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

[2023] SGHC 349

Magistrate's Appeal No 9121 of 2023/01

Between

Yap Kian Sing

… *Appellant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Procedure and Sentencing — Appeal]
[Criminal Procedure and Sentencing — Sentencing]

TABLE OF CONTENTS

Yap Kian Sing
v
Public Prosecutor

[2023] SGHC 349

General Division of the High Court — Magistrate's Appeal No 9121 of 2023
Tay Yong Kwang JCA
29 September 2023

11 December 2023

Tay Yong Kwang JCA:

Introduction

1 The appellant, a male Singaporean, was born on 20 October 1973. At the time he pleaded guilty before the District Court, he was 49 years and six months old. At the time of the appeal before me on 29 September 2023, the appellant was three weeks away from his 50th birthday. He turned 50 three weeks later on 20 October this year.

2 Before the District Court, the appellant pleaded guilty to five charges. He was represented by defence counsel then. The charges concerned:

(a) Criminal intimidation against a woman with whom the appellant had a relationship around 2019 to 2020 by sending a text message to her threatening to cause death or grievous hurt to her son, which constituted an offence punishable under the second

limb of s 506 of the Penal Code (Cap 224, 2008 Rev Ed) (the "Criminal Intimidation Charge");

(b) harassment to the same woman by stalking her, which constituted an offence under s 7(1) of the Protection from Harassment Act (Cap 256A, 2015 Rev Ed) (the "Harassment Charge");

(c) possession of 217.94g of methamphetamine for the purpose of trafficking, which constituted an offence under s 5(1)(*a*) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA") (the "Trafficking Charge");

(d) consumption of methamphetamine, which constituted an offence under s 8(*b*)(ii) of the MDA and for which the appellant was liable for enhanced punishment under s 33(4AA) of the MDA (the "Consumption Charge"); and

(e) possession of 17.75g of methamphetamine for the appellant's own consumption (as accepted at [20] of the Statement of Facts), which constituted an offence under s 8(a) of the MDA (the "Possession Charge").

3 In addition to the above five charges, nine other charges were taken into consideration for sentencing. These concerned two charges of criminal intimidation and two charges of harassment against the same woman, a charge of consumption of methamphetamine on another occasion and four charges of possession of various kinds of drugs and of drug utensils.

The District Court's decision

4 The District Judge ("DJ") sentenced the appellant as follows:

(a) ten months' imprisonment in respect of the Criminal Intimidation Charge;

(b) six months' imprisonment in respect of the Harassment Charge;

(c) 25 years' imprisonment and 15 strokes of the cane in respect of the Trafficking Charge;

(d) three years' imprisonment in respect of the Consumption Charge; and

(e) eight months' imprisonment in respect of the Possession Charge.

5 The DJ ordered the imprisonment terms for the charges in (a) to (c) above to run consecutively, resulting in an aggregate sentence of 25 years and 16 months' imprisonment and 15 strokes of the cane. The imprisonment terms were ordered to commence on 18 August 2021, the date of the appellant's arrest.

6 In considering the sentence for the drug trafficking charge, the DJ noted that both the Prosecution and the defence had agreed that the reference point was the Court of Appeal's decision in *Adri Anton Kalangie v Public Prosecutor* [2018] 2 SLR 557 ("*Kalangie*"). In that case, a sentencing framework was set up for the trafficking or importation of 167g to 250g of methamphetamine. The following three sentencing bands were promulgated (see *Kalangie* at [80]):

Sentencing Band	**Quantity of methamphetamine trafficked or imported**	**Imprisonment (years)**	**Caning**
Band 1	167.00–192.99g	20–22	15 strokes

Band 2	193–216.99g	23–25	
Band 3	217.00–250.00g	26–29	

7 As the appellant's trafficking charge involved 217.94g of methamphetamine, his case crossed marginally into Band 3, with a starting point of 26–29 years' imprisonment. The DJ considered several case precedents and decided that the Prosecution's call for an imprisonment term of 26 years was "slightly on the high side". Looking purely at offence-specific factors, the DJ noted that the amount of drugs in this case fell into Band 3 of the above sentencing framework by a fairly small margin. He noted, however, that the appellant also faced multiple drug-related charges and had committed the drug trafficking charge some five months after an earlier arrest for offences which included drug consumption. The DJ decided that the indicative sentence would be 25 years and 6 months' imprisonment (see [77] and [78] of the DJ's written grounds of decision in *Public Prosecutor v Yap Kian Sing* [2023] SGDC 132 ("Written Grounds")).

