IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2024] SGHC 317

Criminal Motion No 48 of 2024

Between

Kalachelvam s/o Packirisamy

… *Applicant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Procedure and Sentencing — Initiation of proceedings]
[Criminal Procedure and Sentencing — Revision of proceedings]
[Criminal Procedure and Sentencing — Sentencing — Totality principle]
[Criminal Procedure and Sentencing — Sentencing — Date of commencement]

TABLE OF CONTENTS

Kalachelvam s/o Packirisamy
v
Public Prosecutor

[2024] SGHC 317

General Division of the High Court — Criminal Motion No 48 of 2024
Vincent Hoong J
5 December 2024

6 December 2024

Vincent Hoong J:

Introduction

1 In HC/CM 48/2024 ("CM 48"), the applicant sought a reduction in the aggregate sentence of ten years and three months' imprisonment imposed on him in the District Court for four drug-related offences. He did not challenge any of his individual sentences. Neither did he object that three of these individual sentences were, in effect, ordered to run consecutively. His sole complaint was that his offences were not dealt with in a single sitting but across two separate sittings by different district judges. This, he argued, was prejudicial to him because a more favourable combination of individual sentences may otherwise have been selected to run consecutively. Thus, in CM 48, he invited the court to "restructure" his individual sentences and lower his aggregate sentence accordingly.

2 After considering the parties' submissions, I dismissed the application on 5 December 2024 with brief oral remarks. I now provide the full grounds of my decision.

Background

3 The applicant was charged with a total of 11 drug-related offences as follows:

Charge	Particulars
1st charge (DAC-926554-2019)	On or around 11 May 2019, the applicant consumed a Class A controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, Rev Ed 2008) (the "MDA"), namely, 2-[1-(4-Fluorobutyl)-1H-indazole-3-carboxamido]-3,3-dimethylbutanoic acid or its hexanoic acid isomer or any of their respective fluoro positional isomers in the butyl group. This was an offence under s 8(*b*)(i) punishable under s 33(4) of the MDA.
2nd charge (DAC-926555-2019)	On or around 11 May 2019, the applicant consumed a Class A controlled drug listed in the First Schedule to the MDA, namely, 2-[1-(5-Fluoropentyl)-1H-indole-3-carboxamido]-3,3-dimethylbutanoic acid or its hexanoic acid isomer or any of their respective fluoro positional isomers in the pentyl group. This was an offence under s 8(*b*)(i) punishable under s 33(4) of the MDA.
3rd charge (DAC-926556-2019)	On 11 May 2019, the applicant had in his possession a Class A controlled drug listed in the First Schedule to the MDA, namely, one packet and one paper roll containing not less than 8.54g of vegetable matter which was analysed and found to contain 4-fluoro-MDMB-BINACA or its fluoro positional isomers in the butyl group. This was an offence under s 8(*a*) punishable under s 33(1) of the MDA.

4th charge (DAC-926557-2019)	On or around 11 May 2019, the applicant had in his possession utensils intended for the consumption of a controlled drug listed in the First Schedule to the MDA, namely, one packet containing numerous pieces of rolling paper. This was an offence under s 9 punishable under s 33(1) of the MDA.
5th charge (DAC-931439-2019)	On or around 19 September 2019, the applicant consumed a Class A controlled drug listed in the First Schedule to the MDA, namely, 2-[1-(4-Fluorobutyl)-1H-indazole-3-carboxamido]-3,3-dimethylbutanoic acid or its hexanoic acid isomers or their respective fluoro positional isomers in the butyl group. This was an offence under s 8(*b*)(i) punishable under s 33(4) of the MDA.
6th charge (DAC-931440-2019)	On 19 September 2019, the applicant had in his possession a Class A controlled drug listed in the First Schedule to the MDA, namely, one packet containing not less than 21.76g of vegetable matter which was analysed and found to contain 4-fluoro-MDMB-BINACA or its fluoro positional isomers in the butyl group. This was an offence under s 8(*a*) punishable under s 33(1) of the MDA.
7th charge (DAC-931441-2019)	On or around 19 September 2019, the applicant had in his possession utensils intended for the consumption of a controlled drug listed in the First Schedule to the MDA, namely, one packet containing numerous pieces of rolling paper. This was an offence under s 9 punishable under s 33(1) of the MDA.
8th charge (DAC-931442-2019)	On 7 October 2019, the applicant failed to present himself as required for a urine test. This was an offence punishable under reg 15(3)(*f*) read with reg 15(6)(*a*) of the Misuse of Drugs (Approved Institutions, Medical Observation and Treatment and Rehabilitation) Regulations (1999 Rev Ed) (the "Regulations").

