IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 107

Criminal Case No 22 of 2019

Between

Public Prosecutor

And

Muhammad Ikrimah bin
Muhammad Adrian Rogelio
Galaura

GROUNDS OF DECISION

[Criminal Law] — [Statutory offences] — [Misuse of Drugs Act]
[Criminal Procedure and Sentencing] — [Sentencing]

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v
Muhammad Ikrimah bin Muhammad Adrian Rogelio Galaura

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Introduction

1 The Accused pleaded guilty before me on three proceeded drugs charges, with three other charges taken into consideration in sentencing.[1] One charge was withdrawn on a discharge amounting to an acquittal.[2] A total sentence of 27 years' imprisonment and 15 strokes was imposed.[3] The Accused has appealed against his sentence on grounds that it was manifestly excessive.[4]

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1 Hearing Minute for 12 March 2020 ("Hearing Minute") at pp 1 to 2

2 Hearing Minute at p 2

3 Hearing Minute at p 5

4 CA/CCA 11/2020 Notice of Appeal dated 23 March 2020

The Charges

2 The three proceeded charges were as follows:

(a) Importation of not less than 249.99 g of methamphetamine, a Class A controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"), an offence under s 7 of the MDA, punishable under s 33(1) MDA ("Importation Charge");[5]

(b) Consumption of methamphetamine, a specified drug listed in the Fourth Schedule to the MDA, an offence under s 8(*b*)(ii) MDA, punishable under s 33(1) MDA ("Consumption Charge");[6] and

(c) Possession of not less than 34.01 g of methamphetamine, a Class A controlled drug listed in the First Schedule to the MDA, an offence under s 8(*a*) read with s 18(4) MDA, punishable under s 33(1) MDA ("Possession Charge").[7]

3 The charges taken into consideration ("TIC") were:

(a) Importation of two blocks containing not less than 499.99 g of vegetable matter which was found to contain cannabis, a Class A controlled drug listed in the First Schedule to the MDA, an offence under s 7 MDA, punishable under s 33(1) MDA ("TIC Importation Charge");[8]

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5 Charge Sheet dated 5 March 2020 ("Charge Sheet"), 1st charge at p 1

6 Charge Sheet, 4th charge at p 2

7 Charge Sheet, 5th charge at p 2

8 Charge Sheet, 2nd charge at p 1

(b) Possession of utensils intended for the consumption of a controlled drug, an offence under s 9 MDA, punishable under s 33(1) MDA ("TIC Possession Charge");[9] and

(c) Trafficking of not less than 0.84 g of methamphetamine, a Class A controlled drug listed in the First Schedule to the MDA, an offence under s 5(1)(*a*) read with s 5(2) MDA, punishable under s 33(1) MDA ("TIC Trafficking Charge").[10]

4 A charge pertaining to importation of cannabis mixture was withdrawn.[11]

The Facts admitted

5 The Accused admitted to the Statement of Facts ("SOF"),[12] of which the material facts were as follows.

6 The Accused with his wife entered Singapore on 17 October 2017, at about 2 am, at Woodlands checkpoint in a car.[13] During a routine check by officers from the Immigration and Checkpoints Authority (ICA), a plastic bag containing vegetable matter was discovered; that vegetable matter was subsequently analysed to contain cannabis.[14] Officers from the Central Narcotics Bureau ("CNB") were activated; on further search, another block of

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9 Charge Sheet, 6th charge at p 3

10 Charge Sheet, 7th charge at p 3

11 Charge Sheet, 3rd charge at p 2

12 Statement of Facts dated 6 March 2020 ("SOF")

13 SOF at para 3

14 SOF at para 4

vegetable matter containing cannabis was also found.[15] When a canine search was conducted later that morning, two blocks of a crystalline substance wrapped in Chinese tea packaging were also found at the right side of the car boot panel.[16] Subsequent analysis by the Health Sciences Authority ("HSA") disclosed that these two blocks of crystalline substances contained not less than 249.99 g of methamphetamine (the "imported methamphetamine").[17]

7 At about 8.30 am that same day, the Accused and his wife were brought back to their home at Choa Chu Kang;[18] there, four packets of crystalline substances were found,[19] which were also later analysed by the HSA and found to contain not less than 34.01 g of methamphetamine.[20]

