

Possess Imported Cocaine
Commercial Quantity
s.307.5 / s.307.8 (Cth) Criminal Code

Commenced 6.12.2005

307.5 Possessing commercial quantities border-controlled drug

307.8 Possessing commercial quantities border controlled drug reasonably suspected of having been unlawfully imported

Commercial Quantity: 2kg

Maximum Penalty: Life

| | Case (age if known) | Offence | Amount (pure) | Plea | Sentence | Appeal | Record | Facts |
|----|--|---|--|---|--|--|--------------------------------------|---|
| 1. | Riddell (2009) 194 A Crim R 524 [2009] NSWCCA 96 | Att possess comm qty: s.307.5 Possess comm qty: s.307.5 | 3.877kg cocaine 8.080kg cocaine | PG (25%) | 9y NPP 5y 9y NPP 5y (concurrent) | Crown AA 9y 10y <u>Total</u> 11y NPP 7y | Minor assault charge in Canada | Canadian national came to Australia on 6m visa – took delivery of cocaine concealed in goods sent from overseas – unaware of exact nature of drugs – stored goods in hired storage facilities – not involved in unpacking – element of duress |
| 2. | FS (2009) 198 A Crim R 383 [2009] NSWCCA 301 | Consp to possess comm qty: s.307.5 | 28.399kg cocaine | PG (50% plea and assist on appeal) | 12y NPP 9y | AA 10y NPP 6y 8m | Nil | Mexican - Cocaine concealed in shipping container – high level participation and culpability – not principal but important figure Assistance discount |

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| 3. | <p>Pham (32)</p> <p>Nguyen (42)</p> <p>(2010) 205 A Crim R 106 [2010] NSWCCA 238</p> | <p>Att possess comm qty: s.307.5</p> <p>Sched: Att possess comm qty</p> <p>Import comm qty: s.307.1</p> <p>Import comm qtys.307.1</p> <p>Sched: 2 x Att possess comm qty</p> | <p>27.1535kg cocaine</p> <p>27.1535kg cocaine</p> <p>13.04kg methamphet</p> | <p>PG (10%)</p> <p>PG (15%)</p> | <p>11y NPP 7y</p> <p>14y NPP 9y</p> <p>FT 7y 6m</p> <p><u>Total:</u> 14y 6m NPP 9y 6m</p> | <p>Crown AA 15y NPP 10y</p> <p>Crown AA 16y</p> <p>16y</p> <p><u>Total:</u> 18y NPP 12y</p> | | <p>Cousins – drugs imported from Canada concealed in foot spa units – controlled delivery</p> <p>N – involved in setting up business and subsequently arranging to pick and store spa units, removed drugs from units and helped deliver to third person – not a principal but significant role in organisation – financial reward</p> <p>P – female – significant role liaising with people in Canada and unpacking drugs once they arrived in Australia</p> |
| 4. | <p>Wang [2010] NSWCCA 319</p> <p>Co-Offender: MA</p> | <p>Attempt possess comm qty: s.307.5</p> | <p>201.2465 kg (72.3-88.2% pure) cocaine</p> | <p>PG (35% plea and assist)</p> | <p>18y NPP 11y 6m</p> | <p>AD</p> | | <p>Female – cocaine hidden in boxes asserting to be Chinese tea – controlled delivery - arranged for delivery of goods to flat and attempted to unpack drugs – active participant and no mere accessory – sophisticated scheme – towards upper range of gravity - likely unaware of wholesale value of drugs estimated at up to \$45 million - to contact director of company importing the goods - higher in chain of command than co-offender – required co-offender - trusted member of group involved in illegal importation scheme</p> <p>Prior good character - motive of greed and attempt to reconcile with former husband - low chance of re-offending - medium level of assistance</p> |