9th charge (DAC-931443-2019)	On 19 August 2019, the applicant failed to present himself as required for a urine test. This was an offence punishable under reg 15(3)(*f*) read with reg 15(6)(*a*) of the Regulations.
10th charge (DAC-931444-2019)	On 27 June 2019, the applicant failed to present himself as required for a urine test. This was an offence punishable under reg 15(3)(*f*) read with reg 15(6)(*a*) of the Regulations.
11th charge (DAC-900974-2020)	On or around 11 May 2019, the applicant consumed a specified drug listed in the Fourth Schedule to the MDA, namely, methamphetamine. This was an offence under s 8(*b*)(ii) punishable under s 33A(2) of the MDA.

4 The 9th, 10th and 11th charges were initially fixed for trial before District Judge Edgar Foo ("DJ Foo"). However, at the commencement of the trial on 15 September 2020, the applicant indicated that he intended to admit to the 9th and 10th charges and was claiming trial only to the 11th charge.[1] Upon the Prosecution's application, the applicant was also granted a discharge amounting to an acquittal in relation to the 8th charge.[2] The trial before DJ Foo thus proceeded in respect of the 11th charge alone, with the nine remaining charges stood down pending the trial.[3]

5 On 13 January 2021, while the trial was underway, the applicant informed DJ Foo that he had changed his position and was claiming trial to the

[1] Notes of Evidence ("NEs") (15 September 2020) at p 6, lns 13–19.

[2] NEs (15 September 2020) at p 6, ln 26 to p 7, ln 3.

[3] NEs (15 September 2020) at p 6, lns 19–22.

9th and 10th charges.[4] DJ Foo noted this election and explained that, as the trial had so far proceeded on the basis that the applicant was not contesting the 9th and 10th charges, he would "continue with the … sole charge" and fix the 9th and 10th charges for a pre-trial conference ("PTC").[5]

6 On 8 June 2021, after the conclusion of the trial, DJ Foo convicted the applicant on the 11th charge and proceeded that same day to sentence him for the offence. As the applicant had previously been convicted of consuming a specified drug and punished under s 33A(1) of the Misuse of Drugs Act (Cap 185, 2001 Rev Ed), he was now liable under s 33A(2) of the MDA to an enhanced punishment of seven to 13 years' imprisonment and six to 12 strokes of the cane. DJ Foo imposed a sentence of eight years' imprisonment, declining to enhance this in lieu of caning (for which the applicant was ineligible owing to his age). DJ Foo also backdated this eight-year imprisonment term to 19 September 2019, being the date of the applicant's arrest, with the period from 27 September 2019 to 21 January 2020 when he was released on bail to be disregarded. The full grounds of DJ Foo's decision are published as *Public Prosecutor v Kalachelvam s/o Packirisamy* [2021] SGDC 129. Having convicted and sentenced the applicant, DJ Foo then fixed the nine stood-down charges for a PTC, noting that the applicant was "challenging … the urine testing results as well" as he had "mentioned the last time".[6] DJ Foo appeared by this to have been referring to the 9th and 10th charges, concerning the applicant's failure to report for his urine tests on separate dates, to which he had indeed previously expressed an intention to claim trial (see [5] above).

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4 NEs (13 January 2021) at p 1, lns 20–26.

5 NEs (13 January 2021) at p 3, lns 1–13.

6 NEs (8 June 2021) at p 13, lns 2–25.

7 On 10 June 2021, the applicant filed a notice of appeal against his conviction and sentence for the 11th charge.

8 During a PTC and criminal case disclosure conference ("CCDC") held on 2 July 2021, the applicant varied his position again. He now indicated that he was claiming trial only to the 3rd charge and intended to plead guilty to the remaining charges, including the 9th and 10th charges. Directions were accordingly given for the filing of the Case for the Prosecution, which was duly filed thereafter.

9 A further PTC and CCDC was held on 6 August 2021 during which the Prosecution offered to withdraw the 3rd charge on condition of the applicant's plea of guilt. The applicant responded that he would accept this offer.

10 Accordingly, on 2 September 2021, the applicant pleaded guilty before District Judge Kamala Ponnampalam ("DJ Ponnampalam") to the 6th, 7th and 9th charges and gave his consent for the 1st, 2nd, 4th, 5th and 10th charges to be taken into consideration. The Prosecution also applied for and the applicant was granted a discharge amounting to an acquittal in relation to the 3rd charge.

11 I digress here to provide a brief account of the offences underlying the proceeded charges before DJ Ponnampalam. The applicant was first arrested on 11 May 2019 in connection with the 11th charge. Having been released on bail, he was arrested again on 19 September 2019 for further drug-related offences. The following items were found in his possession:

(a) One packet containing not less than 21.76g of vegetable matter which was analysed and found to contain 4-fluoro-MDMB-BINACA or its fluoro positional isomers in the butyl group, which are Class A

controlled drugs listed in the First Schedule to the MDA. The applicant's possession of this packet, which belonged to him and was intended for his consumption, formed the subject of the 6th charge.

