cacc 147/2016 AND CACC 346/2016 AND CACC 375/2017

[2018] HKCA 410

CACC 147/2016

**in the high court of the**

**hong kong special administrative region**

**court of appeal**

criminal appeal no 147 of 2016

(on appeal from HCCC NO 143 of 2015)

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###### BETWEEN

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| HKSAR | | | Respondent |
| and | | |  |
| CHAN Ka Yiu (陳嘉瑤) | | | Applicant |
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AND

CACC 346/2016

**in the high court of the**

**hong kong special administrative region**

**court of appeal**

criminal appeal no 346 of 2016

(on appeal from HCCC NO 400 of 2015)

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###### BETWEEN

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| HKSAR | | | Respondent |
| and | | |  |
| Leung Lok Yi (梁樂兒) (D1) | | | Applicant |
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AND

CACC 375/2017

**in the high court of the**

**hong kong special administrative region**

**court of appeal**

criminal appeal no 375 of 2017

(on appeal from HCCC NO 100 of 2016)

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###### BETWEEN

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| HKSAR | | | Respondent |
| and | | |  |
| Yeung Lok Hei (楊樂晞) | | | Applicant |
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Before: Hon Macrae VP, McWalters JA and Poon JA in Court

Date of Hearing: 21 March 2018

Date of Judgment: 18 July 2018

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| J U D G M E N T |

Hon Macrae VP (giving the Judgment of the Court):

1. These are three consolidated appeals concerned with sentences passed in respect of large quantities of ketamine, all three ‍applicants having pleaded guilty in separate proceedings before the High Court to an offence (or offences) of trafficking in dangerous drugs, contrary to section 4(1)(a) and (3) of the Dangerous Drugs Ordinance, Cap ‍134. Two of the cases involved trafficking in the dangerous drugs across the border into Hong Kong; the other was concerned with trafficking on the streets of Hong Kong.
2. The applicant Chan Ka Yiu[[1]](#footnote-1) admitted one count of trafficking in 1,930 grammes of a powder containing 1,670 grammes of ketamine; the applicant Leung Lok Yi[[2]](#footnote-2) admitted one count of trafficking in 4,488 grammes of a powder containing 2,898 grammes of ketamine and 2.78 grammes of a crystalline solid containing 2.74 grammes of methamphetamine hydrochloride; while the applicant Yeung Lok Hei[[3]](#footnote-3) admitted one count of trafficking in 2,460 grammes of a powder containing 1,920 grammes of ketamine (Count 1), and another count of trafficking in 2,470 grammes of a powder containing 1,630 grammes of ketamine (Count ‍2). The operative quantities of ketamine narcotic for sentencing purposes in each case were **1,670 grammes** (in the case of Chan Ka Yiu); **2,898 grammes** (in the case of Leung Lok Yi); and **3,550 grammes** (in the case of Yeung Lok Hei).
3. Chan Ka Yiu and Leung Lok Yi were both arrested at Lok Ma Chau Control Point, New Territories, Hong Kong, having crossed the border from the Mainland into Hong Kong in possession of their respective quantities of dangerous drugs. Yeung Lok Hei was arrested on a street in San Po Kong, Kowloon, Hong Kong in possession of the first quantity of dangerous drugs (Count 1), which led to the discovery of a second quantity of dangerous drugs in the building from which he had been seen emerging (Count 2). Accordingly, the sentences passed on Chan Ka Yiu and Leung ‍Lok Yi fell to be enhanced for the international element involved in trafficking in dangerous drugs across the border into Hong Kong. No such element was involved in the case of Yeung Lok Hei.
4. The quantities of ketamine concerned in each case were substantially above the highest bracket of upwards of 14 years’ imprisonment after trial for over 1,000 grammes of narcotic set out in the guidelines established in *Secretary for Justice v Hii Siew Cheng*[[4]](#footnote-4). Accordingly, the three cases before us have been consolidated so that the Court can consider the necessity of issuing further guidelines to cater for quantities substantially above 1,000 grammes of ketamine narcotic. In that assessment, the Court has also been invited by counsel on behalf of Yeung Lok Hei to consider revisiting the correctness of the existing guidelines in *Hii Siew Cheng*. However, this invitation is not supported by counsel for either of the other two applicants, and is opposed by the respondent.
5. The Court is further asked to consider issuing guidelines in respect of the international element involved in bringing ketamine over the border into Hong Kong; or attempting to take it over the border out of Hong Kong. Such guidelines as do exist are concerned only with the cross‑border trafficking of heroin, cocaine and methamphetamine hydrochloride[[5]](#footnote-5).
6. Accordingly, we shall in this judgment address three issues: first, the validity of the *Hii Siew Cheng* guidelines; secondly, the necessity of issuing guidelines for trafficking in quantities above 1,000 grammes of ketamine narcotic; and thirdly, the necessity for issuing guidelines in respect of the enhancement of sentence for cross-border trafficking. We shall then deal with the individual appeals presented by the three applicants.
7. In addressing these issues, we are particularly indebted to Ms ‍Anna Lai SC and her junior, Mr Ira Lui, for their very thorough written submissions which were well‑prepared, well‑informed and intelligently presented, thus allowing Ms Lai to be sensible and succinct in her oral arguments. We should say that in presenting her submissions, a number of affirmations containing statements of expert witnesses on the abuse and properties of ketamine, as well as of others tasked with compiling statistical information about seizure and consumption rates, were placed before us with the consent of all parties, pursuant to section 83V of the Criminal Procedure Ordinance, Cap 221.

