IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 05

Magistrate's Appeal No 9163 of 2017

Between

CHEANG GEOK LIN

…Appellant

And

PUBLIC PROSECUTOR

…Respondent

GROUNDS OF DECISION

[Criminal Procedure and Sentencing] — [Appeal]

[Criminal Procedure and Sentencing] — [Sentencing] — [Aggravating factors] — [Relevance of uncharged offences]

Cheang Geok Lin
v
Public Prosecutor

[2018] SGHC 05

High Court — Magistrate's Appeal No 9163 of 2017
Sundaresh Menon CJ
2 November 2017

4 January 2018

Sundaresh Menon CJ:

Introduction

1 The appellant, Cheang Geok Lin ("the Appellant") pleaded guilty before the district judge ("the DJ") to two charges under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) as follows:

(a) one count of possession of 0.03g of diamorphine under s 8(*a*), punishable under s 33(1) of the Misuse of Drugs Act ("the Enhanced Possession Charge"), which was committed on 24 August 2014; and

(b) one count of consumption of monoacetylmorphine under s 8(*b*)(ii), punishable under s 33A(2) of the Misuse of Drugs Act ("the LT-2 Charge"), which was committed on 8 January 2017.

The Appellant also consented to one other LT-2 charge for consumption of morphine and one charge of enhanced possession of methadone being taken into consideration for the purposes of sentencing.

2 The DJ imposed a sentence of three years' imprisonment for the Enhanced Possession Charge and a sentence of eight years and six months' imprisonment for the LT-2 Charge. No caning was ordered for the LT-2 Charge because the Appellant was over 50 years of age at the time of sentencing. However, the DJ, exercising his discretion under s 325(2) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed), imposed an additional 12 weeks' imprisonment in lieu of six strokes of the cane. The DJ ordered that the imprisonment terms for both charges run concurrently. This resulted in the aggregate sentence of eight years and six months' imprisonment and a further 12 weeks' imprisonment in lieu of six strokes of the cane.

3 The Appellant appealed against the DJ's decision, contending that the sentence was manifestly excessive. After hearing the parties, I allowed the appeal in part as follows:

(a) I set aside the DJ's decision to impose an additional 12 weeks' imprisonment in lieu of six strokes of the cane;

(b) I set aside the sentence of three years' imprisonment for the Enhanced Possession Charge and imposed, in its place, a term of imprisonment of two years and six months;

(c) I affirmed the DJ's decision to impose the sentence of eight years and six months' imprisonment for the LT-2 Charge; and

(d) I affirmed the DJ's decision that the two sentences of imprisonment should run concurrently.

4 This resulted in an aggregate sentence of eight years and six months' imprisonment. I provided brief reasons for my decision at the time I allowed the appeal as aforesaid but I now provide fuller grounds for my decision.

The facts

5 The Appellant was first arrested on 24 August 2014 for offences under the Misuse of Drugs Act. He was 59 years old and working as a delivery driver at the time of his arrest. On 2 September 2014, the Appellant was charged with three offences under the Misuse of Drugs Act:

(a) The Enhanced Possession charge;

(b) One count of possession of 35.98g of methadone under s 8(*a*), punishable under s 33(1) of the Misuse of Drugs Act; and

(c) One count of consumption of morphine (LT-2) under s 8(*b*)(ii), punishable under s 33A(2) of the Misuse of Drugs Act.

6 The Appellant claimed trial to the charges, but then he absconded while on bail on the first day of trial on 26 August 2015. The Appellant remained at large until he was arrested on 8 January 2017. A fourth charge, which is the LT-2 charge, was subsequently brought against him for consumption of monoacetylmorphine during the period that he had absconded. On 11 May 2017, the Appellant pleaded guilty before the DJ to the two proceeded charges as stated at [1] above.

The DJ's decision

7 The DJ's Grounds of Decision were reported as *Public Prosecutor v Cheang Geok Lin* [2017] SGDC 155 ("GD"). In coming to his decision, the DJ reasoned as follows:

(a) The dominant sentencing principle for offences under the Misuse of Drugs Act was deterrence (GD at [16]).

(b) The Appellant had a long history of drug offences, which mandated a significant uplift from the mandatory minimum sentences in order to ensure that both specific and general deterrence were sufficiently brought to bear (GD at [18]).