(b) One packet containing numerous pieces of tobacco rolling paper, which were utensils intended for the consumption of 4-fluoro-MDMB-BINACA or its fluoro positional isomers in the butyl group. The applicant's possession of these pieces of tobacco rolling paper formed the subject of the 7th charge.

Separately, the applicant had been earlier placed under compulsory supervision from 30 June 2016 to 28 June 2020 under reg 15 of the Regulations and was required, under reg 15(3)(*f*), to present himself for urine tests every Monday and Thursday. He failed to do so on eight occasions because he was consuming controlled drugs at the time. The applicant's failure to present himself for a urine test on 19 August 2019 without any valid reason formed the subject of the 9th charge.

12 Returning to the plead-guilty mention, DJ Ponnampalam sentenced the applicant to: (a) two years' imprisonment for the 6th charge; (b) three months' imprisonment for the 7th charge; and (c) nine months' imprisonment for the 9th charge. In respect of the 6th charge, it bears mentioning that, as the applicant had previously been convicted of possessing a controlled drug and punished under s 33(1) of the Misuse of Drugs Act (Cap 185, 1997 Rev Ed) , he was now liable under s 33A(1) of the MDA to an enhanced punishment of two to ten years' imprisonment and a fine of up to $20,000. DJ Ponnampalam was also required under s 307(1) of the Criminal Procedure Code 2010 (2020 Rev Ed) (the "CPC") to run at least two of the individual sentences consecutively and

selected for this purpose the sentences imposed for the 6th and 7th charges. This yielded a global sentence of two years and three months' imprisonment for the 6th, 7th and 9th charges. Exercising her discretion under s 322(1) of the CPC, DJ Ponnampalam ordered this further term of imprisonment to commence upon the expiry of the eight-year imprisonment term previously imposed by DJ Foo. The applicant did not file a notice of appeal against DJ Ponnampalam's decision on sentence.

13 On 6 October 2021, I heard and dismissed HC/MA 9136/2021/01 ("MA 9136"), which was the applicant's appeal against his conviction and sentence for the 11th charge.

14 The table below sets out, in summary, the sentences imposed on the applicant for the four proceeded charges:

Charge	**Sentence**	**Date of commencement**	**Sentencing judge**
11th charge (DAC-900974-2020)	Eight years' imprisonment	19 September 2019 (disregarding period from 27 September 2019 to 21 January 2020)	DJ Foo
6th charge (DAC-931440-2019)	Two years' imprisonment (consecutive)	Upon expiry of eight-year imprisonment term for 11th charge	DJ Ponnampalam

7th charge (DAC-931441-2019)	Three months' imprisonment (consecutive)	Upon expiry of eight-year imprisonment term for 11th charge	DJ Ponnampalam
9th charge (DAC-931443-2019)	Nine months' imprisonment (concurrent)	Upon expiry of eight-year imprisonment term for 11th charge	DJ Ponnampalam

It is not inaccurate to say that the sentences for the 11th, 6th and 7th charges were, in effect, ordered to run consecutively, producing an aggregate sentence of ten years and three months' imprisonment for the four proceeded charges.

The parties' cases

15 In CM 48, the applicant "[agreed] that he was sentenced to [*sic*] all his charges fairly" and did not seek any reduction in his individual sentences.[7] However, he submitted that he had been prejudiced because his offences were dealt with across two separate sittings by different district judges.

16 The applicant developed this submission in the following way. He accepted that, had he been sentenced for all four offences collectively in a single sitting, the district judge would have been entitled to order three of the individual sentences to run consecutively. However, he observed that the district judge would have enjoyed more flexibility in selecting the individual sentences for this purpose.[8] Specifically, it was possible that the district judge would have

7 Applicant's Written Submissions dated 7 November 2024 ("AWS") at p 4.

8 AWS at p 4.

ordered the sentences imposed for the 11th, 7th and 9th charges to run consecutively, resulting in a lower aggregate sentence of nine years' imprisonment.

17 However, this option was unavailable because the offences were dealt with separately by DJ Foo and DJ Ponnampalam. After DJ Foo had sentenced the applicant for the 11th charge, only the 6th, 7th and 9th charges were before DJ Ponnampalam. This was significant because she was therefore obliged, owing to its length, to order the sentence for the 6th charge to run consecutively with one or both of the sentences for the 7th and 9th charges. The sentence for the 6th charge could not have been ordered to run concurrently. To be sure, under s 322(1) of the CPC, DJ Ponnampalam could have ordered the further term of two years and three months' imprisonment to commence immediately, rather than upon the expiry of the earlier eight-year imprisonment term. However, this would have subsumed the further imprisonment term within the earlier imprisonment term and, as the applicant himself conceded, would have been "too [lenient]". DJ Ponnampalam therefore had little choice but to order the further imprisonment term to commence only upon the expiry of the earlier imprisonment term, but this resulted in an aggregate sentence which was "significantly longer than it should be and therefore [violated] the principle of totality".[9]

18 In the circumstances, the applicant sought a "reducing of [his] sentence"[10] by way of a "restructuring" of his individual sentences. Specifically, he invited the court to order the sentences for the 11th, 7th and 9th charges to

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9 AWS at pp 1–2.

