IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 183

Magistrate's Appeal No 9029 of 2017

Between

PUBLIC PROSECUTOR

… Appellant

And

LIM CHENG JI ALVIN

… Respondent

EX TEMPORE JUDGMENT

[Criminal Procedure and Sentencing] — [Sentencing] — [Principles]

Public Prosecutor
v
Lim Cheng Ji Alvin

[2017] SGHC 183

High Court — Magistrate's Appeal No 9029 of 2017
Sundaresh Menon CJ
20 July 2017

Sundaresh Menon CJ (delivering the judgment of the court *ex tempore*):

1 Alvin Lim Cheng Ji ("the Respondent") was charged with the possession of not less than 0.91 grams of cannabis mixture ("the Drugs") under s 8(*a*) read with s 33(1) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed). He also consented to having two other drug charges, one for the possession of 0.76 grams of cannabis resin and one for the possession of a utensil intended to be used for the consumption of drugs, taken into consideration for the purposes of sentencing.

Background

2 On 29 June 2016, officers from the Central Narcotics Bureau ("CNB") arrested the Respondent at his home. Upon his arrest, the Respondent surrendered one small sachet from within his safe to the CNB officers. The contents of the sachet were analysed and found to contain the Drugs.

3 At the time of the offence, the Respondent was a couple of months shy of his 27th birthday. Since 2012, the Respondent had been Managing Director of a company established by his father. At the time of his arrest he was earning a salary of about $8,000 a month.

4 The Respondent has been a casual consumer of drugs for some time. It appears to be the case that he first experimented with drugs in 2006 while studying in Australia and continued doing so in 2007, and then from time to time between 2014 and 2016 when he was arrested.

The decision below

5 The learned district judge ("the District Judge") sentenced the Respondent to probation subject to conditions. It appears from the grounds of decision (which can be found at *Public Prosecutor v Alvin Lim Cheng Ji* [2017] SGDC 72 ("the GD")) that the District Judge did so for the following principal reasons:

(a) First, the probation report expressed optimism about the Respondent's prospects of rehabilitation and recommended probation. The District Judge said he was "very impressed" by the probation officer's report (the GD at [10]).

(b) Second, he considered it a significant mitigating factor that the Respondent had no antecedents and described this as a one-off incident. He also said he "completely agreed" with the defence's submissions that this was a one-off incident and that rehabilitation ought therefore to be given more weight (the GD at [19]–[20]).

(c) Third, he noted that the Respondent had done much to contribute to society by doing charitable and various other good works (the GD at [14]).

(d) Fourth, he considered it a significant mitigating factor that the Respondent had pleaded guilty "at the earliest opportunity granted to him" and cooperated with the police (the GD at [16]–[17]).

(e) And last, he noted that the Respondent had expressed remorse (the GD at [18]).

My decision

The positive probation report

6 In my judgment, each of the reasons relied on by the District Judge was misplaced. The starting point in the analysis is to recognise that the law takes a presumptive view that with young offenders, meaning those aged 21 or less, the primary sentencing consideration is rehabilitation. This, to a certain extent, is because the chances of effective rehabilitation in the case of young offenders are thought to be greater than in the case of adults: *Sim Wen Yi Ernest v Public Prosecutor* [2016] 5 SLR 207 at [27]. But that is not all: the different approach for young offenders is also justified for two other reasons at least. The first is that the young may know no better; some regard should therefore be had to the fact that the limited nature and extent of their life experiences might explain their actions and justify some consideration being extended to them. The second is that with young offenders, society generally has an especially strong interest in their rehabilitation; their diversion from the prison environment is therefore a desirable goal where this would enhance their prospects of rehabilitation (see *Public Prosecutor v Mok Ping Wuen Maurice* [1998] 3 SLR(R) 439 at [21]).