The Hii Siew Cheng guidelines

1. It is the thrust of the submissions of Ms Olivia Tsang, on behalf of Yeung Lok Hei, that the abuse of ketamine has been in decline almost since the publication of the *Hii Siew Cheng* guidelines in June 2008. By reference to statistics produced by the respondent, she was able to demonstrate that the proportion of all drug abusers who abused ketamine had decreased steadily from 30.1% in 2007 to 9.1% in 2017, while the proportion of all drug abusers under the age of 21 abusing ketamine had decreased from 80.3% in 2007 to 7.6% in 2017. Accordingly, she questioned the continuing justification for the rationale which lay behind the *Hii Siew Cheng* guidelines in relation to both ketamine and ecstasy, and which played such a significant part in the Court’s thinking 10 years ago, namely prevalence and abuse by those under 21 years of age. In *Hii Siew Cheng*, the Court considered, at paragraph 91, that:

“In our opinion, as we have indicated, sentencing guidelines are called for in regard to ketamine. This drug has been shown not only to be prevalent in Hong Kong but also, seemingly, the most popular of all amongst those under 21 who abuse drugs. As the statistics coupled with the medical evidence have revealed, ecstasy is closely associated with ketamine. Furthermore, both drugs have been shown to be addictive in the sense that they give rise to psychological dependence. These are the prime factors we have taken into account in the formulation of guidelines which we consider should be the same for both types of drug.”

1. She took issue with a similar statement made by a differently constituted Court in 2012 in *HKSAR v Sin Chung Kin*[[6]](#footnote-6), where, at paragraph ‍21, it was said:

“Ketamine is highly toxic and extremely hazardous to the human body. Since 2005 there has been a sharp increase in the quantities of ketamine seized by the police, and ketamine has become the most widely abused drug among youngsters aged below 21.”

1. Ms Tsang says that, while there may have been a sharp increase in the prevalence of trafficking ketamine from 2005 until 2008 when *Hii Siew Cheng* was decided, it is clear that it has been in decline ever since.
2. For the respondent, Ms Lai counters that one should be careful of taking a “snap shot” of the prevalence of ketamine use in any given year from the available data of ketamine seizures for that year, given the fluctuating nature of the statistics in respect of seizure and consumption. Not every seizure is, of course, detected. Furthermore, one could argue that the apparently diminishing trend of ketamine seizures may in no small part be due to the consistency and severity of the guidelines applied to its trafficking. What can undoubtedly be said is that the harmful effects of the abuse of ketamine are now far better understood and documented by scientists and researchers than 10 years ago when *Hii Siew Cheng* was decided. Moreover, it has become clear that ketamine should not be seen in isolation because it is invariably abused in social settings in conjunction with other drugs, such as ecstasy and methamphetamine hydrochloride (commonly known as “Ice”).

