# Public Prosecutor *v* Sivanantha a/l Danabala
# [2015] SGHC 154

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| **Case Number** | : Magistrate's Appeal No 200 of 2014 |
| **Decision Date** | : 05 June 2015 |
| **Tribunal/Court** | : High Court |
| **Coram** | : See Kee Oon JC |
| **Counsel Name(s)** | : Wong Kok Weng and Muhammad Faizal bin Nooraznan (Attorney-General's Chambers) for the appellant; Udeh Kumar s/o Sethuraju (S K Kumar Law Practice) for the respondent. |
| **Parties** | : Public Prosecutor — Sivanantha a/l Danabala |

*Criminal Law – Statutory offences – Misuse of Drugs Act – Importation of controlled drug into Singapore*

*Criminal Procedure and Sentencing – Sentencing – Date of commencement*

5 June 2015

**See Kee Oon JC:**

1 This is the prosecution's appeal against the acquittal of the respondent in the court below on a charge of importing a controlled drug, namely diamorphine, into Singapore, an offence under s 7 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"). It is an appeal on points of fact only; in essence, the prosecution's case is that the District Judge erred in finding that the respondent did not know that the packet of granular substance he was carrying into Singapore contained diamorphine. I allowed the appeal on 22 April 2015 and proceeded to convict the respondent. Sentence was passed on him on 22 May 2015. I now set out the grounds for my judgment.

2 It is not disputed that when the respondent was stopped and searched at the Woodlands checkpoint while entering Singapore from Malaysia on 2 February 2013, a packet of brown granular substance was found hidden in his underwear. The substance was analysed and found to contain not less than 3.03g of diamorphine. Thus it was not disputed that the respondent had a controlled drug in his possession that he was importing into Singapore. The only contested question was whether he did so knowing the nature of the drug that was in his possession.

3 On the question of the respondent's knowledge, it was not controversial that s 18(2) of the MDA applied, with the result that the respondent would be presumed to have known the nature of the drug until the contrary was proved. The District Judge found that the respondent had successfully rebutted the presumption and acquitted him accordingly.

**The evidence as to the respondent's knowledge**

4 The respondent's evidence was that he did not know that the packet he was carrying contained illegal drugs. He gave the following account of how the packet came to be in his possession. Around 27 January 2013, the respondent was sitting at a coffee shop in Johor Bahru when a male Indian whom he did not know came up to him and asked why he was looking so sad. The respondent explained that it was because he could not find a job in Singapore. The male Indian then

asked him if he wanted to do a job for which he would be paid RM300. This job was to bring some "*barang*" into Singapore and to deliver it to a particular person. The respondent agreed.

5 Subsequently, what might be described as a familiarisation trip was arranged for the respondent. On 31 January 2013, he entered Singapore and, having taken a taxi from the Woodlands checkpoint to a car park in an industrial area, he met the person to whom he was to deliver the *barang*. The respondent was empty-handed on this occasion. He said that the purpose of this trip was to ensure that he would be able to recognise the other person from then on. He also said that the industrial location in which this meeting took place caused him to think that the other person was "involved in a catering business". Thereafter the respondent returned to Johor Bahru.

6 On 2 February 2013, the respondent returned to the coffee shop in Johor Bahru that he had been in the week before. After waiting for a while, the male Indian met him and gave him a black plastic bag, with instructions to deliver it to the person he had met on the familiarisation trip. The male Indian also told him to hide the packet in his underwear. The respondent testified that he understood that this plastic bag contained "food flavour". It appears that this alleged understanding of the nature of the bag's contents was one that he formed on his own; the male Indian had said only that it was *barang*. He further testified that, in his mind, the reason the male Indian had instructed him to hide the packet in his underwear was that the "food flavour" was taxable. He hid the packet because he had not the money to pay the tax.

7 That was the respondent's oral evidence in court as to his knowledge of the contents of the packet he was carrying. But his oral evidence was at odds with what he had said in two statements that he had made to narcotics officers. The statements were admitted in evidence and marked P3 and P6, and that is how I will refer to them. In both these statements, the respondent said that he knew that he was carrying drugs, except that he did not know what drugs they were specifically. In addition, the respondent's assertion that he had believed he was carrying "food flavour" was undermined by the fact that there was no mention at all of "food flavour" in P3 and P6.