8 In assessing offender-specific factors, the DJ noted that "there was nothing in particular to add or subtract for the purpose of sentencing, save to observe that [the appellant] was a middle-aged man and would not be accorded any leniency or forbearance granted to youthful offenders in sentencing": see Written Grounds at [79]. The DJ also noted that the appellant had a history of drug-related offences but considered this to be fairly unexceptional and not to merit any additional weightage to the sentence: see Written Grounds at [79].

9 In addressing the totality principle, the DJ considered the extent of the appellant's offending against the three consecutive imprisonment terms that he was going to order. He decided to reduce the indicative sentence for the drug

trafficking charge by 6 months to arrive at the final sentence of 25 years' imprisonment for this charge: see Written Grounds at [82].

The appeal to the General Division of the High Court

The appellant's case

10 In this appeal, the self-represented appellant accepted the sentences imposed on him by the DJ for the Criminal Intimidation Charge and the Harassment Charge and did not appeal against them. Initially, in his written submissions, he asked that the sentences for these two charges be ordered to run concurrently rather than consecutively. After I explained to him that his former defence counsel had agreed before the DJ that the sentences for these two charges should run consecutively with each other and with the sentence for the Trafficking Charge, he decided that he would abandon his argument on concurrent sentences.

11 Accordingly, the appellant's case rested on his appeal against the sentence of 25 years' imprisonment and 15 strokes of the cane (see [4(c)] above) for the Trafficking Charge. The punishment provided in the MDA for this charge is a minimum of 20 years' imprisonment and 15 strokes of the cane and a maximum of 30 years' imprisonment or life imprisonment and 15 strokes of the cane. Since the number of strokes of the cane is fixed by law, the appeal proceeded on the sole issue of whether 25 years' imprisonment was manifestly excessive on the facts.

12 The appellant acknowledged that he had done wrong but felt that the total imprisonment term of 25 years and 16 months was a crushing sentence for him. He pleaded for an aggregate imprisonment term of 23 years for all his offences. Since he accepted the 16 months' imprisonment term for the other two

offences, this meant that he was effectively asking for the sentence for the drug trafficking charge to be reduced from 25 years to 21 years and 8 months.

13 In the appellant's written submissions, he stated that the present case was the first time he was charged for drug trafficking. He argued that in analysing drug trafficking cases, "the only relevant similar charges must be those relating to the act of trafficking, importation or delivery of drugs. Consumption and possession are not relevant and the insertion of such charges in my column are wrong and prejudicial".

14 The decision of the Court of Appeal in *Suventher Shanmugam v Public Prosecutor* [2017] 2 SLR 115 was relied on by the appellant's former defence counsel in his submissions before the DJ. Based on the amount of drugs involved, the accused in that case would fall within the sentencing band of 26 to 29 years' imprisonment. However, the High Court there sentenced him to 23 years' imprisonment and the Court of Appeal dismissed the accused's appeal without altering the imprisonment term.

15 The appellant stated further that he had no objections to youthful offenders being given a chance as they had a long way to go in life. However, for offenders in his age group, with the sort of sentences imposed on him, he would likely spend almost the rest of his life incarcerated, as if he were undergoing life imprisonment.