Consideration

1. Amongst the evidence adduced before us by the respondent pursuant to section ‍83V of the Criminal Procedure Ordinance were the reports of Professor Karen Laidler of the Centre for Criminology, University of Hong Kong; Dr Chu Sau Kwan, a consultant urologist at the Department of Surgery, Tuen Mun Hospital; and Professor Tang Wai Kwong of the Department of Psychiatry, Chinese University of Hong Kong. Professor Laidler[[7]](#footnote-7) and Dr Chu[[8]](#footnote-8) had previously provided evidence to the Court in *Hii* ‍*Siew Cheng*.
2. Professor Laidler, in her report prepared for these proceedings dated 20 July 2017, detailed the tighter restrictions on the use, and penalties for the abuse, of ketamine in several countries in the world since 2007, pointing out that in the United Kingdom, ketamine, although classified as a Class C drug in 2006, had been re‑classified as a Class B drug with more severe penalties for trafficking in 2014. She maintained that over the course of the past decade the abuse of ketamine has remained prevalent in the Asian drug market, whilst ecstasy’s popularity has declined. She concluded:

“24. Based on recent drug use patterns and research on ketamine and ecstasy, I continue to hold to the view that the potential harms and risks associated with ketamine appear to be greater than with ecstasy in the Hong Kong context.”

1. Dr Chu, in her report to this Court dated 6 July 2017, was able to expand upon, and illustrate, the concerns she had previously expressed concerning ketamine to the Court in *Hii Siew Cheng*. She concluded:

“In summary, ketamine abuse causes irreversible urological damage which is well established in the past decade. Animal studies and laboratory evidence had also been shown to complement the above clinical findings. Ketamine abuse has proven worldwide to cause huge health issue problems and subsequently social and economy problems to society.”

Having forecast in her evidence before the Court in *Hii Siew Cheng* that both her research and her clinical findings had led her to believe that ketamine had the potential to cause lasting danger to the health of its abusers as well as have a deleterious effect on society, she recorded in her latest report that one young person had died from ketamine abuse, while irreversible bladder damage had now been confirmed with possible renal failure for other abusers of the drug.

1. For his part, Professor Tang, in a statement dated 24 May 2017, stated that researchers based in Hong Kong have, over the past decade, been able to deduce additional evidence of harm associated with ketamine abuse; in particular, brain damage in the form of atrophy and other lesions, upper gastrointestinal symptoms, cystitis and contracted bladder problems and liver and bile duct damage. Further, the frequency of psychosis, depression and anxiety disorders have also been reported in local chronic ketamine users.
2. It is clear, therefore, that the concerns of the Court in *Hii Siew Cheng* about the dangers and risks of ketamine abuse were well‑founded and have been fully justified and exemplified in the decade that has followed since that decision. Much more is now known about the physical and psychological problems of abuse than 10 ‍years ago, suggesting that the Court in *Hii Siew Cheng* was entirely right to issue the guidelines it did. We do not accept that there is any warrant for relaxing those guidelines, especially where illicit drug tastes and habits of consumption can change and fluctuate, particularly with price, and when the guidelines for trafficking may well themselves have contributed to the apparent downward trend in the prevalence of the offence.
3. Accordingly, we see no reason to reconsider the guidelines for trafficking in ketamine as laid down in *Hii Siew Cheng*.

The need for sentencing guidelines for trafficking in quantities greater than 1000 grammes

1. The respondent has compiled a list of the 56 cases of trafficking in ketamine which have reached the Court of Appeal since *Hii ‍Siew Cheng* was decided. Only 13 of those cases involved amounts of ketamine narcotic over 1,000 grammes, while only 6 of the 13 involved amounts over 2,000 grammes, and only 3 of the 6 involved amounts over 3,000 grammes. We do not consider 13 cases in 10 years a significant enough sample to warrant further detailed guidelines being given for quantities of ketamine above 1,000 grammes, particularly when the incidence of ketamine trafficking appears, at least for the present, to be in decline.
2. Moreover, the approach to quantities of ketamine narcotic in excess of 1,000 grammes has already been considered by this Court in *Sin ‍Chung Kin*[[9]](#footnote-9) and *HKSAR v Chow Yau Ching*[[10]](#footnote-10), which were two of the 13 cases to be decided by the Court of Appeal since *Hii Siew Cheng*. These authorities have ensured a level of consistency in the relatively few cases which have been heard dealing with quantities of more than 1 ‍kilogramme of ketamine over the past 5 years.
3. Essentially, the Court in *Sin Chung Kin* proceeded on the obvious and uncontroversial basis that:

“Where large quantities of ketamine are involved, although it is not possible to enhance the starting points proportionally, a reasonable and logical approach must be that, the larger the quantity of the drug is, the more severe the sentence will be”[[11]](#footnote-11).