(c) The Appellant's absconding on the first day of trial was an aggravating factor because it resulted in a waste of judicial and prosecutorial resources (GD at [20]).

(d) The Appellant had significantly increased his consumption of diamorphine after he absconded and evinced no intention to surrender voluntarily (GD at [22]). This again was an aggravating factor.

(e) The Appellant's offence of drug consumption while on bail was a further abuse of the trust placed in him by the court, and this too called for enhanced punishment (GD at [23]–[25]).

(f) The Appellant's actions militated against any mitigating weight being placed on his alleged remorse or his pleas for compassion to enable him to spend time with his family. He had been caught red-handed for the present offences and had shown scant regard for his family (GD at [21] and [26]).

(g) The only mitigating factor was the Appellant's age. He was 61 years old at the time of sentencing and any imprisonment term meted out to him should leave him with sufficient time to incentivise him to turn his life around (GD at [27]–[28]).

(h) In the light of the long history of relevant antecedents, his absconding on the first day of trial and subsequent re-offending, a substantial uplift to both the mandatory minimum sentences was warranted (GD at [29]).

(i) An uplift of one year and six months on the mandatory minimum sentence for the LT-2 Charge was appropriate in the light of the foregoing aggravating factors (GD at [30]–[31]).

(j) It was appropriate to impose a 12-week term of imprisonment in lieu of six strokes of the cane in the light of the Appellant's previous antecedents and to ensure the appropriate deterrent effect (GD at [32]–[34]).

(k) An uplift of a year over the mandatory minimum sentence for the Enhanced Possession Charge was appropriate in the light of the aggravating factors and the Appellant's prior conviction for the same offence in respect of which he had been sentenced to a term of two years' imprisonment (GD at [35]).

(l) Both sentences should run concurrently because running them consecutively would result in a global sentence of 11 years and six months' imprisonment, with a further 12 weeks' imprisonment in lieu of caning. Such a term would:

(i) be significantly above the norm for the LT-2 Charge, which usually attracts a sentence of between seven and seven and a half years' imprisonment as a starting point; and

(ii) border on being crushing and excessive, and would not afford a reasonable prospect of rehabilitation given the Appellant's age (GD at [37]).

Arguments on appeal

8 On appeal, the Appellant (who was acting in person) sought a reduction of his jail term. His submissions centred on his personal circumstances. He also urged me to give him a chance and to reduce his sentence because he had realised the folly of his ways.

9 In response, the Prosecution contended that the sentence imposed by the DJ was not manifestly excessive for the following reasons:

(a) The Appellant had absconded while on bail, remained at large for more than 16 months, and re-offended while he was at large. These were serious aggravating factors which warranted a substantial uplift from the mandatory minimum sentences prescribed for the charges he had pleaded guilty to; and

(b) The DJ had carefully calibrated the global imprisonment term after considering and balancing the Appellant's age against other aggravating factors.

My decision

10 The threshold for appellate intervention in sentence is well established. Appellate intervention would only be warranted if the DJ had made the wrong decision as to the proper factual matrix for sentencing, or had erred in appreciating the material before him, or had erred in principle in arriving at the sentence, or had imposed a manifestly excessive or inadequate sentence (see *Chong Han Rui v Public Prosecutor* [2016] SGHC 25 at [21]).

11 At the outset, I dismissed the Appellant's plea for mercy because this was not a legitimate ground, in and of itself, for appellate intervention. The court was bound to apply the law and could not decline to do so simply in response to a plea for mercy. In any event, the personal circumstances raised by the Appellant in his submissions did not carry any mitigating weight and did not warrant interfering with the DJ's decision. However, I was concerned by a few specific aspects of the DJ's decision which I put to the learned DPP and I was grateful for her assistance. It is to these that I now turn.

