jurisdiction without being open to appellate reversal or criticism for "error" merely because of those differences.
>
> [78] Thus two courts may arrive at different sentences because the later court considers the first to have erred, not in relation to the identification of legal principle, but in relation to factual reasoning or in relation to the exercise of discretionary judgment. It is open to a later court … to depart from the sentencing conclusion of an earlier intermediate appellate court or trial court even though the circumstances seemed indistinguishable. It is open for the later court to do this simply because the later court thinks that the earlier court erred in fact: in that event the circumstances become distinguishable. It is also open for the later court to do this merely because it thinks the earlier court erred in the exercise of discretionary judgement – that is, arrived at a sentence which the later court, accepting the correctness of the legal principles stated, the facts found and the considerations taken or not taken into account by the earlier court, considers nonetheless to be too high or too low. The later court's liberty to differ from the sentencing conclusion reached by the earlier court does not exist only where it thinks the earlier court to be plainly wrong. It exists where the later court thinks the earlier court's conclusion to be merely wrong. Indeed it exists even where the later court does not think the earlier courts conclusion to be "wrong", but just disagrees with it. The liberty of the later court continues even if more than one earlier court has reached a conclusion with which the later court disagrees. …

[21] *Hili v The Queen* (2010) 242 CLR 520 at [18], per French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ.

[27] In *Lacey v Attorney-General (Qld),*[22] the High Court confirmed that consistency in the sense referred to in *Hili*, that is, in the application of the relevant legal principles (as distinct from some numerical or mathematical equivalence) is maintained by the decisions of intermediate courts of appeal.

[28] The consistency ground argued by the applicant made reference, inter alia, to three sentencing decisions of single judges of the Supreme Court: *R v Deutscher,*[23] *R v Bretherton,*[24] and *R v Baumgarten.*[25] We mention these three in particular because the quantity of methamphetamine supplied or possessed by each offender was similar to that in the possession of the applicant, and so these decisions best illustrate the applicant's contention in relation to inconsistency. However, it is apparent from a consideration of the sentencing remarks in each case that the moral culpability and subjective circumstances of the three offenders differed markedly from those of the applicant. The fact that they were sentenced more leniently than the applicant has no significance in those circumstances.

[29] The quantity of a drug is not the sole, or principal, determinant for sentencing in relation to drug offences. For example, in *Wong v The Queen*, Gaudron, Gummow and Hayne JJ decided in a joint judgment that the reasoning of the Court of Appeal, to the effect that the weight of the

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[22] *Lacey v Attorney-General (Qld)* (2011) 242 CLR 573 at [54], per French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ; *Green v The Queen*; *Quinn v The Queen* [2011] HCA 49; (2011) 244 CLR 462, [29], per French CJ, Crennan and Kiefel JJ.
[23] [2014] NTSC 21409690 (31 July 2014) Sentencing remarks

[24] [2015] NTSC 21430412 (30 January 2015) Sentencing remarks
[25] [2015] NTSC 21449142 (12 February 2015) Sentencing remarks.

narcotic imported was the chief factor to be taken into account in fixing the sentence for a person knowingly participating in the importation, was flawed. Their Honours described as a "false premise" the proposition that the gravity of an offence can usually (perhaps even always) be assessed by reference to the weight of narcotic involved,[26] and later warned that attributing a particular weight to some factors, while leaving the significance of all other factors substantially unaltered, may be quite wrong.[27] In *Markarian v The Queen*, the plurality accepted the appellant's submission that the sentencing judge had placed too great an emphasis upon quantity without regard to the facts of the case.[28] In our consideration of the applicant's arguments in this case, the following statement, made by the New South Wales Court of Criminal Appeal in *MacDonnell*,[29] is very relevant:

> It is also to be accepted that the mere quantity of the drugs is not the sole, or even the principal determinant for sentencing in relation to drug offences. What is more important is the role of the offender, and the level of his or her participation in the offence; subject of course to the fact that, in relation to supply offences under State law, there is a gradation of seriousness reflected by an increase in penalty as the quantity of drug involved moves into those levels which answer the descriptions of a commercial quantity, or a large commercial quantity.

[30] The fact that some offenders have in the past been dealt with more leniently than the applicant, even though they supplied/possessed quite similar

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[26] *Wong v The Queen* (2001) 76 ALJR 79 at [56], [73].
[27] Ibid at [75].
[28] *Markarian v The Queen* (2005) 228 CLR 357 at [32]-[33], per Gleeson CJ, Gummow, Hayne and Callinan JJ.
[29] *MacDonnell* (2002) 128 A Crim R 44 at [33], per Wood CJ at CL, Sully and Dowd JJ agreeing.

quantities of methamphetamine, does not mean that the sentence imposed on the applicant was manifestly excessive (or, for that matter, that the earlier sentences were manifestly inadequate). As Heydon J observed in *Hili*, the ability of a later sentencing judge to differ from an earlier sentence exists even where the judge simply disagrees with the earlier sentence. We would add that it may not even be a situation of frank disagreement; an obvious example is where the later judge sees the need to emphasise different sentencing objectives to those emphasised in an earlier sentence or series of sentences.

[31] The applicant also made reference to the sentence in *R v Wayne Brown*,[30] in which Barr J took as his starting point a term of imprisonment of six years in sentencing a 42-year-old man who had pleaded guilty to taking part in the supply of a commercial quantity of methamphetamine. The amount of the drug was 275 grams. The offender's role had been to organise for a courier to transport the methamphetamine on a commercial flight from Sydney to Darwin, to travel on the same flight as the courier, to deliver the drugs to Darwin-based co-offenders, receive monies from the sale of the drugs and then take the monies back to a Sydney-based principal. The offender's role was thus more than a courier, but less than that of a principal.