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| 5. | Ma [2010] NSWCCA 320 Co-Offender: WANG | Attempt possess comm qty: s.307.5 | 201.2465 kg (72.3-88.2% pure) cocaine | PG (35% plea and assist) | 15y NPP 9y | AD | | Drugs hidden in shipping container of furniture and boxes purporting to contain tea – controlled delivery - upper end of scale based on quantity and quality of drugs, amount of money paid for drugs and profits expected from their sale - initially denied knowledge of drugs and lied at interview - expected payment of \$400,000 for her involvement - role lowest of four participants involved in scheme - not party to importation but aware shipment had to involve large quantity of illicit drugs Under financial pressure - prior good character - significant although limited assistance to authorities - protective custody |
| 6. | Phommalysack (25) Nguyen (34) (2011) 31 VR 673 [2011] VSCA 32 Co-offenders: NGUYEN LUONG NGUYEN | Att possess comm qty: s.307.5 Attempt import comm qty: s.307.1 Att possess comm qty: s.307.5 | 29.1kg cocaine 29.1kg cocaine 21.8kg methamphet 6.3kg ecstasy | PG PG | 12y NPP 9y 10y 7y <u>Total</u> 12y NPP 8y (14% assistance) | AD | AR as a youth Nil | Drugs concealed in foot spas – controlled delivery N arranged for lease of factory - liaised with customs brokers to arrange clearance and delivery - liaised with purchasers – signed for delivery of container – present when unpacking commenced. P – recruited and sent from Sydney to pick up drugs – arranged to have drugs concealed in car – drug user – to receive \$10,000 up front then \$40,000 N – female – promised assistance – became involved to repay debt to co-offender – to receive at least \$25,000 towards debt |
| 7. | Arenilla-Cepeda (31) [2012] NSWCCA 267 | Consp to possess comm qty: s.307.5 | 4-5kg (90% pure) cocaine | PG (30% plea and assist) | 14y NPP 8y 6m | AA 12y 6m NPP 7y 9m | nil | Colombian national – initiated and conducted numerous discussion over several months planning importation – stated contacts were sending at least 5kg – at top or towards top of hierarchy – would receive significant amount of money Excellent prospects of rehabilitation |

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| 8. | <p>Yung (20)</p> <p>Lau (34)</p> <p>Yim (36)</p> <p>[2012] VSC 325 Forrest J</p> | <p>Att possess comm qty: s.307.5</p> <p>Sched: Proceeds of crime: s.400.9</p> <p>Import comm qty: s.307.1</p> <p>Import comm qty: s.307.1</p> | <p>45.6kg cocaine</p> <p>207.6kg cocaine</p> <p>207.6kg cocaine</p> | <p>PG (20%)</p> <p>PG (20%)</p> <p>PG (20%)</p> | <p>11y NPP 6y 6m</p> <p>20y NPP 16y</p> <p>19y NPP 15y</p> | | <p>Subsequent proceeds of crime offences</p> <p>Nil</p> <p>Nil</p> | <p>Drugs concealed in boxes containing lawn mowers – shipped from Brazil – controlled delivery</p> <p>Yim – involved in practical tasks of storing, repackaging and distributing drugs – to receive \$12,000</p> <p>Lau - supervised Yim - instructed him as to unpacking and repacking of cocaine, liaised with purchaser/s, kept Hong Kong organisation informed – to receive \$60,000</p> <p>Yung – collected portion of drugs on behalf of others – second offence unrelated</p> |
| 9. | <p>Nguyen (39)</p> <p>[2012] VSCA 119</p> <p>Co-offenders: PHUONG PHOMMALYSACK LUONG NGUYEN</p> | <p>Import comm qty: s.307.1</p> <p>Attempt possess comm qty: s.307.5</p> | <p>55kg mixture of cocaine, ecstasy and methamphet</p> | <p>PG (21% plea and assist)</p> | <p>12y</p> <p>8y</p> <p><u>Total:</u> 15y NPP 11y 6m</p> | AD | <p>nil</p> | <p>Female - drugs imported from USA in foot spas – controlled delivery - promised money, car and a house – recruited and gave directions to several co-offender</p> <p>Voluntarily returned from Vietnam</p> |

