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

[2024] SGHC 134

Criminal Case No 51 of 2023

Between

Public Prosecutor

And

(1) Iskandar Bin Jinan
(2) Mohd Farid Merian Bin Maiden

GROUNDS OF DECISION

[Criminal Procedure and Sentencing — Sentencing — Guidelines on Reduction in Sentences for Guilty Pleas]
[Criminal Law — Statutory offences — Misuse of Drugs Act]

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v
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17 October, 26 October 2023

21 May 2024

Pang Khang Chau J:

Introduction

1 On 1 October 2023, the Guidelines on Reduction in Sentences for Guilty Pleas (the "Sentencing Guidelines") published by the Sentencing Advisory Panel (the "SAP") came into effect. The Sentencing Guidelines set out specific ranges of reduction in sentence that a court may consider granting when an accused person pleads guilty. One noteworthy feature of the Sentencing Guidelines is that it provides for sentencing discounts of up to 30% for early pleas of guilt. A key issue arising in the present case concerns how the Sentencing Guidelines should be applied in the context of drug trafficking and drug importation offences under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA") having regard to the various tiers of mandatory minimum sentences prescribed for such offences.

The charges

2 The first accused person, Iskandar bin Jinan ("Iskandar"), a male Singaporean aged 52 at the time when the offences were committed, pleaded guilty to the following three charges:

(a) one charge of trafficking in not less than 14.99g of diamorphine, an offence under s 5(1)(*a*) of the MDA punishable under s 33(1) of the MDA ("Iskandar's First Charge");

(b) one charge of possession for the purposes of trafficking, not less than 82.4 g of methamphetamine, an offence under s 5(1)(*a*) read with s 5(2) of the MDA punishable under s 33(4A)(i) of the MDA ("Iskandar's Second Charge"); and

(c) one charge of consuming methamphetamine, an offence under s 8(*b*)(ii) of the MDA punishable under s 33(4) of the MDA ("Iskandar's Fourth Charge").

Iskandar consented to having three other drug-related charges taken into consideration for the purpose of sentencing ("Iskandar's Third Charge", "Iskandar's Fifth Charge" and "Iskandar's Sixth Charge" – collectively "Iskandar's TIC charges").

3 The second accused person, Mohd Farid Merican bin Maiden ("Farid"), a male Singaporean aged 51 at the time when the offences were committed, pleaded guilty to the following three charges:

(a) one charge of abetting by engaging in conspiracy with Iskandar to traffic in not less than 14.99g of diamorphine, an offence under

s 5(1)(*a*) read with s 12 of the MDA punishable under s 33(1) of the MDA ("Farid's First Charge");

(b) one charge of consuming 2-[1-(5-Fluoropentyl)-1H-indole-3-carboxamido]-3,3-dimethylbutanoic acid or its hexanoic acid isomer, an offence under s 8(*b*)(i) of the MDA punishable under s 33(4) of the MDA ("Farid's Fourth Charge");

(c) one charge of possessing, for the purposes of trafficking, 277.14g of vegetable matter and 392.8g of colourless liquid, which were analysed and found to contain 5-fluoro-MDMB-PICA or its fluoro positional isomer in the pentyl group, an offence under s 5(1)(*a*) read with s 5(2) of the MDA punishable under s 33(4A) of the MDA ("Farid's Fifth Charge").

Farid consented to having two other drug-related charges taken into consideration for the purposes of sentencing ("Farid's Second Charge" and "Farid's Third Charge" – collectively, "Farid's TIC Charges").

The parties' submissions

4 On the issue of the appropriate discount to be accorded to a plea of guilt, the Prosecution submitted that the discount of up to 30% provided in the Sentencing Guidelines should be replaced with a maximum reduction of 10% in the case of drug trafficking and drug importation offences. During oral submissions, counsel for Iskandar, Mr Boon Khoon Lim, argued that the 10% cap suggested by the Prosecution was arbitrary. Counsel for Farid, Mr Jason Peter Dendroff, agreed with Mr Boon and further reiterated that the court should assess each case on a case-by-case basis instead of imposing a cap different from that provided in the Sentencing Guidelines.

5 As for the appropriate sentence against Iskandar, the Prosecution sought a sentence of 29 to 30 years' imprisonment for Iskandar's First Charge, at least 12 years and 7 months' imprisonment for Iskandar's Second Charge, and three years' imprisonment for Iskandar's Fourth Charge. The Prosecution asked for the sentences for Iskandar's First Charge and Iskandar's Fourth Charge to run consecutively, for a global sentence of at least 32 years' imprisonment.