8 Following investigations, it was disclosed that the Accused worked as a drug courier for one "Shafiq", whose real identity remained unknown.[21] The Accused agreed to go to Johor Bahru to collect items on Shafiq's behalf from an unidentified Malaysian drug supplier, and to bring those items into Singapore, for which the Accused was promised payment of S$1,500.[22] Thus on 16 October 2017, the Accused drove to Malaysia with his wife.[23] In Johor Bahru, Malaysia, the Accused met with an unknown Chinese man, who handed

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15 SOF at para 5

16 SOF at para 6

17 SOF at paras 10 and 11

18 SOF at para 7

19 SOF at para 7

20 SOF at paras 10 and 12

21 SOF at para 14

22 SOF at para 14

23 SOF at para 15

to him the imported methamphetamine, amongst other things.[24] The Accused hid the imported methamphetamine in the car boot,[25] and the other drug bundles in different locations in the car.[26] The Accused knew that the packets of imported methamphetamine contained methamphetamine.[27] He then entered Singapore with them in the car.[28]

9 The Accused was not authorised under the MDA or regulations made thereunder to import methamphetamine into Singapore.[29] By importing the imported methamphetamine, he committed an offence under s 7 of the MDA of importing not less than 249.99 g of methamphetamine.[30]

10 No information was provided by the Accused to enable the authorities to identify Shafiq, who remained at large as of 12 March 2020, the date of the hearing.[31]

11 After his arrest, the Accused provided urine samples which were found on analysis to contain methamphetamine.[32] The Accused admitted that he had been using methamphetamine since early 2017, smoking about 1 g a week.[33] He

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24 SOF at para 15

25 SOF at para 16

26 SOF at para 16

27 SOF at para 17

28 SOF at para 17

29 SOF at para 18

30 SOF at para 18

31 SOF at para 19 which the Accused admitted to at the hearing

32 SOF at paras 20 to 21

33 SOF at para 22

had done so on or about 16 October 2017, by placing some methamphetamine on the bottom of a glass instrument, heating the base with a lighter and inhaling the fumes emitted thereafter.[34] As the Accused was not authorised to consume methamphetamine, he had committed an offence under s 8(*b*)(ii) of the MDA.[35]

12 The Accused admitted that the four packets of methamphetamine were part of a joint stash shared with his wife for their personal consumption.[36] He knew that they contained methamphetamine, and possessed them with his wife's knowledge and consent.[37] He was not authorised under the MDA or its regulations to possess methamphetamine, and had thus committed an offence under s 8(*a*) read with s 18(4) of the MDA, punishable under s 33(1) MDA.[38]

13 The Accused's wife had pleaded guilty in the State Courts to the same Possession Charge as the Accused and was sentenced to 12 months' imprisonment for the joint possession of not less than 34.01 g of methamphetamine.[39]

Antecedents

14 The Accused had no criminal antecedents.[40]

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34 SOF at para 23

35 SOF at para 24

36 SOF at para 25

37 SOF at para 26

38 SOF at para 27

39 SOF at para 28

40 Accused's Criminal Records filed 6 March 2020

The Prosecution's submissions

Importation Charge

15 The Prosecution sought at least 27 years' imprisonment and 15 strokes for the Importation Charge.[41]

16 The Prosecution cited *Suventher Shanmugam v Public Prosecutor* [2017] 2 SLR 115 ("*Suventher*") as the guiding authority, which laid down a two stage framework.[42] The first stage involves identifying the indicative starting point based on the quantity of drugs, as the quantity is directly related to the harm to society and consequently the gravity of the offence.[43] The second stage involves adjusting the indicative starting sentence upwards or downwards to take into account the offender's culpability, and the presence of aggravating or mitigating factors.[44] These factors include those identified in *Vasentha d/o Joseph v Public Prosecutor* [2015] 5 SLR 122 ("*Vasentha*").[45]

17 The *Suventher* framework was extrapolated to apply to methamphetamine in *Adri Anton Kalangie v Public Prosecutor* [2018] 2 SLR 557 ("*Kalangie*"); *Kalangie* indicated that importing 249.99 g of methamphetamine, as in the present case, fell between the band of 217.00 g to 250.00 g, and warranted a starting indicative sentence of between 26 to 29 years'