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| 10. | Pham | Att possess comm qty: s.307.5 | 71.564kg cocaine | VG | 15y | AD | | Drugs imported from Canada concealed in spa and pedicure chairs – controlled delivery – role of each offender difficult to ascertain – highly organised and sophisticated business T greater culpability –more intimately involved and gave instructions – came out from Canada to confirm quantity of drugs and deal with discrepancies P – facilitated delivery to warehouse and unpacking of drugs | |
| | | Att possess comm qty: s.307.5 | 9.757kg ecstasy | | 15y | | | | |
| | | Att possess comm qty: s.307.5 | 29.285kg methamphet | | 15y | | | | |
| | Tang [2012] VSCA 101 | Import comm qty: s.307.1 | 71.564kg cocaine | PG | 15y | | | | <u>Total:</u> 19y NPP 14y |
| | | Import comm qty: s.307.1 | 9.757kg ecstasy | | 15y | | | | |
| | | Import comm qty: s.307.1 | 29.285kg methamphet | | 15y | | | | |
| | | | | <u>Total:</u> 19y NPP 14y | | | | | |

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| 11. | Barbaro (50) | Consp traffic comm qty: s.302.2 | More than 1.4t MDMA | PG | Life | AD | Drug offences | Consp offence – over several months in 2007 planned to take delivery of drugs imported from Italy for purpose of trafficking – controlled delivery meant no drugs received – highest level of offending – sophisticated and bespoke business Traffic offence – for seven months during 2008 sourced drugs from – significant trafficking to repay debt for missing drugs – offence not of highest gravity Cocaine offence – June 2008 drugs arrived from Colombia concealed in bags with coffee beans – controlled delivery Schedule offences – pseudoephedrine imported from India – over \$11.3 million drug money laundered Barbaro – at apex of offending – lived in rural NSW – motivated by greed Zirilli – lesser offender but right-hand man – lived in rural NSW – cousin to B – motivated by greed |
| | | Traffic comm qty: s.302.2 | More than 100kg MDMA | | 23y | | | |
| | | Att possess comm qty: s.307.5 | 99.9kg cocaine | | 20y | | | |
| | | Sched: Consp import comm qty pseudoeph 2 x Proceeds of crime | | | <u>Total:</u> Life NPP 30y (pre discount for guilty plea: Life with no minimum term) | | | |
| | Zirilli (55) [2012] VSC 47 King J [2012] VSCA 288 [2014] HCA 2 | Consp traffic comm qty: s.302.2 | More than 1.4t MDMA | PG | 20y | AD | Nil | |
| | | Traffic comm qty: s.303.2 | More than 100kg MDMA | | 15y | | | |
| | Att possess comm qty: s.307.5 | 99.9kg cocaine | | 13y | | | <u>Total:</u> 26y NPP 18y (pre discount for guilty plea: 30y NPP 24y) | |

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| 12. | Karan (27) [2013] NSWCCA 53 Co-offender: CONSIDINE | Aid and abet att possess comm qty: s.307.5 | 3.173kg cocaine | PG (25% for plea and assist reduced to 15%) | 3y 9m NPP 2y 6m | Crown AA 6y NPP 4y | Nil relevant | Drugs concealed in knife block and cutting board imported from Canada – controlled delivery – to receive \$5,000 to recruit and supervise consignee and facilitate clearance Drug addiction |
| 13. | C (2013) A Crim R 233 [2013] NSWCCA 81 | Att possess comm qty: s.307.8 | 120kg cocaine | PG (45% plea and assist) | 16y 4m NPP 10y 6m | AA 14y 3m NPP 9y | | Cocaine imported from Mexico - entered Australia on instructions from cartel to take possession of cocaine - low-level participant or courier Admitted offence when arrested and provided assistance to authorities On appeal - inadequate discount for assistance |
| 14. | Considine (22) [2013] NSWCCA 97 Co-offender: KARAN | Aid and abet att possess comm qty: s.307.5 | 3.173kg cocaine | PG (33.3% plea and assist) | 1y 8m (immediate release to recog) | Crown AD (inadequate but exercised discretion to not allow appeal) | nil | Female - drugs concealed in knife block and cutting board imported from Canada – controlled delivery – to receive \$2,000 to be consignee and pick up package – low involvement Prospects of rehabilitation – difficult background – mother to three young children – emotional vulnerability |
| 15. | Franze (32) [2013] VSC 421 Kaye J | Att possess comm qty: s.307.5 Att possess comm qty: s.307.5 | 14.1kg cocaine 133.3kg methamphet | VG | 10y 16y <u>Total:</u> 17y NPP 13y | | Minor | Drugs imported in bottles of beer from Mexico – controlled delivery – significant role - involved in receiving consignment, unloading and moving them-directing disposal when alerted to police surveillance – no knowledge of actual amount – lured by profits Hardship to wife caused by imprisonment |