The Court then determined that for trafficking in 2,000 grammes of ketamine narcotic, the starting point should be no less than 18 years’ imprisonment, while for trafficking in 3,000 grammes, the starting point should be no less than 20 years’ imprisonment. It further held that:

“… if more than 3,000 g of ketamine is involved, the starting point can exceed 20 years, although the increase in sentence should not be proportional to the increase in the drug quantity. The court should exercise its discretion to pass a sentence appropriate in the circumstances of the particular case”[[12]](#footnote-12).

The Court in *Chow Yau Ching* re‑affirmed the analysis in *Sin Chung Kin*.

1. We do not consider it necessary, in the circumstances of prevalence which we have outlined, to revisit what was said by the Court in *Sin Chung Kin*. Indeed, we think the Court’s analysis is correct. For the relatively small catchment of cases involving quantities greater than 1,000 grammes of ketamine narcotic, sentencing courts should continue to adopt the approach set out in *Sin Chung Kin*.

Enhancement for the ‘international element’ in trafficking in ketamine

1. Of the same 56 cases heard by this Court in the wake of the decision in *Hii Siew Cheng*, eight involved an enhancement of sentence for the international element. As Ms Lai points out, there has not been an entirely consistent pattern of enhancement for the quantities involved in these cases. For example, in *HKSAR v Chong Heung Sang*[[13]](#footnote-13), the Court approved an enhancement of 9 months’ imprisonment for trafficking 200.80 grammes of ketamine narcotic across the border from the Mainland into Hong Kong; whilst in *HKSAR v Zhang Saiqiong*[[14]](#footnote-14), a differently constituted Court endorsed an enhancement of 6 months’ imprisonment for trafficking 728.45 grammes of ketamine, also across the border from the Mainland into Hong Kong. In *香港特別行政區 訴 林佩玲*[[15]](#footnote-15), this Court approved an enhancement of 6 months’ imprisonment for trafficking in 800 grammes of ketamine across the border into Hong Kong, whilst in *香港特別行政區 訴 吳笑蘭*[[16]](#footnote-16), the Court endorsed an enhancement of 4 ‍months’ imprisonment in respect of 840 grammes of ketamine.
2. Obviously, there should be a level of consistency in this area of criminal sentencing. Furthermore, cross‑border trafficking in ketamine remains a serious concern, with 23,972.36 grammes of ketamine narcotic being seized at the border in 2017, representing the third highest quantity of dangerous drugs seized (after cannabis and cocaine); and accounting for the second largest number of arrested persons (after cocaine) for that year. Meanwhile, although the principle of enhancement for the international element involved in trafficking in more than 1,000 grammes of heroin or cocaine was clearly established in *HKSAR v Abdallah*, this Court in *HKSAR v Chung Ping Kun* has only issued what it termed “a broad guideline” of enhancement for the international element for trafficking in less than 1,000 grammes of methamphetamine hydrochloride, heroin and cocaine. Plainly, ketamine is in a slightly different league.
3. In all the circumstances, we think the time is right and the opportunity clearly presents itself to issue guidelines for the enhancement of sentences, where trafficking in ketamine across the border of Hong Kong is involved. Those guidelines, which of course only relate to the narcotic quantity of the drug, are as follows:

(1) Up to 500 grammes Up to 6 months

(2) 500 to 1,000 grammes 6 months to 1 year

(3) 1,000 to 3,000 grammes 1 to 2 years

(4) Over 3,000 grammes 2 years

1. We turn, therefore, to the individual appeals before us, bearing in mind that these guidelines cannot be applied retrospectively.