7 This is not presumptively the case with an older offender. Instead, particularly in the context of drug offences, as is the case here, the law is clear that deterrence is the dominant consideration, and save for the "purely exceptional case", a custodial term is usually warranted: *Dinesh Singh Bhatia s/o Amarjeet Singh v Public Prosecutor* [2005] 3 SLR(R) 1 ("*Dinesh Singh*") at [59] (and see more below at [17]–[19]). Precedents where probation, instead of a sentence of imprisonment, has been ordered for older drug offenders involved those who were suffering from psychiatric or other conditions that were in some way causally related to their offences. For example, in *Public Prosecutor v Lee Han Fong Lyon* [2014] SGHC 89, the High Court upheld a sentence of probation for a 25-year-old drug offender, noting that the offender's Attention Deficit Hyperactivity Disorder "was a factor in his criminality" (at [6]). This is not to say that probation will, as a matter of course, be ordered in such cases; rather, where an offender proves that he was suffering from a psychiatric or other condition that was in some way causally related to his drug offence, the court might consider it permissible, in the appropriate circumstances, to depart from the default position that a custodial term is warranted. In the present case, the Respondent did not claim to suffer from any psychiatric or physical condition.

8 Counsel for the Respondent, Mr Raphael Louis ("Mr Louis"), submitted that this was too narrow a formulation of the applicable sentencing approach. He submitted that there had been a number of cases where offenders above the age of 21 had been sentenced to probation even though there was nothing to suggest any mental or other ailment. A careful analysis of the precedents does not bear this out.

9 The first case that Mr Louis cited was that of *Public Prosecutor v Vikram s/o Ulaganathan* [2015] SGDC 292 ("*Ulaganathan*"). The offender there had

pleaded guilty to one charge of consumption of methamphetamine, one charge of causing hurt under s 323 of the Penal Code (Cap 224, 2008 Rev Ed) and one charge of disorderly behaviour under s 20 of the Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Rev Ed). The third offence was committed while the offender had been out on bail after being charged for the first two offences. Although the judge in *Ulaganathan* recognised that the offender "had committed serious offences" (at [16]), the judge nevertheless sentenced the offender to probation.

10 In my judgment, *Ulaganathan* did not assist Mr Louis. The offender in *Ulaganathan* was 21 years old at the time of sentencing, and was 20 years old when he committed the first two offences (at [3]). Given his age, it was perhaps unsurprising that the judge in *Ulaganathan* applied the framework that is generally applicable to young offenders, and presumptively regarded rehabilitation as the dominant consideration in sentencing the offender (at [21]–[25]).

11 The judge in *Ulaganathan* was also strongly influenced by the fact that the offender had a problem with alcohol consumption, and described this as "one obvious causative factor" accounting for the offender's non-drug offences. The judge also observed that "once the underlying problem of alcoholic consumption is definitively dealt with, there is a real possibility that the accused will turn his life around" (at [36]). Such unique circumstances are not found in the present case.

12 Mr Louis then drew my attention to the unreported decision of the District Court in *Public Prosecutor v Abdullah Bin Shaik Lebbai* (District Arrest Case No 920471 of 2015 and others) ("*Lebbai*") as an example of a precedent

where an adult drug offender with no psychiatric or physical condition was sentenced to probation.

13 It is well established that unreported decisions carry little, if any, precedential value because they are unreasoned and this is especially the case when reasoned decisions are available: see *Keeping Mark John v Public Prosecutor* [2017] SGHC 170 at [18]. Given the established jurisprudence both in terms of the sentencing of young offenders and the sentencing of drug offenders in particular (which *Lebbai* might run contrary to), I do not place significant weight on it.

14 But in any case, I also note that the offender in *Lebbai* was a 21 year-old *at the time of the offence* (even though he had turned 22 by the time of sentencing). The court may well have applied the sentencing framework applicable to young offenders on the basis of the offender's age at the time the offence was committed. Hence I do not accept that *Lebbai* is a clear precedent where an adult offender without psychiatric or physical condition has been sentenced to probation for a drug offence.

15 In this case, the Respondent was almost 27 years old at the time of the offence, and had been holding a senior position in one of his father's companies for some years. There is no reason to think that the same position taken with young offenders should also apply to this offender. Mr Louis in the end candidly accepted that he could not point to a single case of an offender approaching the age of the Respondent, who had been sentenced to probation for a drug offence in the absence of exceptional circumstances such as a mental condition that affected the offender's culpability.

16 In the present case, it might well be true that the probation officer was optimistic as to the prospects of the Respondent's rehabilitation. But from the perspective of the sentencing court, this becomes a factor of marginal significance if the key sentencing consideration in the case in question is something other than rehabilitation.