16 In the appellant's written submissions, he went on to state that despite being at the cusp of 50 years in age and despite having been advised that the cut-off age for caning is 50, he elected to plead guilty anyway as he did not wish to delay sentencing or waste the Court's time or the Prosecution's resources. He urged the Court to treat this as a genuine sign of his remorse and determination

to turn over a new leaf. He therefore pleaded guilty before turning 50, accepting the 15 strokes of the cane as part of his sentence.

The Prosecution's case

17 In addressing the appellant's contention that it was wrong and prejudicial for the DJ to have regard to his non-trafficking drug antecedents and the charges taken into consideration, the Prosecution highlighted that the DJ did not enhance the sentence for the drug-related charges. As for the drug-related charges taken into consideration, the DJ followed the established principle that the effect of charges of a similar nature taken into consideration was to give an uplift to the sentence imposed for the charges proceeded with.

18 The Prosecution also pointed out that case law has established that non-trafficking drug offences remained relevant when sentencing an offender for trafficking offences. This contradicts the appellant's contention that "the only relevant similar charges must be those relating to the act of trafficking, importation or delivery of drugs" (see [13] above).

19 The Prosecution submitted that the appellant's guilty plea, his cooperation during investigations and his claim that he had never trafficked drugs before had minimal mitigating weight. They therefore did not buttress his submission for a reduction in his sentence. In any case, his claim that he had never trafficked drugs before was patently untrue as the Statement of Facts (at [15]) indicated that the appellant had prior dealings with the drug supplier.

20 The overall circumstances of this case and a strict application of the sentencing framework (see [6] above) justified amply a sentence within Band 3 of that framework. The appellant received an imprisonment sentence of 25 years

when it should have been 26 years. Accordingly, the Prosecution asked that the appeal against sentence be dismissed.

My decision

21 As indicated earlier, the appeal proceeded on the sole issue of whether 25 years' imprisonment for the Trafficking Charge was manifestly excessive on the facts. While I agreed entirely with the Prosecution's submissions set out above, I felt that a unique and highly important factor in this case was not given sufficient attention to.

22 This factor concerns the appellant's age when he decided to plead guilty before the DJ and his age at the time of the appeal before me. At the time he pleaded guilty, he was 49 years and six months old. Although he had been advised by his former defence counsel that he would be spared caning under the law (see s 325(1)(b) of the Criminal Procedure Code 2010 (2020 Rev Ed)) when he turned 50 in age, he took the honourable route of accepting guilt early and undergoing the mandatory 15 strokes of the cane.

23 We have seen cases where offenders at the age of 48 or 49 resorted to delay tactics before the trial court with the obvious aim of ensuring that they would be 50 years old by the time of sentencing. Alternatively, or additionally, such offenders would delay their appeals so that they would pass the age limit for caning by the time their appeals are disposed of.

24 At the time of the appeal before me on 29 September 2023, the appellant was just three weeks away from his 50th birthday. Yet, he did not resort to tactical ploys to delay the appeal by a mere three weeks but accepted the 15 strokes of the cane knowingly. When an offender accepts culpability and such

corporal punishment willingly although he has an obvious escape route, I think that is one of the surest manifestations of genuine remorse.

25 I therefore thought it appropriate that such honourable conduct evidencing genuine remorse should be acknowledged and encouraged by a suitable reduction in sentence. As the appellant faced multiple drug-related charges and had already received a reduction of one year's imprisonment from Band 3 of the sentencing framework, I was constrained in the length of further reduction. Accordingly, I decided that it would be just to reduce his sentence for the drug trafficking charge by another year.

Conclusion

26 For these reasons, I allowed the appellant's appeal against sentence. The appellant's sentence for the drug trafficking charge was reduced from 25 years' imprisonment and 15 strokes of the cane to 24 years' imprisonment and 15 strokes of the cane. All other orders made by the DJ would remain unchanged. The result was that the appellant would undergo imprisonment for a total of 24

years and 16 months with effect from 18 August 2021 and receive 15 strokes of the cane.

Tay Yong Kwang
Justice of the Court of Appeal

The appellant in person;
Tin Shu Min (Attorney-General's Chambers) for the respondent.