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41 Prosecution's Submissions dated 6 March 2020 ("PS") at para 3

42 PS at para 4

43 PS at para 4

44 PS at para 4

45 PS at para 5

imprisonment and 15 strokes.[46] The corresponding starting sentence should be 29 years as 249.99 g is at the highest end of that spectrum.[47]

18 From the starting sentence, an adjustment downwards of two years was merited.[48] The Accused's role had been limited to being a courier, and the Accused had pleaded guilty.[49] However, the latter ought to be given limited weight as he was caught red handed (*Vasentha* at [71]).[50]

19 There were aggravating factors as: the Accused had actively and personally concealed the imported methamphetamine in his car, which was a separate aggravating factor over and above indicating premeditation and planning;[51] the Accused dealt in a variety of drugs at the time, shown by the TIC Importation Charge of importing 499.99 g of vegetable matter containing cannabis, which was just short of the threshold for the death penalty.[52]

20 Given these factors, a two year downward adjustment was generous;[53] it was also in line with the sentencing precedents.[54]

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46 PS at para 7

47 PS at para 8

48 PS at p 5

49 PS at paras 9 and 12

50 PS at para 12

51 PS at para 10

52 PS at para 11

53 PS at para 13

54 PS at paras 14 to 19

Consumption Charge

21 In *Public Prosecutor v Dinesh Singh Bhatia* [2005] 3 SLR(R) 1 ("*Dinesh Singh*"), the High Court laid down a sentencing benchmark of between 6 to 18 months imprisonment for a first-time offender of drug consumption.[55] The factors to be considered include (*Dinesh Singh* at [39]): the amount of drugs consumed; the occasion that led to the consumption; whether it was planned or incidental to some other event; whether payment was involved; whether there were others simultaneously taking drugs; and whether the accused was a casual consumer or an addict.[56]

22 The Accused should be awarded at least nine month's imprisonment as he had been abusing methamphetamine since early 2017, and was neither a casual consumer nor a young offender.[57] This would be consistent with the precedents of *Tan Woei Hwang v Public Prosecutor* (MA 9147/2017),[58] and *Sutherland Hugh David Brodie v Public Prosecutor* (MA 9044/2019).[59]

Possession Charge

23 The benchmark laid down in *Dinesh Singh* applies similarly to first-time offenders caught in possession of methamphetamine.[60]

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55 PS at para 20

56 PS at para 20

57 PS at para 22

58 PS at para 23; Prosecution's Bundle of Authorities dated 6 March 2020 ("PBOA") at Tab H

59 PBOA at Tab F; PS at para 23

60 PS at para 21

24 The Accused's wife had been sentenced to 12 months' imprisonment for the same Possession Charge. As the drugs were meant to be shared between them, their culpability was arguably the same and hence the same punishment should apply for parity of sentencing.[61]

Total charge

25 The Prosecution argued that the sentences for the Importation Charge and the Possession Charge should be run consecutively as the offences violated different legally protected interests (*Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 at [39]), giving a total of 28 years' imprisonment and 15 strokes of the cane.[62] This would not be crushing as it reflects the overall criminality of the Accused's offences.[63]

The Mitigation and Defence Submissions

26 In mitigation, the Defence pointed to the background and personal circumstances of the Accused: he was only 23 years at the time of his arrest, and 25 years old at the time of the hearing;[64] he was unemployed when arrested and had worked in various odd jobs including delivery and moving; he was married and the couple was renting the flat that they resided in; his mother hoped that the Accused would be able to take care of household matters after he is released, when she reached old age.[65]

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61 PS at para 24

62 PS at para 25

63 PS at para 25

64 Mitigation Plea dated 6 March 2020 ("MP") at para 5

65 MP at paras 6 to 10

27 The Accused expressed his remorse and had "surrendered" the drugs to the CNB officers at his house.[66] He had no antecedents, and this was the first time he was involved in importing drugs.[67] He had co-operated with the CNB officers in their investigations and volunteered all the information relevant to his case; he could not provide further information about Shafiq to the authorities because he did not know any more than what he had told the CNB officers.[68] The Accused wishes to study during his imprisonment and prepare for future prospects when released.[69]