10 Applicant's Notice of Motion dated 20 August 2024.

run consecutively, and the sentence for the 6th charge to run concurrently, with a view to reducing his aggregate sentence from ten years and three months' to nine years' imprisonment.[11]

19 The Prosecution, meanwhile, characterised CM 48 as an application by the applicant for an extension of time to file a notice of appeal against his aggregate sentence.[12] It submitted that the application, thus construed, should be dismissed due to the applicant's substantial and unexplained delay in filing a notice of appeal against DJ Ponnampalam's decision[13] and the absence of any reasonable prospect of success in an appeal.[14] Expanding on this last-mentioned point, the Prosecution denied that the aggregate sentence of ten years and three months' imprisonment was excessive. It denied also that the applicant was prejudiced by the fact that his offences were dealt with across two separate sittings. This was because DJ Ponnampalam had borne in mind the eight-year imprisonment term earlier imposed by DJ Foo and applied her mind to the relevant principles, including the one-transaction rule and the totality principle, in coming to her decision on sentence.[15]

Issues to be determined

20 In determining CM 48, I first considered, preliminarily, whether a criminal motion was an appropriate mode of process for the application having regard to the nature of the relief sought. I then turned to the substance of the

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11 AWS at p 4.

12 Prosecution's Written Submissions dated 11 November 2024 ("PWS") at [1] and [15].

13 PWS at [21]–[26].

14 PWS at [27]–[40].

15 PWS at [2] and [31].

application and considered, in any event, whether it should be allowed on the merits.

Whether the criminal motion was an appropriate mode of process for CM 48

21 In *Amarjeet Singh v Public Prosecutor* [2021] 4 SLR 841 ("*Amarjeet Singh*"), Sundaresh Menon CJ described the criminal motion at [28] as "a mode of process that is *primarily* invoked when seeking a form of relief that is ancillary to or supportive of the conduct of a primary criminal action" [emphasis in original]. Menon CJ further emphasised at [1] that:

> … the criminal motion is a *procedural device* by which the criminal jurisdiction of the court may be invoked, rather than being a *source* of such jurisdiction. That being the case, it would be necessary, at least in cases of doubt, to first establish a proper jurisdictional basis for the matter before the court instead of assuming this just because a criminal motion had been filed. This could be especially important because in some instances, the court's exercise of its jurisdiction may be controlled or circumscribed by certain preconditions such as the need to apply for leave. …
>
> [emphasis in original]

22 Accordingly, to determine the propriety of the applicant's choice of procedural device, it was necessary to closely examine the nature of the relief sought. With respect, I was unable to understand the Prosecution's characterisation of CM 48 as an application for an extension of time to file a notice of appeal. The applicant had neither prayed for such an extension nor signaled any intention, should CM 48 be allowed, to file a notice of appeal thereafter. Indeed, during a case management conference before an assistant registrar, the applicant confirmed quite categorically that he had "no intention to appealing [*sic*] against the sentence" and was "not asking for an extension of time" to do so. It was therefore clear that he was seeking a more substantive

form of relief. To underscore this point, I reproduce the applicant's own description of the relief he was seeking:[16]

> Remedies Sought:
>
> 1) In order to give the court the flexibility to sentence the [applicant] fairly, the [applicant's] charges should be restructured with the same flexibility given to one judge sentencing an accused with 4 charges.
>
> 2) The [applicant] agrees that he was sentenced to all his charges fairly … Therefore, a restructuring is all that is necessary to remedy the [applicant's] aggregate sentence.
>
> 3) The [applicant] hopes that the court is able to restructure his charges so [the 11th, 9th and 7th charges] are ordered to run consecutively while [the 6th charge] is ordered to run concurrently. This will in effect reduce his aggregate sentence from 10 year [*sic*] 3 months to 9 years.

Pertinently, this was the relief that the applicant was seeking in CM 48 itself. It was not the relief that he intended to seek in some subsequent action to which CM 48 was merely a precursor. Indeed, had the applicant succeeded by way of CM 48 in obtaining this relief, it did not appear that any subsequent action would be necessary from his perspective.

23 Against this backdrop, I then considered whether a proper jurisdictional basis could be established for CM 48 and, if so, what that jurisdictional basis was. As will become clear, the answers to these questions had a significant bearing on the propriety of the applicant's choice of procedural device.