Whether the sentence of 12 weeks' imprisonment should have been imposed in lieu of caning

12 The first aspect of the sentence that troubled me pertained to the enhancement of the sentence of imprisonment that was imposed for the LT-2 Charge on account of the fact that the Appellant had been exempted from caning by reason of his age. As noted at [32] of the GD, the DJ's decision was arrived at before the Grounds of Decision of the three-judge bench of the High Court in *Amin bin Abdullah v Public Prosecutor* [2017] SGHC 215 ("*Amin bin Abdullah*") were released. The DJ found it appropriate in the exercise of his discretion to impose a further 12-week term of imprisonment in lieu of six

strokes of the cane, given the Appellant's antecedents. He reasoned that this was necessary to ensure the appropriate deterrent effect (GD at [32]–[34]).

13 The three-judge bench of the High Court stated in *Amin bin Abdullah* (at [53]) that the "*correct starting point* is that an offender's term of imprisonment *should not be enhanced*, *unless* there are grounds to justify doing so" [emphasis added]. Some of the factors which might justify the enhancement of a sentence include (see *Amin bin Abdullah* at [59]):

(a) The need to compensate for the deterrent or retributive effect of caning that is lost by reason of the exemption; and

(b) The need to maintain parity among co-offenders.

In the present case, the applicable consideration was the need to compensate for the deterrent effect of caning that was lost by reason of the exemption (see *Amin bin Abdullah* at [63]).

14 The learned DPP pointed out that there was a need for deterrence in the context of drug offences. While I agreed with this proposition, I did not think that this was, by itself, sufficient grounds for enhancing the present term of imprisonment. As the court in *Amin bin Abdullah* had observed, where the dominant sentencing objective behind the imposition of caning has been identified to be the need for deterrence, there would be at least two factors that should be considered in determining whether to impose a further sentence of imprisonment in lieu of caning (at [65]–[69]):

(a) First, whether an additional term of imprisonment is *needed* to replace the lost deterrent effect of caning, having regard to why the offender was exempted from caning. The key question in this context is

whether the offender would have known before committing the offence that by reason of his particular circumstances, he would likely be exempted from caning. In such circumstances, consideration should be given to the imposition of an additional term of imprisonment to replace the lost deterrent effect of caning.

(b) Second, the court should consider whether an additional term of imprisonment would be *effective* in this regard. A key factor in this context is the length of the likely imprisonment term that the offence already carries. If an offence carries a long minimum term of imprisonment, for instance, it would less likely be the case that an enhancement of the sentence of imprisonment (such enhancement being limited at most to an additional 12 months' imprisonment) in lieu of caning would provide an effective or meaningful deterrent to would-be offenders having regard to the sentence already prescribed for the offence. This is because the "marginal deterrent value of additional imprisonment would generally diminish in relation to the length of the original contemplated term of imprisonment".

15 Specifically regarding the *efficacy* of an additional term of imprisonment imposed to replace the lost deterrent effect of caning, the learned DPP also submitted that when the court spoke of a long mandatory minimum sentence in *Amin bin Abdullah,* it did so in the context of an offence, namely, drug trafficking under s 5(2) of the Misuse of Drugs Act, which carried a mandatory minimum sentence of 20 years' imprisonment and 15 strokes of the cane. The present case involved an offence that carried a mandatory minimum sentence of seven years' imprisonment and six strokes of the cane, and the

learned DPP submitted on that basis that the present case could not be said to be one which involved a long imprisonment term.

16 I disagreed with the suggestion that anything less than a mandatory minimum of 20 years' imprisonment would not qualify as a long sentence. This was ultimately a matter of judgment that depended on the facts of each case that comes before the court. The Appellant in this case would have been liable for six strokes *but for* his age. Based on the indicative guidelines set in *Amin bin Abdullah* at [90], this would have resulted in an enhancement of his imprisonment term by up to three months. Relative to such an enhancement, a mandatory minimum sentence of seven years' imprisonment would be regarded as a long sentence. Hence, in the context of a mandatory minimum of seven years' imprisonment, an enhancement of up to three months might fairly be regarded as having relatively low deterrent value. Finally, this was to be assessed in the light of the fact that the offender is 62 years old and likely to be in his late sixties by the time of his release. As stated in *Amin bin Abdullah* at [80], the offender's old age is also a matter to be considered in deciding whether to enhance the prison sentence of an elderly offender, especially where he is already subject to a lengthy prison term.

17 In these circumstances, I did not think, within the framework set out in *Amin bin Abdullah*, it could be said that there were sufficient reasons which warranted the enhancement of his imprisonment term on account of his being exempted from caning. I therefore set aside the enhanced sentence of 12 weeks' imprisonment in lieu of caning that was imposed by the DJ.