Importation Charge

28 The Defence sought 22 years' imprisonment and 15 strokes of the cane for the Importation Charge. The indicative starting point would be between 26 to 29 years' imprisonment for importing 249.99 g of methamphetamine: *Kalangie* at [80].[70]

29 The absence of antecedents here points to a lesser need to impose deterrence.[71] Here, there should be adjustment downwards as the Accused is a first time offender with no antecedents, being 23 at the time of arrest; he has pleaded guilty and admitted the offence; he was only a novice courier; he had

66 MP at paras 17 to 22, 38 to 39

67 MP at paras 25 to 27

68 MP at para 32

69 MP at para 40

70 Defence's Submissions dated 6 March 2020 ("DS") at para 11

71 DS at para 15

cooperated in providing whatever information he could; and there was little sophistication in the commission of the offence.[72]

30 The Accused only sought payment of S$1,500 as he was suffering from financial difficulties, and on the facts, he did not in fact profit.[73] In any case, financial gain was a factor that is inherently reflected in the sentencing range and should not be double counted: *Loo Pei Xiang Alan v Public Prosecutor* [2015] 5 SLR 500 ("*Loo Pei Xiang*"); *Public Prosecutor v Lai Teck Guan* [2018] 5 SLR 852.[74]

31 The hiding of the drugs by the Accused should not be an aggravating factor as it was not done as part of the activity of a drug syndicate, or in the anticipation of large profit.[75] Unlike in *Kalangie* where the accused there had tried to avoid detection by ingesting the drug pellets and inserting them into his body, the Accused had not taken such active and sophisticated steps to avoid detection, and his efforts were only amateurish.[76] Further, his attempt to hide was not successful.[77]

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72 DS at para 18

73 DS at para 21

74 DS at paras 22 to 24

75 DS at para 25

76 DS at paras 26 to 27

77 DS at para 28

Consumption Charge

32 The Defence sought 12 months' imprisonment for the Consumption Charge.[78] The Accused was not an addict, was new to consumption of methamphetamine and did not have a high level of consumption.[79]

33 On noting that the Prosecution was only seeking 9 months' imprisonment for consumption, the Defence submitted orally that that was appropriate.[80]

Possession Charge

34 The Defence sought 12 months' imprisonment, being consistent with that of the Accused's wife.[81]

TIC Charges

35 It was further argued that no increase in sentence should result from the TIC charges: the TIC Importation Charge was part of the same transaction as the Importation Charge, which both involved Shafiq;[82] the TIC Possession Charge and the TIC Trafficking Charge were part of the same transaction as the Possession Charge, as they were all surrendered during the same house raid at the same place and time.[83] The Defence relied on *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 ("*Shouffee*").[84]

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78 DS at para 32

79 MP at paras 28 to 30; DS at para 36

80 Hearing Minute at p 3

81 DS at paras 38 to 39

82 DS at para 42

83 DS at para 43

36 The global sentence should be 23 years, being appropriate under the totality principle.[85]

The Decision

37 I was of the view that the appropriate sentences were: 26 years and 15 strokes for the Importation Charge; 9 months' imprisonment for the Consumption Charge; and 1 year for the Possession Charge. The sentences for the Importation and Possession charges were ordered to run consecutively, with the sentence for the Consumption Charge running concurrently. The global sentence was 27 years' imprisonment and 15 strokes of the cane, backdated to the date of first remand, 17 Oct 2017.

Analysis

38 The sentences imposed were appropriate taking into account the applicable framework and the circumstances of these offences as well as those of the Accused.

Importation Charge

39 The sentencing framework in respect of drug trafficking and importation was laid down in *Suventher* ([16] above). Under this framework, an indicative starting sentence is first determined by looking at the quantity of drugs involved; an upward or downward adjustment is then made taking into account the culpability of the accused, as well as whether aggravating or mitigating factors were present (*Suventher* at [17] and [28]). In relation to the second stage,

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84 DS at paras 42 to 43

85 DS at para 50

Vasentha ([16] above) provides a non-exhaustive list of indicia to assess an accused's culpability (at [51]), as well as a non-exhaustive list of aggravating and mitigating factors (at [54] and [70]). The *Suventher* framework was adapted and applied to importation of methamphetamine in *Kalangie* ([17] above).