17 In the specific context of drug offences, it cannot seriously be disputed that a key sentencing consideration is deterrence, both general and specific. Deterrence is justified by the grave harm that drugs cause to both the individual consumer and to society at large. As recognised by the High Court judge in *Dinesh Singh* at [55] and [59]:

> 55. …as a judge, I have to unflinchingly and unreservedly acknowledge that the strong public policy considerations dictating a custodial sentence for offences of this nature are compelling and that they have to be respected, adhered to and applied dispassionately in this case.
>
> …
>
> 59. The consumption of drugs is a grave menace and an anathema to the fabric and well-being of society and must be uncompromisingly stamped out. It must now be clearly and unfailingly understood that all drug offences involving the possession or consumption of Class A drugs inexorably attract custodial sentences, save in purely exceptional cases.

18 This strong message of deterrence remains relevant today, particularly in relation to cannabis. Recent statistics on cannabis abuse that were cited by the Member for Holland-Bukit Timah group representation constituency, Mr Christopher de Souza, during a recent parliamentary motion to strengthen Singapore's fight against drugs demonstrate that it remains a serious issue (*Singapore Parliamentary Debates, Official Report* (4 April 2017) vol 94:

> In 2014, the amount of cannabis seized spiked by 125% from 15 kg in 2013 to 35 kg in 2014. The next year, 2015, the demand for cannabis increased. *For the first time, cannabis became the second most commonly abused drug among new*

> *abusers in Singapore*. That year, there was about a 26% increase in cannabis seized from 35 kg to 44.3 kg. One year later, in 2016, the amount of cannabis seized continued to rise significantly. According to provisional statistics, during the first six months of 2016, the amount of cannabis seized was almost the same amount for the entire year of 2015. The data showed that over the entire year, the amount of cannabis seized increased by another 22% from 2015 to 2016. Therefore, muscular laws continue to be needed as they are both relevant and necessary.
>
> …
>
> *The number of abusers arrested under the age of 30 years has increased by about 20% since 2014*. In 2014, the percentage of young abusers under the age of 30 compared to overall abusers was 35.1 %. In 2016, that percentage increased to 41.1 %. Furthermore, in 2015 and 2016, the number of new drug abusers increased. Among the new drug abusers, close to two-thirds are below 30 years of age.
>
> [emphasis added]

19 The need to deter potential drug offenders is as relevant today as it has ever been. Yet the relevance of deterrence as a sentencing consideration was not even mentioned in any meaningful way in the GD.

The Respondent's lack of antecedents

20 Turning to the second of the main planks underpinning the District Judge's decision, as I have summarised at [5] above, it is true that the Respondent had no antecedents in the sense that he had not previously been charged. But where, as here, the offender has previously engaged in criminal conduct, even if he has not been charged, then although such conduct should not be considered as an aggravating factor, the lack of a court antecedent certainly cannot be regarded as mitigating: see *Vasentha d/o Joseph v Public Prosecutor* [2015] 5 SLR 122 at [62] and [81].

21 In this regard, the District Judge was also factually mistaken in apprehending that this was the Respondent's first exposure to drugs or that it

was a one-off incident. It plainly was not, having regard to the material that was before him. The Respondent's history with drugs, dating back to 2006, was stated in the probation report as follows:

> - First experimented with cannabis in 2006 at a Ball Party when studying in Australia. Disclosed that many of his friends there were consuming it and he decided to try a few puffs.
> - Alvin reported that he consumed Cannabis again on two occasions in 2007. Had a bad fall on one of this occasion and this led him to stay away from drugs for a period of time.
> - Sometime in 2014, he befriended some friends at the club who smoked cannabis, and started engaging in drug consumption again. Smoked the drug with them on at least eight occasions prior to the arrest.
> - In Mar 2016, Alvin bought a sachet of 0.5 gm of cannabis from a friend at the KPO bar. The cannabis r[e]sin was given to him at no cost and he bought the improvised utensil from Mustapha [*sic*] Shopping Centre for use to consume the drug (TIC charges)
> - Kept it in his safe and smoked it once before he went on a trip with his girlfriend to Turkey. Parents were unaware of his drug consumption until his arrest for possession.