24 To begin, CM 48 was plainly not an attempt to invoke the court's original criminal jurisdiction, which is "primarily concerned with the court's *trial* jurisdiction and would extend to matters incidental or ancillary

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16 AWS at p 4.

thereto" [emphasis in original]: *Amarjeet Singh* at [15]. Nor did it engage the court's supervisory jurisdiction, which refers to "the scrutiny and control exercised by the High Court over decisions of the inferior courts and tribunals or other public bodies discharging public functions": *Amarjeet Singh* at [17], citing *Ng Chye Huey and another v Public Prosecutor* [2007] 2 SLR(R) 106 at [48].

25 Had the Prosecution been correct to regard CM 48 as an application for an extension of time to file a notice of appeal, it would clearly have involved the court's appellate criminal jurisdiction: *Amarjeet Singh* at [29], citing *Kiew Ah Cheng David v Public Prosecutor* [2007] 1 SLR(R) 1188 at [5]. Moreover, as such applications are commonly brought by way of criminal motions (see *Amarjeet Singh* at [27]), the applicant's choice of procedural device would have been entirely above reproach.

26 However, as I have explained, the applicant was not seeking an extension of time to file a notice of appeal but a reduction in his aggregate sentence by means of a "restructuring" of his individual sentences. In my judgment, this relief was not available pursuant to the court's appellate jurisdiction because the applicant had already exhausted his right of appeal in relation to the 11th charge (see [13] above). The fact that he had not done so in relation to the 6th, 7th and 9th charges did not undermine this conclusion, because each of the individual sentences had to be before me if they were to be "restructured".

27 In any event, the applicant could not possibly have been allowed to invoke the court's appellate jurisdiction for this purpose using a criminal motion. In *Amarjeet Singh*, Menon CJ stressed at [32] that criminal appeals, like

criminal references, revisions and trials, are subject to certain procedural safeguards which exist in order to streamline administration, restrain abuse of process, preserve the finality of judgments and constrain the circumstances in which the court's powers may be invoked and exercised. In this regard, s 377 of the CPC sets out the procedure for appeals, including the requirements of notice and timelines for the filing of the appellant's case. Against this backdrop, Menon CJ emphasised that recourse to criminal motions should not subvert the established processes, safeguards and constraints applicable to criminal appeals. In my view, Menon CJ's observations had considerable force in the present case. Bearing in mind the 14-day deadline prescribed under s 377(2) of the CPC, the applicant was out of time by more than three years to file a notice of appeal against DJ Ponnampalam's decision on sentence. Had he intended nonetheless to invoke the court's appellate jurisdiction, the proper course would have been to seek the court's indulgence for an extension of time under s 380(1) of the CPC, putting forward sufficient material justifying why the court should exercise its discretion in his favour: *Isham bin Kayubi v Public Prosecutor* [2021] SGCA 22 at [20], citing *Lim Hong Kheng v Public Prosecutor* [2006] 3 SLR(R) 358 at [27]. It would plainly have been absurd if the applicant could have circumvented all these procedural requirements by means of a criminal motion.

28 In my judgment, CM 48 could only be plausibly understood as an attempt to invoke the court's revisionary jurisdiction. Section 400(1) of the CPC provides that, once seized of its revisionary jurisdiction, the General Division of the High Court may "call for and examine the record of any criminal proceeding before any State Court to satisfy itself as to the correctness, legality or propriety of any judgment, sentence or order recorded or passed and as to the regularity of those proceedings". The gravamen of the applicant's complaint in

CM 48 was that he was prejudiced because his offences were dealt with across two separate sittings by different district judges. In substance, therefore, it appeared to me that he was seeking the revision of DJ Foo's decision to fix the nine stood-down charges for a PTC, to be dealt with separately, instead of dealing with these charges along with the 11th charge. On this view, the proper jurisdictional basis for CM 48 was the court's revisionary jurisdiction.

29 Bearing this in mind and considering also the absence of any primary criminal action in relation to which CM 48 may be regarded as "ancillary … or supportive", I considered that it should instead have been commenced by way of a petition for criminal revision. Nonetheless, I regarded this error as "ultimately one of form and procedure" (see *Chua Yi Jin Colin v Public Prosecutor* [2022] 4 SLR 1133 at [19]) and was conscious that the court "might, and often will, eschew unyielding and undue emphasis on compliance with procedural formalities": *Amarjeet Singh* at [32], referring to *James Raj s/o Arokiasamy v Public Prosecutor* [2014] 3 SLR 750 at [20]–[22]. In fairness to the applicant, who was unrepresented, I therefore proceeded to consider CM 48 on the merits.

Whether CM 48 should be allowed on the merits

30 The invocation of the court's revisionary jurisdiction "requires a demonstration not only that there has been some error but also that 'grave and serious injustice' has been occasioned as a result": *Amarjeet Singh* at [21], citing *Knight Glenn Jeyasingam v Public Prosecutor* [1998] 3 SLR(R) 196 at [19]. It was clear, in my view, that the applicant had fallen well short of meeting this high threshold.