The indicative starting point

40 The indicative table specified by the Court of Appeal in *Kalangie* at [80] was as follows:

Sentencing Band	Quantity of methamphetamine imported in grams	Indicative starting sentence in years	Caning in strokes
1	167.00–192.99	20–22	15
2	193.00–216.99	23–25	
3	217.00–250.00	26–29	

41 The quantity of imported methamphetamine involved in the present case was not less than 249.99 g. As the amount in question was just shy of the maximum ceiling of Band 3, a starting point of 29 years' imprisonment was appropriate.

42 The Defence argued that the starting point should be between 26 to 29 years. However, *Kalangie* explained that the indicative starting sentence should be broadly proportional to the quantity of drugs imported as the gravity of the offence is to be chiefly measured by the quantity (at [81]). On the facts of

Kalangie, the amount imported was 249.99 g of methamphetamine, similar to the present case; the court stated that the indicative starting sentence should be at the higher end of band 3 (at [81]). Thus, though it is not a mathematical exercise, generally the greater the quantity, the higher the starting point should be. Reduction for other factors would normally be addressed in the second stage. The appropriate starting point in this case was 29 years.

The upward or downward adjustment

43 The proposed adjustment by the Prosecution is set out at [18] to [20] above, considering the aggravating factors, and the mitigating factors relied on by the Defence are set out at [29] to [31] above.

(1) The relative youth of the Accused

44 The Defence relied on the case of *Pham Duyen Quyen v Public Prosecutor* [2017] 2 SLR 591 ("*Pham CA*") to argue that youth is a mitigating factor.[86] The High Court in *Public Prosecutor v Pham Duyen Quyen* [2016] 5 SLR 1289 ("*Pham HC*") had considered that the accused was 24 at the time of hearing (at [1]), which was rather young, and treated it as a mitigating factor (at [58]). This was noted but not reversed in *Pham CA* (at [58]).

45 In my view, the fact that the Accused was young when arrested, or that he was a new courier, could not be of much mitigation value in light of the huge quantity of drugs imported. Youth lessens culpability most when the offence was committed impulsively or because of lack of maturity; shoplifting from a dare, or because of a desire to fit in, or a desire to obtain the latest fashion

86 DS at para 18

accessory, are prime examples of situations where immaturity may attract some reduction of sentence. There, the hope is that the offence will not be repeated as the offender becomes older. In such situations, youth may attract hope for rehabilitation and reform. However, such concerns play a smaller role where the offence in question is more serious and involves greater criminality. The importation of drugs is such an offence. The severe consequences are well known; the harm resulting from such acts is pernicious and affects society as a whole.

46 This was noted in *Pham HC* itself, relied on by the Defence. There, the High Court stated at [58]:

> In my decision on sentence, I took into account the mitigating factors, principally that she was a first offender and rather young. However, I could not ignore the fact that a large quantity of Methamphetamine was involved, even though the charge had been reduced to a non-capital offence. It was necessary for the sentence to reflect this large quantity, and also to reflect the sentences that have been imposed in similar cases.

47 As can be seen, although the judge noted the youth of the offender, this was outweighed or displaced by the huge amount of drugs imported, and a heavier sentence was necessary to reflect the large quantity.

48 Finally, it has been noted on various occasions that rehabilitation can be displaced as the dominant sentencing consideration for young offenders, where the crime is serious (*Public Prosecutor v Koh Wen Jie Boaz* [2016] 1 SLR 334 at [30] cited in *Public Prosecutor v See Li Quan Mendel* [2019] SGHC 255 ("*Mendel See*") at [28] to [29]). The present case was such a case.

49 In any event, the Accused was not all that young; a young offender has been generally regarded as one who is 21 or below (*Public Prosecutor v Mok Ping Wuen Maurice* [1999] 1 SLR 138 at [21] cited in *Kow Keng Siong,*

Sentencing Principles in Singapore (Academy Publishing, 2009) ("*Kow Keng Siong*") at para 22.002; see also *Mendel See* at [28]). The Accused who was 23 years old at the time of his arrest should have had been mature enough to understand the consequences and gravity of his actions.