Whether the individual sentences were manifestly excessive

18 The other aspects of the DJ's decision that initially concerned me pertained to the individual sentences for the Enhanced Possession Charge and the LT-2 Charge. Before discussing the individual sentences, I observe that the DJ appeared not to distinguish between the aggravating factors applicable to the Enhanced Possession Charge and the LT-2 Charge individually, and had analysed the aggravating factors together when he came to deciding on the individual sentences (see [19]–[26] and [29] of the GD).

19 In my judgment, in the context of the present case, this was incorrect in principle. The DJ should have considered the individual sentences separately because there were material differences in the facts pertaining to each of the relevant charges. Specifically, the Appellant's act of re-offending after he had absconded while on bail could only be relevant as an aggravating factor to the LT-2 Charge, which was committed after he had absconded, and not to the Enhanced Possession Charge, which was committed before. I put this to the learned DPP who candidly accepted the correctness of this observation and accordingly agreed that the Appellant's act of re-offending after absconding on bail could not be a relevant aggravating factor for the Enhanced Possession Charge.

20 In my judgment, although this did not ultimately have a bearing on the aggregate sentence given the DJ's decision to run both sentences for the Enhanced Possession Charge and LT-2 Charge concurrently, as a matter of correctness and principle, the sentence for each offence ought to have been separately considered in the context of the mitigating or aggravating circumstances that were relevant to the particular offence in question. In that light, I turn first to the sentence for the Enhanced Possession Charge.

The Enhanced Possession Charge

21 As noted by the DJ at [8] of the GD, the Appellant had a long list of drug-related antecedents reaching back to 1979. Over the past 38 years, the Appellant had committed a wide range of drug-related offences. In particular, the Appellant had been sentenced to the mandatory minimum of two years' imprisonment for a similar charge of enhanced possession of drugs on 18 September 1996. The Appellant also had two charges of enhanced possession of drugs taken into consideration for the purposes of sentencing when he was convicted of some other offences on 13 October 2008. The learned DPP submitted that this warranted an uplift from the mandatory minimum sentence on the ground of specific deterrence.

22 It was further submitted that the Appellant's absconding was another factor that warranted a sentence in this case that was higher than the mandatory minimum. In this regard, the learned DPP relied on the observations of Yong Pung How CJ in *Lewis Christine v Public Prosecutor* [2001] 2 SLR(R) 131 at [39]:

> Thirdly, the appellant's thwarted escape showed her complete contempt for authority. The message must be brought home to offenders that it does not pay to abscond - and accordingly those who attempt to do so must be dealt with more harshly when proven guilty and convicted.

23 The rationale behind such an approach was explained in Kow Keng Siong, *Sentencing Principles in Singapore* (Academy Publishing, 2009) at para 20.045 as follows:

> … Apart from general deterrence and expressing reprehension over the offender's contempt of authority…, other reasons why the fact of absconding is an aggravating factor are (a) police resources have to be expended in trying to locate the fugitive..; and (b) in the case where the offender has been charged in

> court, the court's time would have been wasted and the inconvenience of setting in train the process of arresting him would have been caused. …

24 I invited the learned DPP to address me on whether this was inconsistent with my holding in *Vasentha d/o Joseph v Public Prosecutor* [2015] 5 SLR 122 ("*Vasentha*") at [62] that:

> … an offender cannot be punished for conduct which has not formed the subject of the charges brought against him; he can only be sentenced for offences of which he has been convicted, either by trial or a plea of guilt …

25 I pointed out that the offender's act of absconding was not the subject of the Enhanced Possession Charge. In fact, it constituted a separate wrong that could likely be separately punished had a distinct charge been brought under either ss 172 or 174 of the Penal Code (Cap 224, 2008 Rev Ed), both of which read as follows:

