IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 156

Criminal Case No. 14 of 2017

Public Prosecutor

v

Ng Peng Chong
Cheng Pueh Kuang

JUDGMENT

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

Public Prosecutor
v
Ng Peng Chong and another

[2017] SGHC 156

High Court — Criminal Case No 14 of 2017
Choo Han Teck J
30 June 2017

6 July 2017 Judgment reserved.

Choo Han Teck J:

1 The two accused were convicted before this court for a drug trafficking offence involving the joint possession of 10.17g of diamorphine for the purposes of trafficking ("the First charge"). There is no dispute that the two accused were also drug addicts. Their conviction on the reduced charge meant that instead of the death penalty, they would be sentenced to a term of a minimum 20 years and 15 strokes of the cane and a maximum of 30 years imprisonment or imprisonment for life and 15 strokes of the cane. The same set of 10 charges were against each of the accused. The First charge was the only capital charge. The remaining 9 charges against each of the accused were stood down pending the outcome of this trial.

2 After they were convicted, the prosecution restored 2 of the 9 charges for trial, one was for possession of not less than 98.87 g of methamphetamine for the purposes of trafficking ("the Third charge"), and the other for

consumption of morphine ("the Sixth charge"). Both accused persons pleaded guilty to those two charges. The Third charge carries a minimum of 5 years imprisonment and 5 strokes of the cane and a maximum of 20 years imprisonment and 15 strokes of the cane. The Sixth charge carries a minimum of 7 years imprisonment and 6 strokes of the cane and a maximum of 13 years imprisonment and 12 strokes of the cane. 7 other charges were offered to the two accused persons for their consent to have them taken into account for the purposes of sentencing. They both consented.

3 The learned DPP addressed the court and asked for the 'benchmark sentences' to be applied. She also submitted that a lengthier jail term should be imposed on account of the fact that the two accused, being above the age of 50, are exempt from caning. She added that the accused would otherwise have received the maximum number of strokes (by reason of the minimum mandatory sentences), hence, if the imprisonment term is not extended, it would have been 'a huge discount to them'.

4 The learned DPP's submission is consistent with the strong stand taken by Parliament and the courts against drug offences because of the damage drugs do to society. We have maintained this stance for decades. Hence, the legislature introduced presumptions in law in drug offences, as well as severe punishment including the death penalty, lengthy prison terms, and minimum mandatory sentences. In addition to that, the courts have set what is commonly referred to as 'sentencing benchmarks' with the aim of ensuring further that the sentencing court does not impose a sentence that is too lenient or too severe. 'Benchmarks' are set by taking into account the offences in question, the previous antecedents of the offender, and aggravating and mitigating factors. These are considered sufficiently objective factors so as to produce consistent sentences for like cases.

Consistency is one of the basic principles of the common law and hence, like cases should be treated alike.

5 But in law as in nature, there are tensions and paradoxes. The need for consistency pulls against the demand that each case is adjudged on its own merits. The courts try as best as they can to do justice in spite of such tensions in the law. In each case, the question is, 'How much punishment is enough?'. Benchmarks and minimum mandatory sentences, can be helpful, and so can references to 'aggravating' and 'mitigating' factors. But these are the analogue version of language that can quite easily be digitalised to obtain a computer-generated sentence. The reason that this has not yet been done is that the computer has not yet taken over the full function of the human mind. We have yet to teach it the virtues of sympathy and compassion. The computer cannot see things that lie outside the algorithms dictating its mind. Those are ostensible only to the human eye.

6 The two accused have been found guilty of a serious offence. The law requires drug offenders to be severely punished because of what drugs can do to their victims. From a distance, the two accused may appear only as villains. Close-up, they also resemble victims for they are themselves victims. The two accused have been consuming drugs and have been punished for drug related offences from 1980 to this day. One is 59 years old and the other turned 60 years old just a couple of weeks ago. The minimum sentence they will have to serve is 20 years imprisonment for the First charge. They collect drugs to sell and to feed their own addiction. This has been their lot for the best parts of their life. Their situation raises questions that a court may ask but may not be able to answer. One of them is whether there is more that society can do for such people — victim-offenders, trapped in an unending cycle? Unlike younger offenders,

these two men will not have much of a life left to turn around by the time they are released, we ought to give them hope for however little is left.

7 The learned DPP restored 2 charges for trial instead of leaving them like the remaining 7 to be taken into account for purposes of sentencing, and the consequence of which is that the minimum mandatory terms for imprisonment add up to 25 years for the first accused, and 27 years for the second accused. This is even without taking into account other factors such as previous convictions and other charges, and the fact that they are exempt from caning. This is because the law requires that where an accused is convicted in any one trial of three or more charges, the imprisonment terms for at least two of those charges must run consecutively. That is already the minimum I must impose. Yet the learned DPP suggests that another 12 months be added in lieu of caning. That suggestion would be in line with the benchmarks, but this is a case in which I do not think that justice is served by being technically correct, benchmark-wise. I think that the minimum that has to be imposed is sufficiently severe.

8 I therefore sentence the first accused Ng Peng Chong, to 20 years of imprisonment for the First charge, 5 years of imprisonment for the Third charge and 7 years of imprisonment for the Sixth charge. In consideration of the totality principle, the First charge and the Third charge are to run consecutively. This would result in a total sentence of 25 years of imprisonment with effect from 17 May 2014.

9 I sentence the second accused, Cheng Pueh Kuang, to 20 years of imprisonment for the First charge, 10 years of imprisonment for the Third charge and 7 years of imprisonment for the Sixth charge against him. In consideration of the totality principle, the First charge and the Sixth charge are

to run consecutively. This would result in a total sentence of 27 years of imprisonment with effect from 17 May 2014.

10 There shall be no additional sentence of imprisonment in lieu of caning.

- Sgd -
Choo Han Teck
Judge

Isaac Tan, Rachel Ng and Muhammad Zulhafini Bin Haji Zulkeflee (Attorney-General's Chambers) for prosecution;
Cheong Aik Chye (A C Cheong & Co.) and Tan Jeh Yaw (Lim Swee Tee & Co.) for first accused;
Peter Cuthbert Low, Elaine Low (Peter Low LLC) and Wong Seow Pin (S P Wong & Co.) for second accused.