6 Mr Boon, in his written submissions, did not propose a final sentence for each charge but instead only provided a starting point for each charge, coupled with a list of points in mitigation. He then submitted that a global sentence of 23 to 25 years' imprisonment would be appropriate in the circumstances, with all the sentences running concurrently.

7 As for Farid, the Prosecution sought a global sentence of at least 31 years' imprisonment, comprising a sentence of at least 28 years' imprisonment for Farid's First Charge, to run consecutively with the sentence sought for Farid's Fourth Charge, which is the minimum imprisonment term of three years, and 10 years' imprisonment for Farid's Fifth Charge, to run concurrently.

8 Mr Dendroff did not make individual submissions on the appropriate sentence for each charge Farid faced, but instead submitted that a global sentence of 26 years' imprisonment would be appropriate for Farid's charges.

Issues to be determined

9 Given the contours of the parties' submissions, an overarching issue to be determined is how the Sentencing Guidelines should be applied in the context of drug trafficking and drug importation offences. I therefore examine this issue first, before proceeding to consider the individual sentences to be imposed for the various charges.

Approach to reduction in sentences for guilty pleas in drug trafficking and drug importation cases

10 I will begin by providing an overview of how our courts have dealt with the mitigatory effect of guilty pleas prior to the Sentencing Guidelines coming into effect, before outlining how the provisions of the Sentencing Guidelines operate. This will be followed by an outline of the structure of the sentences prescribed in the MDA for drug trafficking and drug importation offences, and an examination of the issues which this structure presents for the application of the Sentencing Guidelines.

The court's approach to guilty pleas before the Sentencing Guidelines

11 Prior to the Court of Appeal's decision in *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 ("*Terence Ng*"), a number of cases had decided that a plea of guilt could be a mitigating factor *only* if it was indicative of genuine remorse (see *Angliss Singapore Pte Ltd v PP* [2006] 4 SLR(R) 653 at [53], *Public Prosecutor v NF* [2006] 4 SLR(R) 849 at [57] and *Public Prosecutor v UI* [2008] 4 SLR(R) 500 at [71]). This changed with the decision in *Terence Ng*. In that case, the Court of Appeal began by noting (at [66]) that the English Court of Appeal had, in *R v Millberry* [2003] 1 WLR 546 ("*Millberry*"), identified three reasons for which a court might reduce a sentence on account of a plea of guilt:

> (a) the plea of guilt can be a subjective expression of genuine remorse and contrition, which can be taken into account as a personal mitigating factor;
>
> (b) it spares the victim the ordeal of having to testify, thereby saving the victim the horror of having to re-live the incident; and

(c) it saves the resources of the State which would otherwise have been expended if there were a trial.

12 Describing the first reason as a "remorse-based" justification and the second and third reasons as "utilitarian" justifications, the Court of Appeal endorsed all three of the *Millberry* justifications in the following passage:

> 69 We think the principle of the matter is this. The criminal law exists not only to punish and deter undesirable conduct, but also to (a) help the victims of crime; (b) ensure that those suspected of crimes are dealt with fairly, justly and with a minimum of delay; and (c) to achieve its aims in as economical, efficient and effective a manner as possible: see Chan Sek Keong, "Rethinking the Criminal Justice System of Singapore for the 21st Century" in *The Singapore Conference: Leading the Law and Lawyers into the New Millennium @ 2020* (Butterworths, 2000) at p 30. The utilitarian approach properly reflects the contributions that a guilty plea makes to the attainment of these wider purposes of the law. The consideration here is not just a matter of dollars and cents. An important consideration here is the need to protect the welfare of the victims (particularly victims of sexual crimes, whose needs the law is particularly solicitous of) who must participate in the criminal justice process …
>
> …
>
> 71 … In assessing the proper mitigatory weight to be given to a plea of guilt, the sentencing court should have regard to the three *Millberry* ([1] *supra*) justifications set out at [66] above …
>
> [italics in original]

13 However, it appears that despite the endorsement of all three *Millberry* justifications in *Terence Ng*, the reasoning of our courts has continued to remain remorse-centric. As observed in Benny Tan, "Assessment of Mitigatory Weight of an Accused Person's Guilty Plea: A Post-*Terence Ng* Empirical Study and Practical Suggestions" (2023) SAL Prac 3, a survey of all the written judgments involving guilty pleas issued between 1 June 2017 and 31 May 2022 by the Magistrates' Court, the District Court and the High Court revealed that 41.6%

of cases (291 cases) did not allude to any of the three *Millberry* justifications, 35.6% of cases (249 cases) applied or alluded *only* to the remorse-based justification, 13.3% of cases (93 cases) applied the remorse-based justification and one other justification. The justification of sparing victim from trauma was applied in 8.3% of the cases (57 cases), while the justification of saving public resources was applied in 18.0% of cases (126 cases).