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| 16. | Ramazanoglu [2013] VSC 724 Kaye J Co-offender: FRANZE | Att possess comm qty: s.307.5 Att possess comm qty: s.307.5 Obstruct Cth officer Traffick comm qty: s.302.2 Possess unreg longarm Store firearm in insecure manner | 14.1kg cocaine 133.3kg methamphet 3.4-5.6kg methamphet | PG | 4y 8y 2m 4y 2m 2m <u>Total:</u> 8y 6m NPP 4y 6m | | minor | Drugs imported from Mexico concealed in beer bottles – not involved in importation but took possession of bottles for purpose of disposal when controlled delivery discovered – no knowledge of precise amount or purity – less significant role than co-offenders – resisted police officer at time of arrest – smaller amount of methamphetamines found in refrigerator – sentenced on basis stored drugs for deemed purpose of supply – Naughton .22 calibre semi-automatic rifle found stored with ammunition in premises – limited role – moral culpability reduced by psychological condition Significant mitigating features - remorse – difficult childhood including sexual assault by teacher resulting in severe psychological issues and substance abuse – impact on custody - good character references – good prospects of rehabilitation |

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| 17. | <p>Luong (Hung) (53)</p> <p>Nguyen (Minh) (2013) 46 VR 780 [2013] VSCA 296</p> <p>Co-offenders: PHUONG PHOMMALYSACK NGUYEN</p> | <p>Att possess comm qty: s.307.5</p> <p>Att possess comm qty: s.307.5</p> <p>Att possess comm qty: s.307.5</p> <p>Att possess comm qty: s.307.5</p> <p>Att possess comm qty: s.307.5</p> <p>Att possess comm qty: s.307.5</p> | <p>29.1kg cocaine</p> <p>21.8kg methamphet</p> <p>6.3kg MDMA</p> | <p>VG</p> | <p>10y</p> <p>10y</p> <p>10y</p> <p><u>Total:</u> 15y NPP 11y</p> <p>3y</p> <p>3y</p> <p>3y</p> <p><u>Total:</u> 3y NPP 514d</p> | <p>Sentence AD</p> <p>Conviction Appeal only - dismissed</p> | <p>nil</p> | <p>Drugs concealed in foot spas to be imported to Australia from USA – controlled delivery H – involved in organisation but not a major role and not aware of amount of drugs – low intellectual functioning – hardship to family N – asked to come and work for a few days – only became aware of drugs when first package opened</p> |
| 18. | <p>Blackman</p> <p>Jomaa [2014] NSWCCA 90</p> | <p>Att possess comm qty: s.307.5</p> <p>Att possess comm qty: s.307.5</p> | <p>31.92kg cocaine</p> | <p>PG 30% plea and assist)</p> <p>PG (20%)</p> | <p>9y 9m NPP 5y 6m</p> <p>11y 3m NPP 7y</p> | <p>Crown AD</p> | <p>Minor</p> <p>Nil</p> | <p>Drugs imported on ship in bags concealed in legitimate cargo – substantial and continuing involvement – controlled delivery – attempted to take possession of drugs but no indication arranged importation – greater than couriers but not kingpins J – suffering psychological problems</p> |