31 First, I was satisfied that DJ Foo's decision was not in error. I accept that it is common practice, where an accused facing multiple charges is convicted after trial of some charges and admits to the remaining charges, for all the charges to be dealt with collectively in a single sitting. But this is simply not possible where, following his conviction, the accused continues to dispute one or more of the remaining charges. The distinction between the two situations is neatly illustrated by the case of *Public Prosecutor v Hang Tuah bin Jumaat* [2013] SGHC 28. There, the accused was convicted after trial in the High Court on one charge of rape and a second charge of driving a motor vehicle without the appropriate licence. He faced other charges but declined to have these taken into consideration for sentencing. This being the accused's position, the High Court had little choice but to sentence him for the two charges alone, leaving the remaining charges to be dealt with separately. The following observation by the High Court at [5] is instructive:

> … However, there were some complications in this case … The complications concerned the other charges which the accused, in spite of legal advice, declined to have this court take into consideration for the purposes of sentencing. Consequently, he will have to face trial and if convicted may result in him having to serve a far longer time in prison than he would have had he agreed to have the other offences dealt with in this court. All that was rendered academic and speculative given his decision.

The accused was then tried in the District Court on a single charge of sexually penetrating a minor. This was one of the remaining charges that he had declined to have taken into consideration by the High Court. The accused was convicted by the District Court of the charge and, this time, accepted the Prosecution's offer regarding the remaining charges. He therefore pleaded guilty to five of these charges and gave his consent for four other charges to be taken into consideration. This allowed the District Court in *Public Prosecutor v Hang Tuah Bin Jumaat* [2015] SGDC 163 to deal with the remaining charges along

with the charge of sexually penetrating a minor on which he had been convicted after trial.

32 In the present case, the applicant had informed DJ Foo midway during the trial that he was disputing the 9th and 10th charges (see [5] above). If this was his position, the nine stood-down charges simply could not have been dealt with collectively with the 11th charge. However, I observe parenthetically that DJ Foo should, with respect, have expressly confirmed that this remained the applicant's position after convicting him of the 11th charge. After all, some time had elapsed between the applicant's indication (on 13 January 2021) that he intended to claim trial to the 9th and 10th charges and his conviction (on 8 June 2021) of the 11th charge. It was certainly not implausible for his position to have subsequently changed, as indeed it had done by the time of the PTC and CCDC on 2 July 2021 (see [8] above). Instead, it was only after sentencing the applicant for the 11th charge that DJ Foo expressed his understanding that the applicant was "challenging … the urine testing results as well" (see [6] above). Even so, the applicant was not invited to specifically confirm this. Nonetheless, these omissions were ultimately inconsequential because the applicant continued to dispute the 3rd charge during the PTC and CCDC on 2 July 2021 (see [8] above). Accordingly, irrespective of his position on the 9th and 10th charges, the stood-down charges could not have been dealt with collectively with the 11th charge. For completeness, I should add that it was irrelevant that the 3rd charge was ultimately withdrawn by the Prosecution. The short point was that the Prosecution was, at the relevant time, maintaining the 3rd charge, and it was only during the PTC and CCDC on 6 August 2021 that the offer to withdraw the 3rd charge was first conveyed (see [9] above). As has been observed elsewhere, albeit in a slightly different context, an accused who makes certain tactical choices at the initial stages of the proceedings must stand by the

consequences of those choices: see *Public Prosecutor v S Iswaran* [2024] SGHC 251 at [145].

33 Second, in any event, I did not accept that DJ Foo's decision had occasioned "grave and serious injustice" to the applicant. In particular, I was not satisfied that the applicant's aggregate sentence would have been any lower had all the offences been dealt with in a single sitting. This was because, in determining the date of commencement of the further imprisonment term under s 322(1) of the CPC, DJ Ponnampalam had been obliged in any event to consider the one-transaction rule and the totality principle, bearing in mind the eight-year imprisonment term earlier imposed by DJ Foo: *Public Prosecutor v Hang Tuah bin Jumaat* [2016] 2 SLR 527 ("*Hang Tuah*") at [27] and [33]–[34]. These were the very same principles by which a single district judge dealing with all the offences would have been bound in determining a suitable global sentence: see *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 ("*Shouffee*") at [25] and *Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 ("*Raveen Balakrishnan*") at [39] and [65]. Indeed, in contemplating the totality of the sentences imposed on the applicant, DJ Ponnampalam had been required to consider whether, if all the offences had been before her, she would still have passed a sentence of similar length. If the answer to this question was no, she would have been required to adjust the sentences imposed for the latest offences in light of the aggregate sentence: *Hang Tuah* at [34].