8 P3 was a contemporaneous statement recorded at the Woodlands checkpoint less than an hour after the respondent was stopped and searched. This was a short statement consisting of five questions posed to the respondent and the answers that he gave to them. The material question-and-answer pair was the first: the question was "What is this", "this" referring to the packet the respondent was carrying. The respondent initially answered, "I do not know this is drugs", but subsequently the words "do not" were cancelled and other words were added after "drugs" so that the amended answer read, "I know this is drugs, but I do not know what drug this is". The respondent signed against the amendments.

9 P6 was a significantly longer statement recorded on 3 February 2013, the day after the respondent's arrest. This statement took the form of an unbroken narrative rather than questions and answers. In it the respondent described in detail his meeting with the male Indian in Johor Bahru, his familiarisation trip to Singapore, and finally his collecting the *barang* and carrying it into Singapore. He stated, "I know it is drugs I am bringing in, but I do not know what the drugs is used for or what type of drugs it is".

10 Before the District Judge, the respondent challenged the admissibility of P3 on the basis that it had been made pursuant to an inducement, threat or promise. No similar challenge was mounted against P6. In the trial-within-a-trial or ancillary hearing to determine the admissibility of P3, the respondent testified that the narcotics officer who recorded the statement – I shall call him "PW7" – had spoken to him privately before the taking of the statement. According to him, he told PW7 that he had believed he was carrying "food flavour", but PW7 did not believe him and did not record it in

the statement. Instead, PW7 told him that if he did not admit that he knew he was carrying drugs, he would be hanged. PW7 then asked him to cooperate and added that, if he did, he (*ie*, PW7) would do his best to help him avoid the death penalty. It was this combination of threat and promise that caused him to change his initial answer, "I do not know this is drugs", to a self-incriminating "I know this is drugs, but I do not know what drug this is".

**The District Judge's decision**

11 The District Judge found that the making of P3 had not been caused by threat, inducement or promise, and he ruled that it was therefore admissible: see *Public Prosecutor v Sivanantha a/l Danabala* [2014] SGDC 452 ("the GD") at [24]. But he went on to opine that the circumstances in which P3 had been recorded meant that the respondent's apparent admission that he had known he was carrying drugs was not a reliable one. He said that he "accepted the [respondent's] testimony that he had, all the time, thought that the packet contained taxable "food flavour", and that he made the amendment because he was confused", and he found that the respondent had been "influenced by the respective [immigration] and [narcotics] officers when they told him that the packet was drugs" (at [66] of the GD).

12 In other words, the District Judge found that, although the making of P3 had not been caused by threat, inducement or promise, the respondent had nonetheless been "confused" at the time because the immigration and narcotics officers repeatedly told him that the packet contained drugs. Hence, little weight should be given to the respondent's statement in P3 that he had known he was carrying drugs. With P3 out of the way, there remained P6; in this statement the respondent had also admitted that he knew he was carrying drugs. It is not entirely clear what the District Judge found in relation to P6; all he said about P6 was: "In his long statement (P6), the [respondent] repeatedly stated what he had stated in his amended first statement (P3)…": at [68] of the GD. It is to be inferred that the District Judge's view was that the respondent was merely parroting in P6 the words that he had said in P3 in his earlier confused state.

13 The upshot of the District Judge's consideration of P3 and P6 was that "little weight" would be placed on both statements: at [69] of the GD. Having considered the circumstances of the case, the District Judge concluded that the respondent had been "naïve" and not wilfully blind: at [71]. The District Judge added that, if the respondent had been a drug addict or if it could be proved that he had been taught about drugs in school, he might be found to have been wilfully blind, but in the present case there were no facts giving rise to an inference of wilful blindness: at [74].

**The prosecution's contentions**

14 On appeal, the prosecution argued that the District Judge erred in giving little weight to P3 and P6. The immigration and narcotics officers all testified that they had at no point told the respondent that the packet contained drugs, hence the respondent could not have been "confused" and influenced into falsely admitting knowledge of the fact that he was carrying drugs. Moreover, the respondent did not even say in evidence that he had been "confused"; his case all along was that he was frightened into making a false admission by a threat that he would otherwise be hanged and a promise that he would receive help if he was cooperative. Hence P3 and P6 should be given more weight than the District Judge gave them. This would cast grave doubt on the respondent's claim that he thought he was carrying "food flavour".