HKSAR v Chan Ka Yiu (CACC 147/2016)

1. Chan Ka Yiu pleaded guilty to trafficking across the border in 1,670 grammes of ketamine narcotic. No issue is taken by Mr John Reading SC (with him Mr Leung Chun Keung), acting on his behalf at this appeal, as to the starting point for trafficking, namely 15 years’ imprisonment. His complaints concern (i) ‍the excessive enhancement of 18 months’ imprisonment for the international factor of carrying the dangerous drugs in question across the border into Hong Kong; and (ii) ‍the insufficient discount for the applicant’s plea of guilty and assistance to the authorities, namely 36%.
2. In respect of the issue of enhancement, it should be said that the trial judge[[17]](#footnote-17) conducted a very careful assessment of the arguments and authorities and determined that there should be a downward adjustment of the guidelines in *Abdallah* to reflect the comparatively less serious nature of ketamine, when compared with heroin and cocaine; an approach which, as he noted, had been approved by the Court in *Zhang ‍Saiqiong*[[18]](#footnote-18). Whilst his adoption of an 18 months’ enhancement would be slightly above that indicated arithmetically under the guidelines we propose, it may be compared with the enhancement of 12 months given in respect of the trafficking across the border into Hong Kong of 1,130 ‍grammes of ketamine narcotic in the earlier decision of *HKSAR v Tsang Koon Lap*[[19]](#footnote-19); an enhancement with which this Court declined to interfere.
3. The quantity in which the applicant before us was trafficking was more than half a kilogramme greater than the quantity in *Tsang Koon Lap*. Moreover, the judge described the applicant as playing a “prominent role” in bringing the dangerous drugs into Hong Kong, having gone to the Mainland to collect them, where they were packed inside two ‍ziplock bags, covered by pieces of A4‑size paper inside two brown envelopes, and then placed in her shoulder bag. He pointed out that the applicant’s fingerprints were found on various sheets of the A4 paper used and on the two ‍brown envelopes, suggesting that she had obviously taken part in packaging the drugs as well as collecting and carrying them.
4. In our judgment, the enhancement of 18 months’ imprisonment for someone who was clearly closely involved in packaging and carrying such a large quantity of ketamine across the border, whilst robust, was appropriate.
5. As for the second issue, the applicant participated in a controlled operation, which involved making several telephone calls to telephone numbers recorded in her telephone, as well as WhatsApp messages to the person she claimed was to collect the drugs. She also took Customs officers to a particular hotel room, which was said to have been booked by the person who was to collect the drugs from the applicant. However, no one appeared to collect the drugs and the operation was called off. It may, however, be noted that despite initial admissions under caution upon arrest and her agreement to cooperate in making a controlled delivery, the applicant subsequently refused to answer any questions put to her during a video‑recorded interview. For her participation in an unsuccessful controlled delivery, the judge gave the applicant an extra ‍2.6% ‍deduction on top of the one‑third reduction for plea.
6. In *HKSAR v Nkwo Nnaemeka Darlington*[[20]](#footnote-20), this Court declined to specify a discount which might be given for an unsuccessful controlled delivery operation. We said:[[21]](#footnote-21)

“33 … neither a straitjacket approach nor the application of a percentage discount range is desirable, because the factors to which a sentencing judge should have regard will necessarily vary according to the unique circumstances of different cases. Such factors would include: (i) the nature and effect of any voluntary participation; (ii) the outcome of the assistance: was it successful in bringing to justice persons who would not otherwise have been brought to justice?; (iii) the degree or extent of assistance which had been provided; and (iv) the degree of risk to which the defendant had exposed himself or his family. It is a matter within the discretion of judges how these, and other possible, factors affect the discount to be accorded a defendant in a particular case. Accordingly, we do not accede to the invitation to lay down guidelines for such assistance.

…..

35. As we say, every case is different and we do not accept that there can be a fixed percentage discount applied to all, or even similar, cases. …”

1. In this case, the applicant’s assistance was confined to her participation in an abortive controlled delivery operation. Significantly, however, she declined to follow the matter up by answering any questions during a video‑recorded interview. In our view, her assistance was limited and dependent upon what she chose to do when making calls or sending WhatsApp messages to people she claimed were involved, details about whom she did not elaborate in interview. We see no significant element of risk to herself by doing what she did and none was suggested in mitigation. We would not be prepared to interfere with the judge’s exercise of his discretion in according her a minimal discount for her participation in the unsuccessful controlled delivery operation.
2. In our judgment, there is no merit in this appeal. The application for leave to appeal against sentence is refused and the appeal is dismissed.

