Yusran bin Yusoff *v* Public Prosecutor
[2014] SGHC 74

Case Number : Magistrate's Appeal No 253 of 2013

Decision Date : 16 April 2014

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Appellant in-person; Suhas Malhotra (Attorney-General's Chambers) for the respondent.

Parties : Yusran bin Yusoff — Public Prosecutor

Criminal Law – Statutory offences – Misuse of Drugs Act

Criminal Procedure – Sentencing – Appeals

16 April 2014

Choo Han Teck J:

1 The appellant, in this appeal against conviction and sentence, was charged with four counts of drug-related offences. Three were for failure to report for urine tests (DAC 46625/2012 to DAC 46627/2012). The appellant pleaded guilty to these three charges. He was convicted and sentenced to 6 months' imprisonment on each charge, with the three sentences to run concurrently. The fourth charge was for an offence of consumption of morphine (DAC 46624/2012). As the appellant had prior antecedents, he was liable to enhanced punishment under s 33A(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA") ("the LT-2 offence"). He claimed trial to this charge. The trial was heard on 7, 8 and 11 October 2013. On 11 October 2013, the district judge convicted him and sentenced him to 8 years' imprisonment and 6 strokes of the cane for the LT-2 offence. His global sentence was hence 8 years' and 6 months' imprisonment and 6 strokes of the cane. The sentence of imprisonment was backdated to the date on which he was first remanded, 15 December 2012.

2 The appellant filed his notice and petition of appeal against both conviction and sentence. The appellant was represented at trial, by Mr Sankar from Sterling Law Corporation, but he conducted his appeal without counsel. In his petition of appeal, dated 21 November 2013, he indicated that he was dissatisfied with the district judge's judgment on the grounds that the sentence was unreasonable and manifestly excessive. However, in his submissions before this court, he stated that he was only appealing against his conviction on the LT-2 offence. Nevertheless, in considering his appeal against conviction in this case, I also considered the sentence imposed. I was satisfied that the sentence was not manifestly excessive, and that there was no reason to disturb the trial judge's decision.

3 An LT-2 offence attracts a sentence of imprisonment of not less than 7 years and not more than 13 years, along with a minimum of 6 strokes of the cane. LT-2 stands for "Long Term 2", parlance used by the prosecution and defence counsel to refer to this offence, and is reserved for accused persons who have a significant history of drug consumption. The appellant did not contest the validity of his antecedents. His defence was simply that he had not consumed morphine (or, rather, heroin). He argued that he had taken medication for his illness, and this was the reason the certificates from the Health Sciences Authority ("HSA") indicated that morphine was found in his urine samples, which he provided shortly after his arrest, on 7 December 2012. Of note, the appellant did

not, either at trial or in this court, contest the validity of the HSA certificates or the urine procurement process. He accepted that morphine was found in his urine samples. He was merely contesting the *source* of the morphine.

4 Morphine is a controlled drug, listed in the First Schedule to the MDA. Pursuant to s 22 of the MDA, if a controlled drug is found in the urine of a person as a result of urine tests conducted by the HSA, he shall be presumed, until the contrary is proved, to have consumed that controlled drug, in contravention of s 8(*b*) of the MDA. At trial, the appellant tried to rebut the presumption that was triggered against him, by virtue of the HSA certificates. HSA analysts had testified that promethazine hydrochloride with codeine phosphate syrup (cough syrup), might give rise to morphine being detected in urine samples. As such, the question was whether the appellant had, in fact, consumed promethazine hydrochloride with codeine phosphate syrup prior to providing his urine samples.

5 The district judge did not think that the appellant had consumed the said syrup before his urine test. First, although the appellant had raised medication as a defence, he did not name or describe the medication he had allegedly consumed. He did not testify, during the trial, whether he consumed the medication just before his arrest. Second, although the appellant was able to furnish a medical report from Tan Tock Seng Hospital which indicated that he was indeed prescribed with promethazine hydrochloride with codeine phosphate syrup, the medication was prescribed to him on 14 January 2012. He was arrested more than 10 months later, on 6 December 2012. As he testified that he had taken the medication in accordance with the doctor's instructions, it was unlikely that he would have had any of the medication left by the time he was arrested. Third, the appellant's claims of having been prescribed medication by other clinics, and having consumed traditional medicine, were vague and unsubstantiated. Fourth, the appellant did not raise his "medication defence" when a statement was recorded from him on 7 December 2012. Neither did he raise it during his cautioned statement, on 14 December 2012. His "medication defence" was a mere afterthought. He was not a first offender and the late reference to this explanation was not at all convincing.

6 For the reasons above, and the district judge's assessment of the credibility of the appellant during trial, including the confessions of the appellant, the district judge found that the appellant had failed to rebut the presumption in s 22 of the MDA and the prosecution had proven its case beyond a reasonable doubt. I see no reason to disturb the trial judge's findings. I note that the appellant's submissions for this appeal did not raise anything new that had not already been dealt with by the district judge.

7 I have considered the sentence of 8 years and 6 strokes meted by the district judge (1 year above the minimum) for the LT-2 offence, and were satisfied that it was not manifestly excessive. The district judge's reason for imposing an additional year above the minimum was the appellant's recidivism. Not only was the appellant convicted of an LT-2 offence previously, he had also reoffended shortly after his last stint in prison. He was released sometime in November 2011 and arrested on 6 December 2012. I find these were valid reasons and hence see no reason to disturb the sentence imposed by the district judge either.

8 The appeal was thus without merit, and I dismissed it.