15 The prosecution also argued that, given the circumstances, it was incredible that the respondent could have been under the impression that the packet contained "food flavour". He stood to receive a substantial sum of money, RM300, just for delivering the packet to someone in

Singapore; he underwent an elaborate preparatory process consisting of the familiarisation trip he made to Singapore; he was being asked to make the delivery by a complete stranger; and he went to great lengths in trying to hide the packet by putting it in his underwear. All these facts, according to the prosecution, made it difficult to believe that the respondent could have had such an "innocent" understanding of the packet he was carrying.

**My decision**

16 I preface my analysis by noting that, the prosecution, in its submission, brought my attention to a number of authorities and argued that I should have regard to the findings of fact in those authorities. In two of the authorities, the accused persons hid drugs in their underwear and the courts rejected their assertions that they had not known the nature of what they were carrying. In two other authorities, the accused traffickers had on previous occasions dealt with the same drug supplier, and on those occasions they had trafficked in a certain kind of drug, and this led the courts to accept their evidence that they had believed they were trafficking in that same drug on a later occasion even though it turned out to be a different drug which attracted harsher criminal sanctions. The prosecution submitted that, in the light of first two authorities, I should in the instant case also be slow to accept the respondent's evidence of his ignorance of the nature of what he was carrying given that the packet had been hidden in his underwear. In respect of the latter two authorities, the prosecution submitted that they were distinguishable from this case mainly because here, the respondent and his supplier had no prior relationship.

17 With respect, I was unable to derive substantial assistance from reference to these authorities. When it comes to findings of fact and inferences to be drawn in respect of matters such as the state of an accused person's mind, I am unable to see much utility in referring to other cases unless the facts in question are on all fours with the case at hand. Even if the facts of another case are fairly similar in some respects to the facts of the present case, and the court in the other case made certain findings of fact or drew certain inferences, it does not ineluctably follow that similar findings or inferences must be made in the present case. The mental faculties, responses and level of understanding of individuals can and do differ. For instance, taking two people of the same age and nationality who were apprehended with drugs hidden in their underwear, it could make all the difference that one person is more savvy and street-smart while the other is more naïve and gullible. It is far more productive to closely scrutinise the evidence in the case at hand than it is to depend on findings made in other cases.

18 Turning then to the evidence in this case, I found myself generally in agreement with the prosecution's arguments. In particular, I did not agree with the District Judge's finding that the respondent had been "confused" when making the statement P3. Having perused the record, I was satisfied that *at no point* did the respondent testify that he had been confused. His evidence all along was that he had made a *choice*, albeit allegedly under duress, to admit knowledge of the fact that he was carrying drugs in response to PW7's alleged threat and promise. However, no such threat or promise was found in the event. There was thus no basis to suggest that this might then have somehow caused confusion in his mind.

19 According to the District Judge, what caused the respondent's confusion was *not* any threat or promise but the mere fact that the respondent had been told by immigration and narcotics officers prior to the recording of P3 that the packet he was carrying contained drugs. The officers unanimously testified at trial that they had not told the respondent that the packet contained drugs. In so far as the District Judge rejected the officers' testimony and found that they did indeed impress upon the respondent that the packet contained drugs, I did not think I was in any position to interfere with that finding because it hinges in large part on an evaluation of conflicting oral

testimony, which the trial judge is best placed to undertake. But even if the officers did tell the respondent repeatedly that the packet contained drugs, it is another thing to say that the respondent was "confused" into making a false admission when that was not his own evidence.

20 The District Judge was satisfied that the respondent was "frightened" during the recording of P3. It appears that he went on to infer from this that the respondent was "totally confused, bewildered, shocked" (see the GD at [24]). With respect, the District Judge might have misdirected himself and overstated how "frightened" the respondent was. The respondent testified during the ancillary hearing that he was frightened because PW7 allegedly told him that he would face the death penalty, but this evidence must be viewed critically in the light of the finding that there had been no threat or promise issued by PW7. Given this finding, the District Judge seemed not to have been convinced that there had been any mention of hanging or the death penalty. That would have undercut the respondent's testimony as to how frightened he was. It is questionable whether the District Judge's inference that the respondent was "frightened" and therefore "totally confused, bewildered, shocked" can logically be reconciled with his finding that P3 was a statement given voluntarily without any threat, inducement or promise.