50 Though not couched as such in the Defence arguments, it may also be thought that imprisoning the Accused during the supposed best years of his life may be excessive and should be balanced by a lower sentence. I did not think that this was a substantial factor; a serious crime was committed and hence the young and the old, and those in-between, should all face the consequences of such serious acts to the same degree. In *Kow Keng Siong* at para 27.134 citing *R v Vaitos* (1981) 4 A Crim R 238 at 301, it was observed that the mere fact that a young offender had to spend many of the best years of his life in imprisonment, serving a deserved long imprisonment sentence, did not mean that the sentence should be disturbed.

(2) Financial gain

51 I agreed with the Defendant at [30] above that financial gain is ordinarily not an aggravating factor. The Court of Appeal in *Kalangie* at [82] ([17] above) had established that the motivation of financial gain, without more, cannot be considered aggravating as most drug importers would be motivated by some form of material gain and such motivation did not make it materially more serious than any other typical case:

> … However, we respectfully did not agree with the Judge that the fact that the Accused was motivated by financial gain in making the drug deliveries could, without more, be considered aggravating. It appeared to us that most drugs traffickers or importers would be motivated by some form of financial or material gain, and that the presence of such motivation did not render the offence materially more serious, or the offender more culpable, than any other case of drug trafficking or importation.

> It might be otherwise if there was something exceptional about the circumstances of the case, such as the role of the offender or the amount of the gain but nothing of that kind was proven in the present case.

52 There was nothing exceptional about the Accused's financial motivation in the present case and it was only a neutral factor.

(3) Concealment of drugs

53 The Prosecution argued that the fact that the Accused had personally concealed the imported drugs in the car was a separate aggravating factor, over and above indicating that the Accused had premeditated and planned the commission of the offence ([19] above). Hence, the Prosecution's case seems to be that concealment of imported drugs ultimately counts as two aggravating factors.

54 However, not all attempts to conceal drugs should be regarded as an aggravating factor. It is inherent in almost all importation offences for the drugs to be concealed. There are hardly any accused persons who would import drugs into Singapore by placing the drugs openly on the car seat or walking into Singapore with the drugs in his hand in a transparent plastic bag. Accused persons will naturally conceal the drugs that they intend to import. Treating all forms of concealment as an aggravating factor would lead to the conclusion that all, or almost all, offences of importation are aggravated.

55 Attempts to conceal the drugs being imported should only be regarded as an aggravating factor where the circumstances suffice to distinguish them from typical importation offences, such as when they are being concealed in an unusually sophisticated manner to avoid detection. An example of this can be seen in *Kalangie*, as was raised by the Defence ([31] above).

56 Nevertheless, the lack of concealment and/or the lack of sophisticated concealment are not mitigating factors, but are at best neutral.

57 In the present case, while the Defence described the Accused's concealment of the drugs as not being sophisticated, he did hide the drugs in the boot, which was a clear attempt to evade detection. It may not have succeeded, but such failure could neither absolve nor mitigate.

(4) Lack of cooperation

58 No further reduction could be given for any cooperation; while the Accused claimed that he had given the authorities all the information sought, he did not provide information leading to the identification of Shafiq. Such lack of information would not mean that he merited a heavier sentence, but it did mean that he could not avail himself of any additional reduction.

(5) Guilty plea

59 In light of the above, the only mitigating factor was that the Accused had chosen to plead guilty. His lack of antecedents and limited role as a courier were not mitigating factors, but at best neutral. The lack of an aggravating factor is not a mitigating factor, but is only neutral.

(6) Sentencing precedents

60 The Defence relied on the following precedents to argue for a sentence lower than 27 years.

61 The Accused's sentence should be lower than that imposed in *Mohd Akebal s/o Ghulam Jilani v Public Prosecutor and another appeal* [2020] 1 SLR 266. There, the second appellant was sentenced to 27.5 years imprisonment for

instigating the trafficking of not less than 14.46 g of diamorphine (at [8]) (anything more than 15 g crosses the capital threshold, as seen in the Second Schedule to the MDA). The court held that the quantum of drugs alone may not have warranted a sentence of 27.5 years, but there were aggravating factors that warranted such a sentence, namely: that the second appellant was not a one-off trafficker but had been involved in trafficking as a business; and that he was involved as a part of a group of operatives who were conducting these activities (at [18]). The present Accused lacked these aggravating factors and should be awarded a lower sentence.[87]

62 The Accused's sentence should also be lower than that in *Public Prosecutor v Muhamad Nor Rakis Bin Husin* [2017] SGDC 174.[88] There, the accused was sentenced to 27 years imprisonment for importing not less than 247.04 g of methamphetamine; the accused there did not plead guilty, and had drug-related antecedents. This was explained in *Kalangie* ([17] above) at [86]. The lack of antecedents and guilty plea in the present case support a lower sentence than in that case.