[32] Counsel for the applicant argued, in effect, that although six years may have been an appropriate starting point in *R v Wayne Brown*, the sentencing judge in the applicant's case erred in taking six years as a starting point, because

[30] [2014] NTSC 21415775 (17 December 2014) Sentencing remarks.

the amount supplied by the applicant was only about one fifth of the amount supplied by Mr Brown. However, for the reasons explained in [29] to [30], it does not follow that, because the starting point for Mr Brown was six years, the starting point for the applicant should have been less than six years, or that a starting point of six years for the applicant was manifestly excessive.

[33] The applicant relied on a number of sentencing decisions by Victorian courts. It is unnecessary to refer to them in detail, because we found them to be unhelpful for a number of reasons. Significantly, the Victorian legislation[31] considered in the various decisions established a different regime to that in the Northern Territory. The commercial threshold quantities and (in some cases) maximum penalties were different, making valid comparison difficult. Moreover, the applicant's argument in brief was that an offender in Victoria would have to possess/supply a much greater quantity of methamphetamine than was possessed by the within applicant for a sentencing judge to take as a starting point a sentence of six years. We have rejected a similar argument, for reasons explained in [29], [30] and [32] above.

Conclusions

[34] The courts in the Northern Territory have an obligation to protect the Northern Territory community from the dreadful effects of methamphetamine usage and addiction. Courts have for many years stressed the need, in cases such as the present, for sentencing judges to impose

[31] *Drugs, Poisons and Controlled Substances Act 1981* (Vic).

condign sentences which appropriately reflect the elements of retribution, punishment and deterrence, both personal and general.

[35] The learned sentencing judge specifically referred to the need to protect the community from the supply of dangerous drugs. His Honour referred to the fact that the supply of methamphetamine is becoming increasingly prevalent in the Northern Territory, and to the vital role of couriers in the supply of dangerous drugs. In our view, that observation applies equally to principals who transport their own drugs. His Honour identified the main sentencing objectives as denunciation, punishment and deterrence, and said that the applicant and others must be deterred from committing the same or similar crimes in the future.

[36] General deterrence was particularly important in the sentencing of the applicant. There was a clear need to send a strong deterrent message to people like the applicant: an interstate resident who supplied methamphetamine into the Darwin market, who was prepared to run the risk of detection in the expectation of significant profit, perhaps a greater profit than could be made supplying methamphetamine in his home state. In terms of general deterrence, the message applicable to both Territory and interstate residents is that any offenders who import commercial quantities of

dangerous drugs into the Northern Territory from interstate risk lengthy terms of imprisonment.[32]

[37] Whether a sentence is manifestly excessive, or not, is a conclusion. It does not depend upon attributing a specific identified error in the reasoning of the sentencing judge.[33] In relying upon the ground of manifest excess, it is incumbent upon the applicant to show that the sentence was not just excessive, but manifestly so. He must show that the sentence was clearly and obviously and not just arguably excessive.[34] Mr Lee, counsel for the applicant, referred the Court to *Hanks v The Queen*,[35] in which Bongiorno JA made the following statement in relation to manifest excess:

> The term 'manifest excess' is usually used when a ground of appeal alleges that a sentence is so egregiously erroneous that the sentencing judge must have made a sentencing error although that error cannot be identified. To succeed on this ground the excess must be obvious, plain, apparent, easily perceived or understood and unmistakable. It must be so far outside the range of a reasonable discretionary judgment as to itself bespeak error.

[38] The maximum sentence for the offence to which the applicant pleaded guilty was a term of imprisonment of 25 years. The applicant admitted that he was involved in the business of drug supply for commercial gain and that he was bringing methamphetamine to Darwin in furtherance of that purpose. He was the principal in his own business. His main reason for offending, as found

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[32] See, for example, *R v Indrikson* [2014] NTCCA 10 at [25] in relation to cross border trafficking and supply of cannabis in the Northern Territory.
[33] *Dinsdale v The Queen* (2000) 202 CLR 321 at [6], per Gleeson CJ and Hayne J.
[34] See, for example, *Pittman v The Queen* [2013] NTCCA 16, at [25].
[35] *Hanks v The Queen* [2011] VSCA 7, per Bongiorno JA at [22], Redlich JA agreeing.

by his Honour, was commercial gain.[36] He claimed that he was addicted to methamphetamine, significantly drug dependent, but he declined to give evidence about his addiction, even when the Crown had made it clear that it did not accept that the need to support the applicant's addiction was the motive for his offending. The amount of methamphetamine was close to one and a half times the commercial threshold amount. The applicant's level of moral culpability was high. The sentencing judge was not satisfied that the applicant was genuinely remorseful. His prospects of rehabilitation were uncertain.

[39] The starting point of six years was towards the high end of the range, but not outside the bounds of a sound sentencing discretion. We note that there is no issue as to the discount allowed by his Honour. In our view, the applicant has not established that the sentence of four years and 10 months was so egregiously erroneous that the sentencing judge must have made a sentencing error; or that there was an obvious and unmistakable excess, or that the sentence was so far outside the range of a reasonable discretionary judgment as to itself bespeak error.

[40] The application is dismissed.

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[36] Sentencing remarks, AB 31.8.