21 Nonetheless, I proceeded on the basis that the respondent was frightened when he was being questioned. Speaking in general terms, it is certainly conceivable that a person who is frightened might also feel confused. But in my view, *in the present case*, the District Judge's inference that the respondent's fright led to confusion was not justifiable because the respondent's testimony was that fright caused him to choose a certain course of action, *ie*, to admit (falsely) that he knew he was carrying drugs. It bears repeating that the District Judge himself had found at [24] of the GD that the respondent had embellished his evidence during the ancillary hearing and had in fact been "allowed to freely state his statement without any threat, inducement or promise". Given these findings, it must follow that this was a conscious admission in the circumstances and not one borne out of confusion. Whether it was indeed a false admission or not is another matter of course.

22 There is a world of difference between saying that the respondent was "confused" when he gave his statement (P3) and saying that he made a deliberate choice to amend P3 out of self-interest, *ie*, to save himself from the death penalty, which was his evidence; I think that they are mutually exclusive possibilities. Either he was confused, and had given a statement in a state of disorientation, or his mind was still clear enough that he knew what his options were and could consciously weigh them. The respondent's own account was that the latter scenario represented the actual state of affairs and hence that is the only possible finding here. I saw no basis upon which the District Judge could have concluded that the respondent had admitted to having knowledge of the drugs in P3 out of confusion.

23 In any event, there is also P6 to contend with; there was no allegation that this statement was made as a result of inducement, threat or promise. In P6, the respondent also said that he knew that the packet he was carrying contained drugs. He testified that he had said this because he was still operating under the fear generated by PW7's assertion that he would be hanged unless he cooperated by admitting that he knew he was carrying drugs. But given the District Judge's finding that PW7 had not issued any such threat or promise as alleged by the respondent, this explanation for the contents of P6 must fall away. I could not see how it might plausibly be said that the respondent was somehow also "confused" when P6 was recorded.

24 It follows that, in my judgment, P3 and P6 ought to have been given due weight; certainly much more weight than the District Judge gave them. They should not have been lightly dismissed as being unreliable. And this, I think, was highly damaging to the respondent's defence. If not for the statements, there would arguably be rather slender justification to interfere with the District Judge's

finding that the respondent believed he was carrying "food flavour". The prosecution rightly pointed out that the circumstances of the case are such that it is difficult to imagine that any person could have believed that the packet found stuffed in his underwear contained "food flavour", in that it would take a person of quite extraordinary naivety or ignorance to hold that belief. Nevertheless, the question of an accused person's naivety or ignorance is very much one to be determined by the trial judge who has had the advantage of observing and assessing the accused in the witness box.

25 The respondent's evidence does however strain belief in some respects. I highlight two in particular. First, I found it very difficult to accept his testimony that he thought the RM300 paid to him was *entirely* for "travel expenses". Second, leaving aside the question why one might stuff some 225.7g of granular "food flavour" in a package inside one's underwear, the substance hardly resembled anything that might look like food flavour. It took the form of what the respondent himself described as a brown "rock substance". This is evident from the photograph of the exhibit A1. Notwithstanding all this, I would have been slow to disturb the District Judge's findings if the evidence before me had not included the statements P3 and P6.

26 The fact is that the respondent said, and omitted to say, certain things in P3 and P6 that undermine and run contrary to his oral evidence that he believed he was carrying "food flavour". He said in P3 and P6 that he knew that the packet contained drugs. I did not think it at all plausible that he would have said this if it were not true. He did not say that he thought they contained "food flavour". I acknowledge that he did testify that during the recording of P3, he had in fact told PW7 that the packet contained "food flavour" but PW7 refused to record it down. The District Judge did not make any finding of fact in this respect. But even if this allegation against PW7 was true, there was no explanation for why there was no mention of "food flavour" in the subsequent statement P6. In my view, this was a very material and inexplicable omission that severely undermined the veracity of his claim that he thought the packet contained "food flavour". It would strongly suggest that the "food flavour" defence was no more than an afterthought.

27 The District Judge appeared to have had considerable sympathy for the respondent on account of his relative youth and perceived ignorance. With respect, while the respondent is certainly young, he is not uneducated or illiterate. He had completed his SPM (the equivalent of 'O' Levels) and was in fact almost 19 at the time of the offence. He had travelled independently to Singapore a number of times within less than two months to look for employment. Even accounting for his youth, this did not necessarily mean that he was completely ignorant about what he had agreed to undertake. It appeared that too much allowance had been made for this factor in the District Judge's overall assessment of the cogency of the respondent's defence.