> **Absconding to avoid arrest on warrant or service of summons, etc., proceeding from a public servant**
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> **172.** Whoever absconds in order to avoid being arrested on a warrant, or to avoid being served with a summons, a notice, or an order proceeding from any public servant, legally competent, as such public servant, to issue such warrant, summons, notice or order, shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to $1,500, or with both; or, if the summons, notice or order is to attend in person or by agent, or to produce a document or an electronic record before a court of justice, with imprisonment for a term which may extend to 6 months, or with fine which may extend to $3,000, or with both.
>
> …
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> **Failure to attend in obedience to an order from a public servant**
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> **174.** Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, a notice, an order or a proclamation, proceeding from any public servant legally competent, as such public servant, to issue the same, intentionally omits to attend at the place or

> time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart, shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to $1,500, or with both; or if the summons, notice, order or proclamation is to attend in person or by agent before a court of justice, with imprisonment for a term which may extend to 6 months, or with fine which may extend to $3,000, or with both.

26 In such circumstances, there was a question of principle as to how the court should view the fact of the Appellant's absconding and whether it could treat it as an aggravating factor even though the Prosecution had not availed itself of the alternative course of bringing a charge under ss 172 or 174 of the Penal Code.

27 Having considered the matter in the light of the submissions of the learned DPP, I accepted that it might be permissible, in the appropriate circumstances, to regard the fact of absconding as an aggravating factor. In my judgment, as long as the relevant facts have been admitted or proved, and are relevant to culpability and implicate a relevant sentencing consideration, the court may fairly have regard to that fact in determining the appropriate sentence for the offence at hand. In doing so, however, the court cannot and must not impose a sentence that is aimed at punishing the offender for an offence he has not been charged with, even if such an offence is disclosed on the facts. Rather, the court's endeavour is to consider these facts in the light of assessing the offender's culpability for the offence that he has been charged with.

28 This question was explored in some depth by Chan Seng Onn J in *Chua Siew Peng v Public Prosecutor and another appeal* [2017] 4 SLR 1247. At [81]–[85], Chan J explained that a fact which had a *sufficient nexus* to the offence for which the offender was being punished could be considered, notwithstanding that such a fact could also constitute a separate offence with

which he had not been charged. The relevant part of the judgment in that case bears quoting at length because it encapsulates the point neatly:

> 81 While a sentencing court generally cannot take into account uncharged offences, it is entitled to, and in fact should, consider the aggravating circumstances in which the offence was committed, even where these circumstances could technically constitute a separate offence …
>
> 82 This principle has been applied, for example, in the cases relating to the offence of driving while under the influence of alcohol ("drink driving") under s 67(1)(*b*) of the Road Traffic Act (Cap 276, 2004 Rev Ed) ("RTA"). Even though this offence is made out once it is established that the level of alcohol in the accused's blood or breath exceeds the prescribed level, it is accepted law that a number of other circumstances can aggravate the drink-driving offence (even though these facts could technically make out independent offences). …
>
> …
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> 83 Thus for instance, where injury is caused whilst drink-driving, this is treated as an aggravating factor for the drink-driving offence even though technically it could constitute a separate offence of causing hurt or grievous hurt through rash or negligent driving under ss 337 and 338 of the Penal Code. In such a situation, it should not matter that the Prosecution fails to draw up a specific charge in respect of this injury because this fact is so closely intertwined with the commission of the drink-driving offence such that it should be considered at the sentencing stage – it is a consequence of the drink-driving offence. Other than consequences of the offence, the circumstances under which the offence is committed should also be considered. For instance, as stated in *Edwin s/o Suse Nathen*, the fact that the offender had been speeding while drink-driving is an aggravating factor even though the act of speeding discloses a separate offence for which no charge has been drawn up by the Prosecution: see s 63(1) of the RTA. In a related vein, See J also suggested in *Chong Yee Ka* … that facts relating to "the immediate background to the offence at hand" can be considered in sentencing (at [45]).
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> 84 Accordingly, the principle that can be drawn here is that a fact with sufficient nexus to the commission of the offence can be considered at the sentencing stage, *irrespective* of whether this fact could also constitute a separate offence for which the accused was not charged. This nexus makes it a relevant fact in assessing the culpability of the offender for the offence(s) for which he is charged. ***Ultimately, what will constitute***