63 I accepted that these cases indicated that the appropriate sentence for the Accused here should be lower than 27 years.

64 The Prosecution disagreed, arguing that the 27 years' imprisonment sought was consistent with *Kalangie* and *Public Prosecutor v Poopathi Chinaiyah s/o Paliandi* [2020] SGHC 37 ("*Poopathi*").[89]

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87 DS at paras 15 to 16

88 DS at para 17

89 PS at para 14

65 In *Kalangie*, 25 years was awarded to the accused who had voluntarily confessed, cooperated with the authorities and pleaded guilty for importing 249.99 g of methamphetamine (at [83]); the Prosecution argued that an uplift was required in the present case as the Accused had another importation charge taken into consideration, did not provide information leading to the identification of Shafiq, and did not surrender to authorities as the drugs were only found after a thorough search of his car.[90]

66 In *Poopathi*, the accused was given 28 years imprisonment for trafficking of 499.99 g of cannabis, as well as shorter sentences for trafficking of diamorphine and possession of cannabis, with a further TIC charge of trafficking of methamphetamine (at [1] to [4]).[91] The aggravating factors considered were that: the accused had an antecedent for trafficking; the accused had been released only in 2015 before reoffending in 2018 and had been undeterred; and the accused had admitted to another TIC charge of trafficking 25.45 g of methamphetamine (at [22(c)] and [27]).

67 The Prosecution argued that the Accused's culpability was more similar to that of *Poopathi*, as compared to *Kalangie*, as:[92] the Accused had failed to cooperate with the CNB officers in identifying Shafiq; and also because in the present case there was a TIC Importation Charge of importing 499.99 g of vegetable matter containing cannabis, a large amount, which was a far higher quantum than in the TIC charge of trafficking 25.45 g of methamphetamine in *Poopathi.*

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90 PS at paras 15 to 16

91 PS at para 17

92 PS at para 19

68 I accepted that the Accused's culpability was higher than that in *Kalangie*, given the significant weight awarded to the voluntary confession and cooperation in that case (at [83]). However, it should be noted that in *Kalangie*, the sophisticated concealment of the drugs was regarded as an aggravating factor (at [82]). The lack of such concealment in the present case meant that although the Accused was more culpable than in *Kalangie*, his culpability was slightly offset by the lack of concealment. The appropriate sentence should hence be slightly higher than the 25 years in *Kalangie*, but lower than 27 years, as stated above.

69 I did not consider this case as equivalent to that of *Poopathi*, as the accused in that case was a repeat trafficker who had criminal antecedents. The accused in *Poopathi* was also charged with multiple trafficking charges, as opposed to the single proceeded importation charge in the present case.[93]

(7) Charges taken into consideration

70 The Defence argued at [35] above, relying on *Shouffee*, that no uplift in sentence should be awarded for the TIC charges, as they were part of the same single transaction as the proceeded charges. However, this reliance on *Shouffee* was misplaced. *Shouffee* stands for the proposition that multiple proceeded individual charges which form part of the same transaction should in general be run concurrently (at [27]); it did not discuss the issue of whether the sentence of a proceeded individual charge should be enhanced based on a TIC charge which was part of the same transaction as the proceeded charge. No authority was provided by the Defence in relation to the latter issue.

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[93] PS at para 17

71 There may be a question of under what circumstances the sentence for a proceeded charge may be enhanced by a TIC charge which forms part of the same transaction as the proceeded charge. This may need to be addressed with the benefit of fuller arguments on the issue, but it was in my view not necessary to fully discuss this in the present case as the below was sufficient.