28 Since the presumption in s 18(2) of the MDA was operative, it was the respondent's burden thereunder to prove, on a balance of probabilities, that he did not know or could not reasonably be expected to know the nature of the drugs he was carrying: *Dinesh Pillai a/l Raja Retnam v Public Prosecutor* [2012] 2 SLR 903 at [18] and [21]. The pivotal question was whether the respondent had discharged *his* burden. In the circumstances, I was unable to say that the burden had been discharged. I was impelled to this view by the inherent improbability of his evidence, much of which centred around his professed belief that he was carrying 225.7g of taxable "food flavour" in a packet stuffed inside his underwear, coupled with the inconsistency between that evidence and his statements in P3 and P6 – statements which I found ought to have been given substantial weight.

29 I need not and did not rely on notions of wilful blindness even though the prosecution advanced substantial submissions on that point. In any event, I noted that there was ample evidence to support the prosecution's arguments of wilful blindness as an alternative basis upon which the respondent's acquittal ought to be set aside.

**Conclusion on appeal against acquittal**

30 It is well-established that an appellate court will be slow to disturb findings of fact made by a trial judge unless they are clearly arrived at against the weight of the evidence. I was satisfied that the trial judge's decision to acquit the respondent could not be supported on a proper consideration of the evidence. I therefore allowed the prosecution's appeal and convicted the respondent on the charge of importing a controlled drug into Singapore, an offence under s 7 of the MDA.

**Mitigation and sentence**

31 After allowing the appeal against acquittal, I adjourned the appeal to 22 May 2015 to allow counsel for the respondent time to take instructions and prepare a mitigation plea. The prosecution suggested that the imprisonment sentence ought to be in the range of six years, having regard to sentencing precedents involving comparable or even lesser quantities of diamorphine imported into Singapore by offenders with no known antecedents. As the respondent had been convicted, I ordered him to be remanded in custody pending sentence.

32 In his written mitigation plea, counsel for the respondent suggested that reformative training could be considered although he conceded that this would be 'difficult'. This point was wholly moot since reformative training can only be imposed on offenders who are between 16 and 21 years of age at the time of their conviction, as provided in s 305(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed). The respondent was born on 14 March 1994. At the time of his conviction on 22 April 2015, the respondent was already above 21 years of age. Another submission made in mitigation was that the respondent had not "openly brought in the drugs". This was neither here nor there and I failed to see how it could possibly be regarded as a mitigating factor.

33 I note that the MDA prescribes a mandatory minimum punishment that includes a minimum term of 5 years' imprisonment for the offence in question. A potential and legitimate concern was raised by counsel for the respondent in relation to the respondent having spent about 19 months in remand prior to his acquittal in the court below. In my view, this lengthy remand period ought properly to be taken into account as time already served for the purpose of computation of his sentence.

34 I am supported in this view by precedents where a prior period of custody (*ie*, time spent in remand or serving sentence) was ordered by the court to be taken into account in computing the overall sentence. One such instance is the case of *S Thambiraja s/o Chelladurai v Public Prosecutor* (Magistrate's Appeal No 166 of 2011, unreported). In that case, the accused was arrested on 3 July 2011 and remanded because he could not raise bail. He pleaded guilty and was subsequently sentenced on 8 July 2011 to six months' imprisonment. Thereafter, on 18 August 2011, he was released on bail pending appeal against sentence. He remained on bail until Tay Yong Kwang J heard and dismissed his appeal on 9 March 2012. Tay J ordered that the imprisonment term would be backdated to 3 July 2011 and that the period from 3 July to 18 August 2011 be "taken into account for the computation of sentence".

35 I understand that the prison authorities proceeded to compute the remaining sentence to be served appropriately to give proper effect to Tay J's order. The duration when the appellant was not in custody was excluded in this computation. This case serves as a helpful precedent for the practice of ordering that a sentence be backdated to include a prior duration of custody even though there is a "break" in the period of custody in the form of an intervening period during which the offender is released on bail. At least two other cases have come to my notice where a similar approach was adopted in taking into account prior remand periods. These are the decisions of V K Rajah J (as he then was) in the cases of *Mounissamy Selvame v Public Prosecutor* (Magistrates' Appeal No 187 of

2006, unreported) and *Chin Hin On v Public Prosecutor* (Magistrates' Appeal No 212 of 2006, unreported)

36 In *Tang Kin Seng v Public Prosecutor* [1996] 3 SLR(R) 444 ("*Tang Kin Seng*"), there arose the issue of whether backdating is permissible in circumstances where there has been a "break" in custody following an accused's arrest due to his having been released on bail. Yong Pung How CJ accepted the prosecution's submission (at [116]) that "as a general rule, the period in which a convicted person has been out on bail should not be taken into account in backdating a sentence", citing a Malaysian case, *Muharam bin Anson v Public Prosecutor* [1981] 1 MLJ 222 ("*Muharam*"). I would agree entirely with this as a statement of principle, and I shall refer to this for convenience as the "general rule".