> ***sufficient nexus is a fact-sensitive inquiry, depending on the circumstances of each case*** and in particular on the degree of proximity of time and space to the charged offence(s). Sufficient nexus will generally be present if it concerns a fact in the immediate circumstances of the charged offence(s) or is a fact relevant to the accused's state of mind at the time the offences(s) are committed. This situation is different from the case of antecedent offending conduct with no nexus whatsoever to the offence(s) in question.
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> 85 The reason for treating facts with sufficient nexus as relevant is to give effect to the relativity principle which I have described (see above at [71]). For two offenders charged with the same offence, the offender with the higher culpability ought to receive a higher sentence. Given that the culpability of the accused person in any offence is largely concerned with the circumstances in which the offence was committed as well as the consequences of the offence, a sentencing court cannot turn a blind eye to these facts just because no charges were brought in respect of these acts. In making this assessment, the fact that these concern uncharged offences are less important here because these factors go to the very commission of the offence in question and thus directly inform the court about the culpability of the accused. However, the sentencing judge must bear in mind that he cannot sentence the accused as if he had been convicted of this uncharged offence. ***He can only take this fact into consideration in deciding on the culpability of the accused in relation to the charges that were brought against him.*** It is also important for the judge to ensure, as cautioned by Menon CJ in *Edwin s/o Suse Nathen*, that such aggravating factors have been adequately proven by the Prosecution such that a finding of fact is made by the trial judge or the accused admits to this fact.
>
> [emphasis in original italicised; emphasis added in bold and italics]

29 In my judgment, such an approach strikes the right balance in ensuring fairness to the accused person while at the same time ensuring that his culpability has been properly accounted for in sentencing. In the present case, the fact that the Appellant had absconded did have a sufficient nexus to the Appellant's culpability for the Enhanced Possession Charge notwithstanding the fact that it occurred sometime after the Appellant committed the offence. This was because the Appellant's act of absconding reflected his lack of remorse

for the offence disclosed in the Enhanced Possession Charge. It is appropriate to take this into account in sentencing just as a court may take account of an offender's other acts *after* an offence, such as his cooperation with the police, a timely plea of guilt or an offer to pay compensation, in arriving at a view on the offender's remorse at the sentencing stage.

30 On this basis, while the act of the Appellant's absconding could have been but was not the subject of a separate offence, I accepted that the relevant facts, so long as they were proved, could be relied upon in assessing the Appellant's overall culpability. A disregard of authority and a lack of remorse would call for the imposition of a higher sentence. This was consistent with the approach taken by Chao Hick Tin JA in *Lin Lifen v Public Prosecutor* [2016] 1 SLR 287. The appellant in that case was initially charged in 2001 and 2002 for using a forged degree certificate and having made false statements in her applications for permanent resident status. She was released on bail and permitted to travel out of the jurisdiction. She did not return to answer the charges. Chao JA considered the fact that the appellant had absconded while out on bail to be an aggravating factor because, among other things, it revealed her manifest intention to frustrate the proper operation of the law (at [50]).

31 However, in my judgment, as a matter of fairness to the accused person, any enhancement on this basis would need to be balanced against the extent to which the accused person could have been punished had a separate charge been brought. I therefore took note of the fact that if in this case a charge had been brought under ss 172 or 174 of the Penal Code, the maximum sentence would have been six months' imprisonment.

32 Finally, I agreed with the learned DPP that the need for specific deterrence was a valid basis for imposing a sentence above the mandatory minimum for the Enhanced Possession Charge. As was observed in *Public Prosecutor v Ali bin Bakar and another appeal* [2012] SGHC 83 at [6]:

> … Courts may incline towards leniency for first offenders, but if the offender is not deterred by the sentence he cannot be given a "frequent flyer" discount. In crime, *higher frequency must generally attract harsher punishment unless there are good reasons to the contrary*. … [emphasis added]

33 Nonetheless, in my judgment, the sentence of three years' imprisonment that was imposed by the DJ, which was 50% over the mandatory minimum, was excessive because the DJ appeared to have also taken into account the fact of the Appellant's act of re-offending while on bail as an aggravating factor in deciding on the sentence for the Enhanced Possession Offence and for the reasons set out at [18]–[19] above, this was not correct as a matter of principle. Accordingly, I set aside the sentence of three years' imprisonment for the Enhanced Possession Charge and imposed a term of imprisonment of two years and six months in its place on account of the Appellant's recidivism and his lack of remorse.