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| 19. | Nerbas (27) [2014] QCA 259 Co-offender: HANDLEN | Possess comm qty: s.307.5 Att possess comm qty: s.307.5 | Not stated cocaine ecstasy methamphet | PG | 15y NPP 10y 15y NPP 10y (concurrent) | AD | Nil | Drugs imported from Canada in cathode ray tubes over several months – maintained infrastructure used for importing – provided additional labour when required Lesser offender – long history of legal proceedings – prior good character |
| 20. | Polimeni [2014] VSCA 72 | Consp to possess comm qty: s.307.5 | 91kg (no stated purity) cocaine | VG | 18y NPP 12y | AD | | (2008) Conspired with others to import drugs concealed in ship from Colombia – ‘elevated level of criminality’ |
| 21. | Handlen (39 at offence – 47 at sentence) [2015] QCA 292 Co-offender: NERBAS | Possess comm qty: s.307.5 Attempt possess comm qty: s.307.5 | 103kg cocaine 7.6kg ecstasy 1.085kg methamphet | VG | 27y NPP 18y | AD | Nil relevant | Drugs imported from Canada in cathode ray tubes – management role – controlled delivery after drugs detected by authorities |
| 22. | PC (20) [2016] NSWCCA 137 | Att possess comm qty: s.307.5 Import comm qty: s.307.1 Sched: 3 x Import comm qty Proceeds of crime Possess comm qty | 17.314kg cocaine 20.548kg methamphet at least 21kg methamphet | PG (30% - plea and assist) PG (25% plea and assist) | 19y 6m 16y 6m <u>Total:</u> 26y 6m NPP 18y | AA 17y 6m 15y <u>Total:</u> 20y 6m NPP 14y 6m | Lengthy record – breached conditional liberty | Played managerial role in the receipt and distribution of drugs imported over 6 month period from Canada – drugs concealed in equipment – trusted and key member in syndicate – found in possession of \$135,700 proceeds of crime Difficult childhood – drug user – gambling addiction On appeal – degree of accumulation too high |

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| 23. | Phelps (30) Zapala (33) [2018] NSWCCA 191 | Att possess comm qty: s.307.5 Import comm qty: s.307.1 Proceeds of crime s.400.6(1) Sched: 2 offences | 11.99kg cocaine 11.99kg cocaine | PG (30% combined) PG (25%) | 4y 6m NPP 2y 3m 8y 2y <u>Aggregate</u> 9y NPP 5y 3m | Crown AD Crown AD | minor drug nil | Sophisticated syndicate – cocaine imported in box marked ‘food sausage stuffer’ – controlled delivery and operation – Z senior and trusted member responsible for importation – delivered \$40,000 cash to car according to arrangements made with co-offender – obtained and passed on details of consignment – at least mid-range – P significant but not crucial role – picked up consignment using false identification – not aware of sophistication of operation or amount of drugs – reckless – limited involvement P – relatively good character – drug user – genuine remorse – some mental health problems Z – prior good character but previously involved in criminal activity – excellent prospects of rehabilitation |
| 24. | Hoang (20) [2018] VSCA 86 | Att possess comm qty: s.307.5 Traffic lge comm qty (Vic) | 3.3742kg cocaine 2.6033kg cocaine | PG | 9y NPP 5y 8y NPP 5y <u>Total:</u> 10y NPP 6y | AD | Nil | Involved in importation of drugs from Vietnam – attempt to import cocaine concealed in two consignments of printer toner cartridges – cocaine found in car and at residence – principal role – high moral culpability Financial difficulty – onerous custodial conditions due to isolation – youth – good prospects of rehabilitation |
| 25. | Da Silva (39) [2020] QCA 176 | Import comm qty: s.307.1 Att possess comm qty: s.307.5 Dealing proceeds of crime | 4.0537kg cocaine | PG | 9y 4y 12m <u>Total:</u> 9y NPP 4y 6m | AD | nil | Involved in importation of drugs from Brazil using courier – tasked with collecting drugs from courier and making payment – limited but planned involvement – more culpable than courier Some contrition – offending out of character – effect of panic disorder on custodial conditions – excellent prospects of rehabilitation |