34 I accepted that DJ Ponnampalam was somewhat constrained by the fact that the 6th charge was subject to a mandatory minimum of two years' imprisonment. This meant that, if the further imprisonment term was to take effect upon the expiry of the earlier eight-year imprisonment term, the resulting

aggregate sentence would have been at least ten years' imprisonment. However, if she had regarded this as excessive, DJ Ponnampalam could instead have ordered the further imprisonment term to commence immediately. Contrary to the applicant's submission, this need not have involved subsuming the further imprisonment term within the earlier imprisonment term. DJ Ponnampalam could have imposed longer individual sentences for the 6th, 7th and 9th charges, ordering all three individual sentences to run consecutively if necessary, to ensure that the further imprisonment term outstripped the remaining duration of the earlier imprisonment term. An aggregate sentence of between eight and ten years' imprisonment could thus have been imposed had DJ Ponnampalam thought this appropriate. In this regard, I refer to the observation in *Hang Tuah* at [34] that it "does not at the end of the day make much difference" whether the adjustment is effected "by imposing a shorter sentence to run consecutively or a long sentence to commence immediately" even if, "in principle, the judge should, as far as possible, try to impose a sentence that is reflective of the gravity of the latest offence(s) in question". I therefore did not accept that the applicant had been prejudiced by the mere fact, without more, that his offences were dealt with separately by DJ Foo and DJ Ponnampalam.

35 A similar argument was considered and rejected in *Ewe Pang Kooi v Public Prosecutor* [2023] 3 SLR 1736. There, the appellant was convicted after trial in the High Court on 50 charges of criminal breach of trust as an agent and sentenced to 25 years and ten months' imprisonment. The Prosecution thereafter proceeded with 643 remaining charges in the District Court, these charges having been stood down pending the High Court proceedings. The appellant pleaded guilty to three of the remaining charges and gave his consent for the other 640 charges to be taken into consideration. The District Court sentenced the appellant to four months and 25 days' imprisonment and a fine of $1,000,

ordering the further term of imprisonment to commence only upon the expiry of the imprisonment term earlier imposed by the High Court. On appeal, the appellant's case was that the District Court should instead have ordered the further imprisonment term to commence on the date of sentencing. One of his submissions was that he had been prejudiced by the Prosecution's administrative decision to stand down the 643 charges, proceed with them subsequently in another court and seek the sentences for the stood-down charges to commence upon the expiry of the existing aggregate sentence. The court did not accept this submission, explaining at [66]–[67] as follows:

> 66 … [T]he appellant's fundamental objection from principle is misplaced – regardless of whether all the charges had proceeded before [the High Court] or not, the inquiry would remain the same. This is because the court's exercise of its discretion under s 322(1) of the CPC is informed by the *same considerations*, being the one-transaction rule and the totality principle. Even if the sentences in respect of the later proceedings had to be run consecutively by virtue of s 307(1) of the CPC, the court has the discretion under s 322(1) to order the sentences for those offences to begin immediately, taking into account, *inter alia*, the one-transaction rule and totality principle. There is thus no circumvention of the *Shouffee* principles, which have in fact been encapsulated within the s 322(1) inquiry. An offender would hence not suffer any prejudice arising from the Prosecution's administrative decision.
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> 67 Even taking the appellant's case at its highest, I am unable to identify any potential prejudice that could arise as a result of the Prosecution's administrative decision. I illustrate my point with an example. Assume an accused person faces a set of six charges, which in fact formed part of the same transaction. The Prosecution chooses to proceed with the charges in two separate proceedings involving three charges each. The three less severe charges are proceeded with first, and the accused is sentenced to, and begins serving, the imprisonment term for those charges. Subsequently, while the accused is serving his sentence, and towards the tail end of his sentence, the three more severe charges are proceeded with. By operation of s 307(1) of the CPC, the court has to order the sentences for at least two of the three offences to run consecutively. If the second sentencing court, in exercising its

> discretion under s 322(1) of the CPC, deems that it would not have passed a global sentence of similar length if all the offences had been before it at once, the court can choose to impose a shorter sentence and order it to run following the expiry of the first imprisonment term or a long sentence and order it to commence immediately (as per the approach in *Hang Tuah* at [34], set out at [45] above). There is thus no lacuna here in which the Prosecution's administrative decision to proceed with different charges at different times would result in perverse outcomes.
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> [emphasis in original]

These observations were equally applicable in the present case given that the applicant was similarly complaining that his offences had been dealt with across two separate sittings.

36 Returning to the plead-guilty mention, DJ Ponnampalam had clearly borne in mind the one-transaction rule and the totality principle, as she was obliged to do, in sentencing the applicant for the 6th, 7th and 9th charges. I summarise the salient aspects of her reasoning as follows:

(a) The offences underlying the 6th, 7th and 9th charges had been committed while the applicant was on bail following his arrest for the 11th charge. They were therefore "distinct and separate" and "not from the same transaction" as the 11th charge. Accordingly, it was appropriate for the further imprisonment term to commence only upon the expiry of the previous imprisonment term.[17]

(b) In principle, a sentence of two years and three months' imprisonment for the 6th charge, as submitted for by the Prosecution, would have been fair. This was because the applicant had similar

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17 NEs (2 September 2021) at p 13, lns 3–16.

antecedents for drug possession and many drug-related antecedents generally. However, on account of the totality principle, DJ Ponnampalam ultimately calibrated this downwards to the mandatory minimum two years' imprisonment.