The LT-2 Charge

34 With respect to the LT-2 Charge, there were two factors that warranted a sentence above the mandatory minimum. The first was the fact that the Appellant had committed a further LT-2 consumption offence despite already facing a similar LT-2 charge after his initial arrest on 24 August 2014. There were a number of precedents that suggested that the sentence for a second LT-2 offence should be a term of imprisonment of about eight years:

(a) In *Public Prosecutor v Krishnasamy s/o Suppiah* [2011] SGDC 321, Senior District Judge See Kee Oon (as he then was) sentenced an offender who pleaded guilty to two LT-2 consumption charges and one drug possession *simpliciter* charge to seven years' imprisonment for the first LT-2 consumption charge and eight years' imprisonment for the second LT-2 consumption charge. It appears that a higher sentence for the second LT-2 consumption charge was imposed in order to take into account the aggravating factor that the offender "had reoffended while on bail and committed a further LT-2 offence" (at [8]). The sentences were upheld by Steven Chong J (as he then was) on appeal to the High Court (see *Krishnasamy s/o Suppiah v Public Prosecutor* (MA 217/2011, unreported)).

(b) In *Yusran bin Yusoff v Public Prosecutor* [2014] SGHC 74, Choo Han Teck J upheld the sentence of eight years' imprisonment with six strokes of the cane for a second LT-2 offence. At [7], Choo J agreed with the district judge that the appellant's recidivism justified such a sentence.

35 The second factor that warranted a sentence above the mandatory minimum was the lack of remorse evident from the fact that the Appellant had committed the offence disclosed in the LT-2 Charge while on bail and indeed after absconding. The act of re-offending on bail is a common aggravating factor that warrants greater attention being placed on the need for specific deterrence (see *Vasentha* ([24] *supra*) at [63]):

> (3) Reoffending on bail
>
> 63 Another common aggravating factor is when the offender has reoffended while on bail (see, *eg*, *PP v Liyakath Ali s/o Maideen* [2008] SGDC 216 … at [17]). Among other things, this

> may indicate that the offender is not genuinely remorseful (see *Chen Weixiong Jerriek v PP* [2003] 2 SLR(R) 334 at [18]–[23]) and warrants greater attention being placed on the need for specific deterrence.

36 To similar effect, V K Rajah JA observed in *Public Prosecutor v Loqmanul Hakim bin Buang* [2007] 4 SLR(R) 753 as follows (at [61]):

> To recapitulate, the commission of an offence whilst on bail is *aggravating* in nature because it is consistent with two of the key sentencing considerations, namely, *retribution and deterrence*, though more so the latter than the former. Accordingly, where the primary sentencing consideration that is engaged represents one of these considerations, or both, the fact that the offence had been committed on bail assumes further significance meriting enhanced sanctions to reflect the abuse of trust and the manifested proclivity for offending behaviour. [emphasis in original]

37 The DJ imposed a sentence of eight years and six months' imprisonment for the LT-2 Charge. If I were to approach this on the basis that he could have been sentenced to a term of eight years just on the basis that this was the second LT-2 charge, this would mean that the DJ increased the sentence by a further six months on the ground that the Appellant had re-offended after absconding on bail. In my judgment, this was not manifestly excessive. I therefore affirmed the sentence imposed by the DJ for the LT-2 Charge.

Whether the individual sentences should run concurrently

38 Finally, I was satisfied that the DJ's decision to run both sentences concurrently was correct and should not be interfered with for the following reasons:

(a) First, the DJ was correct in finding that running both sentences consecutively (which would have resulted in an aggregate imprisonment term of 11 years and six months' imprisonment based on the DJ's

individual sentences and 11 years' imprisonment based on the revised individual sentences on appeal) would be significantly above the norm for the most serious offence, which was the LT-2 Charge.

(b) In the context of the Appellant's age, the DJ was correct in finding that running both sentences consecutively would border on being crushing and excessive, and might not afford the Appellant a reasonable prospect of rehabilitation.

Conclusion

39 For these reasons, I allowed the appeal in part as aforesaid.

Sundaresh Menon
Chief Justice

Appellant in person; and
April Phang and Jaime Pang (Attorney-General's Chambers) for the respondent.