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| 26. | O'Shaughnessy [2020] NSWCCA 124 | Att possess comm qty: s.307.5 | 5.39kg cocaine | PG (25%) | 6y 9m NPP 4y | AA 4y NPP 3y | Nil | Drugs imported concealed in two drive shafts – controlled deliver of package to co-offender via Golf Club – assisted co-offender remove drugs from drive shafts – minimal involvement – motivated by misguided loyalty to friend – bottom of range Prior good character – out of character – remorse – excellent prospects of rehabilitation – low risk of re-offending On appeal – manifestly excessive in view of low involvement |
| 27. | Taumoepeau (30) Siaki (26) [2020] NSWCCA 200 | Att possess comm qty: s.307.5 Att possess comm qty: s.307.5 | 47.587kg cocaine | PG (25% on appeal) | 12y 6m NPP 7y 6m 12y 6m NPP 7y 6m | AA 10y 6m NPP 6y 6m 10y 6m NPP 6y 6m | Driving and some violence Minor violence | Drugs imported from Panama concealed in hydraulic press – controlled delivery to premises of business run by offenders – offenders agreed to take delivery of press – after delivery agreed to remove packages – financial benefit and some threats – unaware of drug amount – important and equal role T – violent childhood and bullying at school – depression and financial pressure at time of offence – remorse and good prospects of rehabilitation S – financial pressure – remorse – generally good prospects of rehabilitation CCA: <i>Xiao</i> error established. |
| 28. | Abreu (34 at offences; 41 at sentence) [2020] NSWCCA 286 | Possess comm qty: s.307.8 Proceeds of crime: s.400.4(1) | 7.283kg cocaine | PG (10%) | 11y 3m NPP 6y 6m 1y 8m <u>Total</u> 11y 9m NPP 7y | AA 10y 2m 1y 6m <u>Total</u> 10y 7m NPP 6y 2m | US record - theft, receiving stolen property, forgery, conspiracy to commit access device fraud. | Flew in from US – with co-offender purchased bags for storage of drugs – left drugs for collection - drugs and large amount of cash found in hotel room. Traumatic background - history of heavy substance abuse and gambling - post-traumatic stress disorder, depressive disorder, pathological gambling disorder-rehabilitation. CCA: <i>Xiao</i> error established. |

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| 29. | Martellotta [2021] NSWCCA 168 | Att possess comm qty: s.307.5 | 4.34kg cocaine | PG (25%) | 6y NPP 4y | AD | No | With co-offenders arranged importation – role as more than mere warehouseman although not possible to define role with certainty: recruiting co-offenders to take delivery of consignment; directing their actions; overseeing collection and removal of consignment when unexpectedly delivered; taking receipt of consignment at his residential premises; acting as point of contact with Peruvian end of operation. Family and financial stress - remorse - prior good character - good prospects of rehabilitation. |
| 30. | Salazar (27) [2021] VSCA 125 Co-offender: PALMISANO MUNOZ CARMONA | Att possess comm qty: s.307.5 Possess mkt qty: s.307.9 | 5.766kg / 4.072kg cocaine 15.5g cocaine | PG | 7y 9m <u>Total:</u> 7y 3m NPP 5y 6m | AA 5y 9m <u>Total:</u> 5y 3m NPP 3y 6m (pre discount for guilty plea: 6y 10m NPP 4y 8m) | Nil | Cocaine shipped in two consignments from Chile and Panama – took delivery of Chile consignment and transported to apartment – present when co-offender brought second consignment to apartment – attempted to open one consignment and offered advice on second – role of courier only – small amount of cocaine found in wardrobe on arrest Colombian student – recreational drug user – financial gain – good prospects of rehabilitation – delay – onerous custodial conditions On appeal: allowed due to parity with Palmisano |