37 The general rule does not appear to foreclose the possibility that backdating a sentence could entail that a period (or periods) where a convicted person has been out on bail could also be computed as part of the sentence. This appears to have been the precise issue that Yong CJ had left "open for another day" (at [119]), noting the dearth of authority. On the facts of *Tang Kin Seng*, a determination of this issue was unnecessary since Yong CJ decided to simply reduce the original sentence. No backdating was needed to mitigate the excessive harshness of the sentence.

38 This issue arose squarely in the present case. In my view, it would clearly not be appropriate to backdate the respondent's sentence in such a manner that even the duration when he was not in custody (*ie*, from 18 September 2014, the date on which he was acquitted, to 21 April 2015, the day before I reversed the acquittal) would also be computed as part of the sentence. Applying first principles, such an order would patently offend logic. He was not in remand for that period; *a fortiori* there is no reason why time not actually spent in custody should count at all towards the computation of a backdated sentence.

39 Correspondingly, a period of detention preceding a period when the appellant was released on bail *ought* generally to be taken into account in passing sentence. In *Muharam*, the Malaysian Federal Court had plainly endorsed this view. In that case, the appellant was remanded initially for about three and a half months after his arrest until he was released on court bail. Bail was subsequently revoked and he was remanded in custody from 29 November 1978. The trial judge convicted him and sentenced him to six years' imprisonment to take effect from 29 November 1978. The earlier period of remand lasting three and a half months was however apparently not brought to the attention of the trial judge. The Federal Court observed that this initial period of remand ought to have been taken into account, and, to that end, proceeded to reduce the sentence to five years' imprisonment, ordering this reduced sentence to take effect from 29 November 1978. It was unnecessary to backdate the sentence.

40 Thus in both *Tang Kin Seng* and *Muharam*, the same approach was adopted by the respective courts. Where an appropriate adjustment to the sentence can be made, the general rule ought to apply and no backdating should, or more precisely, need to be ordered. But not all situations lend themselves readily to such an approach.

41 The present case did not permit a similar adjustment to be made to the sentence that would allow the prior remand period to be effectively taken into account. This is because a lengthy mandatory minimum imprisonment sentence must be imposed as a starting point in sentencing, notwithstanding that the respondent had already spent 19 months in remand before his acquittal on 18 September 2014 by the court below. If the sentence cannot be backdated to take into account the remand period, it would mean that the respondent would have to be made to suffer a much more severe punishment than others in a similar position. This would be so even if I were to impose the

bare minimum imprisonment sentence of five years with effect from 22 April 2015, the date when his acquittal was reversed on appeal. This surely could not be a fair or just outcome.

42 To my mind, there was ample justification for the court to exercise its discretion to backdate the sentence in the present case. The duration when the respondent was not in custody should of course be excluded. To that extent, the general rule should be qualified to allow backdating in exceptional circumstances such as these where such an order is necessary to ensure that the respondent is not excessively punished. In adopting this approach, I respectfully agree with the precedents laid down by Tay J and Rajah J (as he then was) in their decisions which I have cited at [34]–[35] above.

**Conclusion on sentence**

43 In the circumstances, I sentenced the respondent to five years and six months' imprisonment and five strokes of the cane. It would not be appropriate to impose the mandatory minimum sentence given the quantity of drugs involved and the fact that he had been convicted after trial. But for his youth and lack of any known antecedents and evidence of drug dependency, I would have imposed a longer imprisonment sentence. I also took the view that he deserved some credit for returning to Singapore to attend the hearing of the appeal against his acquittal. This reflected a basic sense of responsibility and respect for the law.

44 I ordered that his sentence be backdated to 2 February 2013, the date of his arrest, in order to include the period of remand from the date of arrest to the date before his acquittal (2 February 2013 to 17 September 2014), as well as the period of remand from 22 April 2015 to the date of his sentence (*ie*, 22 May 2015). These periods should be taken into account for the computation of sentence. For avoidance of doubt, the period after his acquittal to the date the appeal was allowed (18 September 2014 to 21 April 2015) is to be excluded.