HKSAR v Leung Lok Yi (CACC 346/2016)

1. Leung Lok Yi pleaded guilty to trafficking in 2,898 grammes of ketamine narcotic and 2.74 grammes of methamphetamine hydrochloride. Again, no complaint is made by Mr Phillip Ross, on behalf of the applicant, about the starting point of 19 years and 9 months’ imprisonment adopted for both drugs concerned. Complaint is made, however, that the judge[[22]](#footnote-22) has miscalculated the discount she said she would apply to the starting point by 2 months, and has erroneously enhanced the starting point by 2 years’ imprisonment based upon the authority of *Abdallah*, which case applied only to heroin and cocaine, not to ketamine.
2. We think both complaints are misconceived. In respect of the first, the judge said she considered that the appropriate discount from the starting point for the applicant’s plea and assistance to the authorities should be “just under 43%”. As Ms Lai points out, the phrase used by the judge coincides with the language used by Toh J at first instance, in *HKSAR ‍v Kam Siu Wang & Another*[[23]](#footnote-23), which case had been submitted to the judge by defence counsel (not Mr Ross) as “very, very similar to our case”[[24]](#footnote-24). In *Kam Siu Wang & Another*, Toh J had adopted a discount which she described as “a little less than 43%” in respect of his plea of guilty and participation in a successful controlled delivery operation. Moreover, the very language of the judge in the case before us made clear that she was considering a discount that fell short of 43% in round terms. In the event, the discount she adopted was 42.15%. There is nothing whatsoever in this point.
3. In respect of the second complaint, the judge did not actually say that she was directly applying the guidelines of enhancement set out in *Abdallah*. All she said was that the case of *Abdallah* had established that the cross‑border trafficking into Hong Kong of dangerous drugs was an aggravating factor calling for the enhancement of the starting point. She went on to hold, applying that principle, that since the applicant had imported almost 3 kilogrammes of dangerous drugs, the enhancement would be 2 years’ imprisonment.
4. The real question for us is whether an enhancement of 2 years’ imprisonment for bringing 2,898 grammes of ketamine and 2.74 grammes of methamphetamine hydrochloride across the border into Hong Kong was manifestly excessive and/or wrong in principle.
5. We have already referred to the enhancement of 1 year, with which the Court in *Tsang Koon Lap* declined to interfere, where the quantity of ketamine being trafficked across the border was 1,130 grammes of ketamine narcotic. In the present case, we are dealing with slightly more than 2½ times that quantity, for which the enhancement was 2 years’ imprisonment. Furthermore, it should not be forgotten that the applicant was also trafficking across the border in 2.74 grammes of methamphetamine hydrochloride, for which the judge said the sentence after trial would have been 3 years and 3 months’ imprisonment[[25]](#footnote-25). By itself, the methamphetamine hydrochloride component was not particularly significant, but it did mean that the applicant was trafficking across the border in two types of dangerous drugs. We see no reason to interfere in the judge’s exercise of her discretion in enhancing the starting point for sentence by 2 years’ imprisonment in respect of the international element for trafficking these quantities of dangerous drugs.
6. The application for leave to appeal against sentence is also refused and the appeal dismissed.

HKSAR v Yeung Lok Hei (CACC 375/2017)

1. The facts in this appeal do not engage the issue of enhancement for the international factor. The basis of Ms Tsang’s submissions on behalf of the applicant is that the *Hii Siew Cheng* guidelines are outmoded, whilst the approach in *Sin Chung Kin* to large quantities of ketamine is unsatisfactory, if not incorrect. As will be clear from our resolution of the first two issues before this Court, we do not accept either of those propositions.
2. The total quantity of dangerous drug with which the applicant Yeung Lok Hei was trafficking on the streets of Hong Kong was 3,550 ‍grammes of ketamine narcotic. As we earlier observed, of the 56 ‍cases brought to our attention by Ms Lai, only three involve amounts of ketamine narcotic greater than 3,000 grammes. To that select catchment of cases may now be added this one.
3. The starting point adopted by the judge[[26]](#footnote-26) in this particular case, in respect of the quantity concerned, was 19 years and 9 months’ imprisonment. In doing so, the judge carefully and expressly followed what was said in *Sin Chung Kin*. He also noted that the Court in *Chow Yau Ching* had endorsed the rationale behind *Sin Chung Kin*. As Ms Lai pointed out, the starting point adopted by the trial judge in *Chow Yau Ching* was identical to that adopted by the judge in case before us, yet the quantity in which that applicant had trafficked was 2,890 grammes of ketamine, a quantity significantly less than the one with which we are concerned. The Court in *Chow Yau Ching* held that the starting point of 19 years and 9 ‍months’ imprisonment for the lesser quantity was neither wrong in principle nor manifestly excessive[[27]](#footnote-27).
4. We do not accept that the starting point and resultant sentence of 13 years and 2 months’ imprisonment is either manifestly excessive or wrong in principle. In the light of what was held in *Chow Yau Ching*, the applicant could not have complained if his sentence had even been slightly longer.
5. We likewise refuse the application for leave to appeal against sentence and dismiss the appeal.

