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Joe Zheng, Yikun Zhang and Colin Zheng. Photo: RNZ/Dan Cook

Joe Zheng, Yikun Zhang and Colin Zheng. Photo: RNZ/Dan Cook

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POLITICS

National the winner as donations trio sentenced

The Crown fails in a bid to have those convicted of political donations crimes sent to jail

Three men found guilty of deception in providing big donations to the National Party will serve community sentences for their "moderately serious" offending

- but National gets to keep the $200,000 it gained from the fake donor ruse.

The trio avoided jail terms that had been urged by Crown prosecutor Paul Wicks KC to Justice Ian Gault in the High Court at Auckland on Wednesday, instead

being sentenced to between three and five months' community detention, with night curfews, and obliged to perform community service.

Community detention is a less restrictive sentence than home detention, with those sentenced simply having to remain at an approved address for specified

curfew hours, not wearing ankle monitors 24 hours a day.

A lawyer for Yikun Zhang,

the Chinese community leader

referred to as 'Chairman' by co-defendant twins Colin and Joe Zheng, had asked the judge to discharge Zhang without conviction so he could travel to the

United States in future to see his sons, and for business. But that was rejected, the judge saying a conviction was not excessive for the offence he had

committed.

READ MORE:

\* How SFO failed in Labour donations case

\* China's political influence: The dragon in the room

The community detention and community service sentences amounted to a light return for the Serious Fraud Office, which had originally prosecuted the three

men plus four others who were

acquitted by Justice Gault

over a separate donation to the Labour Party.

The maximum sentence for the charge of obtaining by deception is seven years' imprisonment, and Wicks wanted the judge to jail the men as "a deterrent

and denunciation" and to recognise the harm done to the community by undermining the integrity of New Zealand's electoral system.

While the three men must endure what defence lawyers called their "fall from grace", National has retained the $200,000 that was submitted to it on two

separate occasions in small amounts purportedly from numerous other Chinese donors.

The judge had previously found the men guilty of engaging in a fraudulent stratagem or trick to break the $100,000 sums up into amounts under the threshold

for public disclosure. The money was said to have been provided by either Zhang or Colin Zheng or both, before being distributed to bank accounts of associates

to be paid to National.

Zhang's lawyer John Katz KC, told the court it was an unusual crime, not involving violence or drugs or mental or emotional harm. "It's not one where any

person or entity has lost any money. There's a benefit to the National Party of being able to retain the $100,000 donation [from 2018, for which his client

Zhang was found guilty] - and it has still been retained."

He said the $100,000 donated via the men in 2017 was one of the party's biggest and the same amount in 2018 represented a full third of National's donations

income that year.

The Crown's view that the men had threatened the integrity of the political donations system did not stand up to scrutiny. New Zealand was still second

in the international rankings for lack of corruption, and this case did not involve a charge of corruption; there was no allegation made at trial of buying

influence.

Justice Gault said there was no allegation directly of corruption in the sense of a quid pro quo for the donation from the party that received it. But

the charge of obtaining by deception under the Crimes Act did not have a 'corrupt act' charge equivalent to the Electoral Act's provisions concerning body

corporates rather than individuals.

Katz said rather than an attack on the electoral system or integrity of New Zealand's democracy, the men's actions were "totally foolish, misguided". The

Crown's recommendation that a sentence of imprisonment was necessary because of the aggravating factor of harm to the electoral system "receded to a significant

degree".

"In no way could the donation to the National Party be seen as an attempt to influence the outcome of the 2020 election, two years later."

Katz said there was no kickback for any of the participants, no "cash for questions" element such as that revealed in a UK political investigation. "This

was a misguided and simply hapless attempt to disguise the true identify of a donor. The public gaze was shielded. Whether or not that impacts on the integrity

of our system, I leave to your honour."

Positive references for Zhang from a range of public figures, including former Auckland Mayor Phil Goff, Māori Party President John Tamihere, former National

MPs Jian Yang, Eric Roy and Sam Lotu Iiga, and artist and activist Tame Iti had been provided to the judge.

Katz pointed out Iti in the court's public gallery and said Iti's statement of support was extraordinary, given the two men's sharply different backgrounds.

Zhang had supported Iti's charitable trust for young people. Katz said referees spoke of Zhang's "generosity, magnanimity and simple common humanity".

Zhang's loss of face and fall from grace were punishment in their own way and Katz said retaining the conviction for obtaining by deception, which was

entered after the judge's verdict in September, would preclude his client from visiting three sons forced to now live in the US because of the scandal.

He said a discharge without conviction, which would effectively be an acquittal, might allow Zhang to obtain visas and to continue to visit and maintain

important family dynamics.

Crown lawyer Katie Hogan rejected the need for Zhang to be granted a discharge for the purpose of "holidaying" and noted that having his sons study in

the US was not the only option open to the family.

She argued any loss of standing for Zhang in his community might arise from the charges and trial as much as the conviction. "The finding of guilt will

not be affected by any discharge.

"The consequences are not out of proportion to the gravity of offending."

Paul Dacre KC argued for a community detention sentence and community service for his client Colin Zheng, who had also suffered a fall from grace after

emigrating to New Zealand and being a model citizen. Any hopes he had of community or political leadership had ended, and he was now ineligible to continue

as a Justice of the Peace.

The lawyer said Zheng had been forced to face up and start to put things right. He felt ashamed of having involved his twin brother in the matter at his

behest and then having let him down.

His construction companies, already facing economic pressures, needed his expertise.

Joe Zheng's lawyer, Rosemary Thomson, said her client was the youngest in the family and had been expected to respect and follow his brothers.

He was a conformist and did so without reservation, describing himself as naive and his involvement in the donations arrangement was "participation, not

pre-meditation".

Thomson urged a community sentence, given Joe Zheng's low risk of re-offending or of harm to anyone else.

In sentencing, Justice Gault told the trio: "You all must have known it was a breach of a legal obligation to provide false names. You must have known

you were not entitled to do so."

He said Zhang did have a high reputation and did not gain personally from the offending but had knowledge of it and had influence over the two younger

men, Colin and Joe Zheng.

"I do not characterise you as a key orchestrator," he said, but accepted the Crown's view that the crimes were not victimless. "There was an element of

planning. You acted together ... you must have known the donation was being concealed, you wanted to avoid public disclosure, you had knowledge of the

steps that they took. I consider the offending moderate in seriousness."

The judge noted it could be desirable for Zhang to be able to visit his children in the US but they could also visit New Zealand in summer breaks, and

there was insufficient evidence that a discharge without conviction would definitely alter the approach American border officials might take in questioning

him over his offence or trial.

He sentenced Zhang to four months' community detention, with a 10pm to 6am curfew, plus 200 hours of community service.

Colin Zheng will serve five months' community detention, the same curfew plus 250 hours community service and his brother Joe, who had also been found

guilty of lying to the Serious Fraud Office during a compulsory interview, must serve a cumulative three months' community detention and curfew and 150

hours' community service.

\* SFO charges against former National MP Jami-Lee Ross over the two donations to National, and against three other people with name suppression over the

donation to Labour, were thrown out by Justice Gault after a seven-week trial ending in September 2022. Labour had a net gain of $35,000 from a $60,000

donation for artworks which ended up in Yikun Zhang's home. Labour also did not have to repay the money.

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