(c) Had all the applicant's offences been dealt with in a single sitting, his aggregate sentence would not have been "significantly different" but was "likely to be similar".[18] This was because the district judge sentencing the applicant would have been required by law to order at least two of the individual sentences to run consecutively.[19] In fact, the district judge was likely to have ordered three of the individual sentences to run consecutively in view of "the nature of the offences and the number of charges".[20]

37 I agreed with DJ Ponnampalam the same aggregate sentence of ten years and three months' imprisonment could justifiably have been imposed even if all the applicant's offences had been dealt with in a single sitting. The following points sufficed to justify this conclusion. First, as observed by DJ Ponnampalam, the district judge sentencing the applicant would have been required to order at least two of the individual sentences to run consecutively. In my view, he would have been entitled to select the sentences for the 6th and 11th charges for this purpose. Given that the underlying offences were committed on entirely separate occasions and clearly did not form part of a single transaction, this would have been entirely in keeping with the general rule

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18 NEs (2 September 2021) at p 12, lns 10–11 and 14.

19 NEs (2 September 2021) at p 11, ln 29 to p 12, ln 2.

20 NEs (2 September 2021) at p 11, lns 25–26 and p 12, lns 4–6 and 12–13.

of consecutive sentences for unrelated offences: see *Raveen Balakrishnan* at [41].

38 Second, I agreed with DJ Ponnampalam that two years and three months' imprisonment would in principle have been an appropriate sentence for the 6th charge. This modest uplift from the mandatory minimum two years' imprisonment would have been amply justified, if nothing else, by the applicant's commission of the offence while on bail, which is a well-established aggravating factor: *Public Prosecutor v Loqmanul Hakim bin Buang* [2007] 4 SLR(R) 753 at [61].

39 Third, the ensuing aggregate sentence of ten years and three months' imprisonment, comprising eight years' imprisonment for the 11th charge and two years and three months' imprisonment for the 6th charge, could not have been regarded as inconsistent with the totality principle. In the first place, this would not have been substantially above the normal level of sentences for the most serious of the individual offences committed: *Shouffee* at [54]. Here, this was the offence of enhanced drug consumption underlying the 11th charge, which was punishable with at least seven years' imprisonment (and six strokes of the cane). Nor could it have been said that the effect of this aggregate sentence on the applicant was crushing and not in keeping with his past record and his future prospects: *Shouffee* at [57]. In all, the applicant had pleaded guilty to four drug-related charges and gave his consent for five others to be taken into consideration. He also had a long list of drug-related antecedents dating back to 1986. Most recently, in 2012, the applicant was convicted of an offence of enhanced drug consumption punishable under s 33A(2) of the MDA and two offences of failing to report for a urine test. The global sentence imposed was seven years and six months' imprisonment with six strokes of the cane. Despite

the severity of this sentence, it did not take long for the applicant to reoffend after his release from prison. For completeness, it bears mentioning that DJ Ponnampalam's downward calibration of the individual sentence for the 6th charge was on the basis that three individual sentences (for the 11th, 6th and 7th charges) were, in effect, being ordered to run consecutively. In my judgment, no such downward calibration would have been necessary if only two individual sentences (for the 11th and 6th charges) were being ordered to run consecutively.

40 I was therefore satisfied that the same aggregate sentence of ten years and three months' imprisonment could justifiably have been imposed even if all the applicant's offences had been dealt with in a single sitting. It would have sufficed, to derive this outcome, to order only two of the individual sentences to run consecutively. Accordingly, it was unnecessary for me to consider the correctness of DJ Ponnampalam's assessment, and the applicant's own concession, that three of the individual sentences could have been ordered to run consecutively. This would have involved asking whether the overall criminality of the applicant's conduct could not have been encompassed in two consecutive sentences: see *ADF v Public Prosecutor and another appeal* [2010] 1 SLR 874 at [146]. I expressed no view on this question.

41 In summary, I did not regard DJ Foo's decision to fix the stood-down charges for a PTC as having been wrong. In any event, I was satisfied that the applicant had not suffered any "grave and serious injustice" on account of the fact that his offences were dealt with across two separate sittings by different district judges. The high threshold for the exercise of the court's revisionary jurisdiction was plainly not met.

Conclusion

42 For the above reasons, I dismissed CM 48.

Vincent Hoong
Judge of the High Court

The applicant unrepresented;
Tan Jing Min (Attorney-General's Chambers) for the respondent.