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| (Andrew Macrae)  Vice President | (Ian McWalters)  Justice of Appeal | (Jeremy Poon)  Justice of Appeal |

Ms Anna Lai SC, DDPP and Mr Ira Lui ADPP (Ag), of the Department of Justice, for the Respondent

Mr John Reading SC and Mr Leung Chun Keung, instructed by Eric ‍Cheung & Lau, assigned by the Director of Legal Aid, for the Applicant in CACC 147/2016

Mr Phillip Ross, instructed by Eric Cheung & Lau, assigned by the Director of Legal Aid, for the Applicant in CACC 346/2016

Ms Olivia Tsang, instructed by the Legal Aid Department, for the Applicant in CACC 375/2017

1. *HKSAR v Chan Ka Yiu*, CACC 147/2016. [↑](#footnote-ref-1)
2. *HKSAR v Leung Lok Yi*, CACC 346/2016. [↑](#footnote-ref-2)
3. *HKSAR v Yeung Lok Hei*, CACC 375/2017. [↑](#footnote-ref-3)
4. *Secretary for Justice v Hii Siew Cheng* [2009] 1 HKLRD 1. [↑](#footnote-ref-4)
5. *HKSAR v Abdallah* [2009] 2 HKLRD 437; *HKSAR v Chung Ping Kun* [2014] 6 HKC 106. [↑](#footnote-ref-5)
6. *HKSAR v Sin Chung Kin* [2013] 1 HKLRD 627. [↑](#footnote-ref-6)
7. *Secretary for Justice v Hii Siew Cheng* [2009] 1 HKLRD 1, at paragraphs 69-72. [↑](#footnote-ref-7)
8. *Ibid.*, at paragraphs 67-68. [↑](#footnote-ref-8)
9. *HKSAR v Sin Chung Kin* [2013] 1 HKLRD 627. [↑](#footnote-ref-9)
10. *HKSAR v Chow Yau Ching* [2014] 2 HKLRD 639. [↑](#footnote-ref-10)
11. *HKSAR v Sin Chung Kin*, at paragraph 23. [↑](#footnote-ref-11)
12. *Ibid.*, at paragraph 28. [↑](#footnote-ref-12)
13. *HKSAR v Chong Heung Sang* (unrep., CACC 221/2009, 18 November 2009). [↑](#footnote-ref-13)
14. *HKSAR v Zhang Saiqiong* (unrep., CACC 333/2011, 5 July 2012). [↑](#footnote-ref-14)
15. *香港特別行政區 訴 林佩玲* (unrep., CACC 498/2011, 27 June 2012). [↑](#footnote-ref-15)
16. *香港特別行政區 訴 吳笑蘭* (unrep., CACC 487/2011, 13 September 2012). [↑](#footnote-ref-16)
17. Zervos J. [↑](#footnote-ref-17)
18. *HKSAR v Zhang Saiqiong* (unrep., CACC 333/2011, 5 July 2012), at para’s 6 and 12. [↑](#footnote-ref-18)
19. *HKSAR v Tsang Koon Lap* (unrep., CACC 464/2011, 24 July 2012). [↑](#footnote-ref-19)
20. *HKSAR v Nkwo Nnaemeka Darlington* [2016] 1 HKLRD 692. [↑](#footnote-ref-20)
21. *Ibid*., at 700. [↑](#footnote-ref-21)
22. D’Almada Remedios J. [↑](#footnote-ref-22)
23. *HKSAR v Kam Siu Wang & Another*, HCCC 378/2011, 30 March 2012. [↑](#footnote-ref-23)
24. Appeal Bundle, p 32P. [↑](#footnote-ref-24)
25. Appeal Bundle, p 24J-L. [↑](#footnote-ref-25)
26. A Wong J. [↑](#footnote-ref-26)
27. *HKSAR v Chow Yau Ching* [2014] 2 HKLRD 639, at para 24. [↑](#footnote-ref-27)