72 I found that the sentence for the Importation Charge could be enhanced on grounds that the TIC charges reflected aggravated criminality. It was noted in *Public Prosecutor v UI* [2008] 4 SLR(R) 500 ("*UI*") at [38], citing *Navaseelan Balasingam v Public Prosecutor* [2007] 1 SLR(R) 767 at [17], that where an accused had agreed for multiple similar charges to be TIC, that meant that he had committed many more similar offences and that fact must aggravate the charges proceeded with. This supported that the proceeded charges be enhanced, to reflect the aggravated criminality reflected in the multiplicity of charges.

73 That said, I noted the primary limiting factor that the overall sentence uplift from the TIC charges should not exceed the uplift in the case where all charges had in fact been proceeded with. This was noted in *UI* at [36]:

> … [The accused] can also be fairly sure that, despite the TIC offences being considered by the sentencing court, the increase in the severity of his sentence for the offences proceeded with will be less draconian than the sentence which he would have received had the Prosecution proceeded with the TIC offences as well.

74 It was open to the court to enhance the sentence for the Importation Charge on the basis that the Accused had imported a variety of drugs, this being regarded as an aggravating factor in certain situations (*Vasentha* at [64] to [67]). Sundaresh Menon CJ in *Shouffee* had explained that a higher sentence for importing of a variety of drugs would be warranted where it can be inferred

from this that there was a higher degree of sophistication in the offender's drug operations, or that he had been conducting it on a larger scale (at [67]). The question in each case is whether the variety of drugs showed that the accused was more culpable, such that he required a more onerous sentence (*Shouffee* at [67]).

75 I was satisfied that the circumstances in the present case showed a greater culpability on the part of the Accused, than if he had only committed the singular crime of importing methamphetamine. Apart from the TIC Importation Charge which showed that the Accused had been involved in importing a variety of drugs, the Accused also had a TIC Trafficking Charge. This TIC Trafficking Charge was not part of the same transaction as the Importation Charge, since there was no proximity of place or time, and the bundles involved being separate bundles of drugs. This showed that the Accused had been involved in a variety of drug crimes and such trafficking and/or importation were not one-off offences. These factors seen together aggravated the Accused's culpability and could be used to enhance the sentence for the Importation Charge. This would not prejudice the Accused, as such aggravation would similarly have had been present even if all the charges had been proceeded with; the Accused would not be worse off with the charges being taken into consideration, as compared to them being proceeded with.

(8) Conclusion

76 Overall, considering the guilty plea, the precedents, and the TIC charges in the present case, I was satisfied that a sentence of 26 years' imprisonment and the specified 15 strokes of the cane was an appropriate sentence for the Importation Charge. The two year reduction from the starting point of 29 years as argued for by the Prosecution did not align with the precedents and give

sufficient weight to the circumstances, particularly the guilty plea, and a three year reduction was more appropriate.

The Consumption and Possession Charge

77 The sentences for the Consumption Charge and Possession Charge were not in dispute. The Defendant initially submitted that 12 months' imprisonment was appropriate for the Consumption Charge ([32] above); the Prosecution submitted that this should attract at least nine months' imprisonment ([21] to [22] above). Taking into account that the Accused was neither a very young offender, nor on the other hand a more habitual drug taker, I was of the view that nine months' imprisonment was sufficient punishment for the Consumption Charge, considering all the circumstances.

78 Both parties agreed that 12 months imprisonment for the Possession Charge was appropriate, bringing the sentence into parity with the Accused's wife's sentence ([24] and [34] above). There was nothing on the facts to require a differentiation from what was imposed for the Accused's wife, and given that the couple possessed the drugs jointly, the imposition of the same term of imprisonment was appropriate. However, instead of 12 months' imprisonment, I imposed one year's imprisonment to make the running of sentences more convenient.

Running of Sentences

79 Under s 307(1) of the CPC, at least two of the sentences had to run consecutively. It was to my mind sufficient to order the sentences for the Importation Charge and Possession Charge to run consecutively, giving a total of 27 years' imprisonment and 15 strokes. The overall sentence was

commensurate with the criminality involved. This was backdated to the date of first remand.

Conclusion

80 The sentences were imposed accordingly in the circumstances.

Aedit Abdullah
Judge

Chan Yi Cheng and Kenneth Kee (Attorney-General's Chambers) for the prosecution;
Rupert Seah Eng Chee (Rupert Seah & Co.) and Krishna Ramakrishna Sharma (Fleet Street Law LLP) for the accused.