22 These facts do not appear to have been fully appreciated by the District Judge, even though he had quoted parts of the probation report in the GD (at [9]). It was simply not possible, given this background, to treat the present set of offences as a one-off incident.

The Respondent's charitable works

23 Turning to the next reason relied on by the District Judge, in my judgment, he was also wrong to place any reliance on the alleged charitable or other unspecified good works of the Respondent. As I explained when writing for the Court of Three Judges in *Ang Peng Thiam v Singapore Medical Council*

and another matter [2017] SGHC 143 at [100]–[101], such works cannot be regarded as mitigating on the basis of some form of social accounting that balances the past good works of the offender with the present offences. The only basis on which limited weight might be given to such works is if they were sufficient to demonstrate that the offence in question was a one-off aberration, which might then displace the need for specific deterrence (at [102]).

24 But, as I have already said, the present case was not a one-off aberration. The charitable or other good works of the Respondent cannot therefore have any relevance in the present case, even assuming the evidence is there to warrant finding that there was such a history. I note in passing that the evidence on this was somewhat thin. While the Respondent claims to have contributed to society "through various consistent charity works", the only evidence tendered in support was a letter of commendation in relation to a charity event that took place months after his arrest.

The Respondent's plea of guilt and expressions of remorse

25 Finally, the relevance of and the weight to be placed upon a plea of guilt is always fact-sensitive. It will only be taken into consideration in mitigation when the facts indicate that the plea of guilt was motivated by genuine remorse, contrition, regret and/or a desire to facilitate the administration of justice: *Angliss Singapore Pte Ltd v Public Prosecutor* [2006] 4 SLR(R) 653 at [77]. Where the offender pleads guilty under circumstances where he can hardly deny the offence, a plea of guilt will not be accorded much weight: see for instance, *Ooi Joo Keong v Public Prosecutor* [1996] 3 SLR(R) 866 at [17] (a case concerning drug consumption). In cases of drug possession, if there is limited room to suggest that the offender was not in possession, a plea of guilt will often carry little if any weight.

26 This is also the position with expressions of regret and remorse after the offender has been caught. These are easy to profess and difficult to prove. The court will only consider them to be a mitigating factor where there is evidence that the regret and remorse is genuine: *Chen Weixiong Jerriek v Public Prosecutor* [2003] 2 SLR(R) 334 at [23]. Such claims are also less credible in cases such as the present where the Prosecution will have little trouble in proving the charge: *Wong Kai Chuen Philip v Public Prosecutor* [1990] SLR 361 at [13].

27 In the present case, the Respondent was found to possess the Drugs when his home was raided by CNB officers. While he had surrendered the Drugs, which were then in his safe, there was no suggestion that the CNB officers would not have been able to find them without his assistance. It is clear that the law had caught up with the Respondent. I am thus unable to accord the Respondent's claims of remorse significant weight.

The appropriate term of imprisonment

28 I am therefore satisfied that the learned District Judge erred in his approach to sentencing in this case. In my judgment, this is a case that falls squarely within the ambit of the position laid down by the High Court in *Dinesh Singh.* The sentencing range that was laid down in that case at [38] for a first offender who is charged with possession of a Class A controlled drug was a term of imprisonment of between six and 18 months. The judge in that case imposed a sentence of eight months essentially because he thought the baseline of six months was applicable to younger offenders, and also, because the drug in question in *Dinesh Singh* was cocaine which the judge described as a particularly lethal drug. On the other hand, the judge was also mindful of the fact that the offender in *Dinesh Singh* was a first-time user. Here the drug in

question was cannabis which is perhaps not as pernicious or lethal as cocaine. And the Respondent was somewhat younger than the offender in *Dinesh Singh*.

29 But, on the other hand, he was a casual user rather than a one-off user. There is a greater need for specific deterrence where casual users of drugs (as opposed to one-off users) are involved. In all the circumstances I think the same sentence of eight months as was imposed in *Dinesh Singh* would be appropriate in this case, and I therefore allow the Prosecution's appeal and sentence the Respondent to a term of imprisonment of eight months.

Sundaresh Menon
Chief Justice

John Lu and Chin Jincheng (Attorney-General's Chambers) for the appellant; and
Raphael Louis (Ray Louis Law Corporation) for the respondent.