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| 31. | Palmisano (23) [2021] VSCA 124 Co-offender: SALAZAR MUNOZ CARMONA | Att possess comm qty: s.307.5 Proceeds of crime: s.400.7(1) Possess controlled drug: s.308.1 | 5.766kg / 4.072kg cocaine \$6,150 See facts | PG | 5y 18m 2m <u>Total:</u> 5y 6m NPP 3y 9m | AA 5y 3m 2m <u>Total:</u> 5y 1m NPP 3y 5m (pre discount for guilty plea: 6y 8m NPP 4y 7m) | | Cocaine shipped in two consignments from Chile and Panama – took delivery of Panamanian consignment and transported to apartment – role of courier only – found in possession of cash and drugs – 1.54g MDMA – 2.86g ketamine – small amount cocaine Italian student – recreational drug user – paying off drug debt – remorse - good prospects of rehabilitation On appeal: allowed due to parity on proceeds of crime sentence to co-offender Carmona |
| 32. | Awraham (24) [2021] NSWCCA 241 | Att possess comm qty: s.307.5 Possess unauthorised pistol Supply drug Possess unregistered firearm | 2.152kg cocaine | PG (25%) | 7y 6m NPP 5y 15d 3y NPP 1y 11m 2y 3m 18m <u>Total:</u> 9y NPP 6y 6m | AD | Driving – not relevant. | Closely involved in an attempt to import drugs - role “at least that of a courier” and above that of “mere recruit” - aware of when and where consignment would be delivered - arrived at delivery address to oversee what occurred after package delivered - expected to gain significantly to discharge drug debt of \$40,000 to \$50,000 - .22 calibre Ruger pistol and a magazine containing eight rounds of ammunition found on premises Special circumstances – good rehabilitation. |

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|-----|--|---|---|-------------|--|----------|---|--|
| 33. | Narayan (41) [2022] NSWCCA 163 Co-offender: GOVENDER | Att possess comm qty: s.307.8 | 198.3078kg cocaine 80.1728kg methyldamphet | PG (30%) | 11y 6m NPP 7y | AD | nil | Offender part of syndicate - drugs imported by ship from South Africa hidden in iron ore extractor – controlled delivery – machinery transported to Sydney, picked up by offender and stored in premises – used forklift to remove from packaging for co-offenders – trusted to transport and store drugs unsupervised – paid \$20,000 – aware of presence of drugs but not quantity – below mid-level On appeal: dismissed parity ground |
| 34. | Barki (61) Dumbrell (74) Theobald (63) [2023] NSWCCA 309 Co-offenders: BUTLER KEEN | Att possess comm qty: s.307.5 s.3LA Att possess comm qty: s.307.5 s.3LA Att possess comm qty: s.307.5 Supply comm qty pseudoeph | 188.16kg cocaine | PG (25%) | 6y 12m <u>Total:</u> 6y 3m NPP 3y 3m 7y 12m <u>Total:</u> 7y 3m NPP 3y 6m 7y 3y 6m 5y NPP 3y 9m <u>Total:</u> 8y NPP 4y 6m | Crown AD | Less significant than others Significant Significant | Members of international criminal group importing drugs into Australia from Mexico in aluminium ingots - variously involved in four attempts to access the cocaine – “clumsy” participation - wholesale between \$34.815 million and \$48.530 million. |

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| | Case (age if known) | Offence | Amount (pure) | Plea | Sentence | Appeal | Record | Facts |
|-----|---|--|--|----------|--|--|--------------|---|
| 35. | JRE (28) [2023] WASCA 100 | Procure att possess comm qty: s.307.5 Att possess ketamine with intent to sell: s.6(1)(a) <i>Misuse of Drugs Act</i> (WA) | 2.87kg cocaine 4.877kg ketamine (gross) | PG (25%) | 7y 6y <u>Total:</u> 10y NPP 7y | AA 6y 6y <u>Total:</u> 8y NPP 5y 6m | Nil | Ketamine imported from Spain – controlled delivery – arranged for collection and delivery of package by co-offender – two weeks later cocaine imported in purses – controlled delivery – arranged for delivery to co-offender – organised collection through Wickr app – significant and trusted role in well organised drug importation syndicate – expected significant financial benefit Born in NZ – became involved in drugs after period of unemployment - remorse – good prospects of rehabilitation – unlikely to re-offend – co-operation On appeal: individual sentences appropriate – totality only |
| 36. | La Bianca (41) [2023] WASCA 172 | Att possess comm qty: s.307.5 | 2.365kg cocaine | VG | 9y NPP 5y 3m | AA 7y NPP 3y 3m | Nil relevant | Drugs imported in electrical cable and delivered to café – offender and co-offender transported package to second premises and unwrapped and removed drugs – controlled delivery – aware substantial risk of drugs – essential role – relatively short period Some contrition – good prospects of rehabilitation – onerous custodial conditions due to cystic fibrosis On appeal: disparity |
| 37. | Hurkmans [2024] NSWCCA 126 | Possess comm qty: s.307.5 Proceeds of crime: s.400.4(2A) | 155.1kg cocaine | PG (25%) | <u>Indicative</u> 10y 3y <u>Aggregate</u> 11y NPP 6y 6m | AA <u>Indicative</u> 9y 3y <u>Aggregate</u> 10y NPP 6y | Nil | Acted under duress - purchased boat in 2020 registered in offender's name - boat paid for by unknown persons making cash deposits into bank account of vendor - rented hire car and leased storage unit - drove hire car, towing boat out to water - unknown persons threw 11 buoyant containers into waters collected by offender and loaded onto boat – intercepted by police - cocaine located in containers - suitcase containing \$520,000 located in storage unit - motivated initially for money, but when sought to withdraw, primary motivation was threats and concerns for family and himself. Extreme contrition and remorse - extremely good prospects rehabilitation - low risk of reoffending – strong family support - mental health. CCA: failure to make finding whether mental condition reduced moral culpability |

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| | Case (age if known) | Offence | Amount (pure) | Plea | Sentence | Appeal | Record | Facts |
|-----|--|--|-------------------------------------|-------------|--|--|---|--|
| 38. | Butler [2024] NSWCCA 133 Co-offenders: BARKL DUMBRELL THEOBALD KEEN | Aid and abet attempted poss comm qty: s.307.5 | 149.3kg cocaine | PG | 3y Released to recog after 6m for 18m (effective time in custody 2d due to backdate) | Crown AD | nil | Five co-offenders imported cocaine from Mexico concealed in silver ingots – offender agreed to allow workshop to be used to store ingots – initially believed legal but became suspicious and continued involvement – unaware of precise amount but believed significant – present on several occasions when attempt made to extract drugs – controlled delivery – agreement to receive rent Personal circumstances contributing to poor mental health and substance abuse impaired judgment – prior good character – remorse – good prospects of rehabilitation – unlikely to re-offend – facilitated course of justice – degree of extra curial punishment due to impact on business – delay in arrest On appeal: error to treat bail conditions as quasi-custodial – exercised discretion |
| 39. | Keen (50) [2024] NSWCCA 157 Co-offenders: BARKL DUMBRELL THEOBALD BUTLER | Aid and abet att possess comm qty: s.307.5 Knowingly take part in supply comm qty pseudoeph | 149.3kg cocaine | PG (25%) | 9y NPP 5y 5y NPP 3y 9m <u>Total:</u> 10y NPP 6y | AA 7y NPP 3y 6m 5y NPP 3y 9m <u>Total:</u> 8y NPP 4y 6m | Manufacture lge comm qty prohibited drug - breached conditional liberty | Assisted co-offenders who imported drugs from Mexico concealed in aluminium ingots – controlled delivery – actively engaged but not principal – took delivery of ingots delivered to warehouse and moved them around on several occasions – 19m later pseudoephedrine delivered to warehouse concealed in motor vehicle side steps – controlled delivery – assisted in removing drugs from several side steps and found in possession of one package on arrest – original consignment contained 2.6kg in each of ten side steps Remorse – prospects of rehabilitation On appeal: allowed parity ground in relation to two of four co-accused |
| 40. | Govender (75) [2024] NSWCCA 179 Co-offender: NARAYAN | Att possess comm qty: s.307.5 | 198.kg cocaine 80.1kg methamphet | VG | 20y NPP 11y | AD | Nil | Drugs imported from South Africa concealed in machinery – offender travelled from South Africa on multiple occasions over 6 months – mid-range role (not principal) – aware illicit drugs and significant quantity South African national – age and poor health – prior good character |

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