14 The focus on remorse-based reasoning has led our courts to hold that a plea of guilt should be given little mitigating weight if the evidence against the offender is overwhelming. Thus, the Court of Appeal in *Fu Foo Tong v PP* [1995] 1 SLR(R) 1 ("*Fu Foo Tong*") held (at [12]) that "[a] plea of guilt can be of no mitigating value, for example, when the evidence overwhelmingly supports a conviction", endorsing the following remarks from Chan Sek Keong J (as he then was) in *Wong Kai Chuen Philip v Public Prosecutor* [1990] 2 SLR(R) 361 at [14]:

> [T]he voluntary surrender by an offender and a plea of guilty by him in court are factors that can be taken into account in mitigation as they may be evidence of remorse and a willingness to accept punishment for his wrongdoing. However, I think that their relevance and the weight to be placed on them must depend on the circumstances of each case. I do not see any mitigation value in a robber surrendering to the police after he is surrounded and has no means of escape, or much mitigation value in a professional man turning himself in in the face of absolute knowledge that the game is up.

In a similar vein, Yong Pung How CJ held in *Xia Qin Lai v Public Prosecutor* [1999] 3 SLR(R) 257 (at [26]) that:

> It is of course a trite proposition that a timeous plea of guilt indicative of genuine remorse is a mitigating factor: see, *eg Wong Yuk Ai v Public Prosecutor* [1966] 2 MLJ 51 and *R v Alcock* [1967] Crim LR 66. However there is no mitigation value in a plea of guilty if the offender pleaded guilty in circumstances knowing that the Prosecution would have no difficulty in

> proving the charge against him, of if he had been caught red-handed.

15 However, in keeping with the Court of Appeal's endorsement of the utilitarian justifications in *Terence Ng*, our courts have in recent years been more prepared to accord substantial mitigatory weight to a plea of guilt in "caught red-handed" cases (see *eg, Public Prosecutor v Vashan a/l K Raman* [2019] SGHC 151 ("*Vashan*") at [20] and *Public Prosecutor v Murugesan a/l Arumugam* [2020] SGHC 203 ("*Murugesan a/l Arumugam*") at [24]). However, this shift in attitude is not uniform, as there continued to be some post-*Terence Ng* cases which held that the guilty plea of an accused person caught red-handed should be accorded little weight (see *eg, Public Prosecutor v Muhammad Nur Azam bin Mohamad Indra and another* [2020] 4 SLR 1255 at [26]).

16 As for the extent of sentencing discount, the Court of Appeal in *Terence Ng* declined to follow the approach suggested by the UK Sentencing Guideline Council's *Reduction in Sentence for a Guilty Plea: Definitive Guideline (July 2007)* ("the UK Sentencing Guideline") in setting prescribed sentencing discounts based on the timeliness of the plea of guilt (at [70]).

17 The Court of Appeal in *Terence Ng* also declined to follow the suggestion in *Chia Kim Heng Frederick v Public Prosecutor* [1992] 1 SLR(R) 63 (at [20]) that a guilty plea in a rape case which saves the victim from further embarrassment and suffering would merit a discount of one-quarter to one-third of the sentence. Instead, the Court of Appeal held that "what discount should be accorded to an accused person who pleaded guilty was a fact-sensitive matter that depended on multiple factors" (*Terence Ng* at [71]).

18 A further issue considered in *Terence Ng* was the stage during the sentencing process at which the mitigating effect of a guilty plea should

considered. To recapitulate, *Terence Ng* developed a two-step sentencing framework for the offence of rape. In the first step, the court considers the "offence-specific" factors (such as the harm caused and the culpability of the offender) to arrive at an indicative starting sentence. In the second step, the court adjusts the indicative starting sentence upwards or downwards on account of "offender-specific" aggravating or mitigating factors (such as presence of antecedents or evidence of remorse). This two-step sentencing framework is modelled largely after what is known as the "*Taueki* methodology" adopted in New Zealand (named after the case of *R v Taueki* [2005] 3 NZLR 372). However, the "*Taueki* methodology" (as modified after the New Zealand Supreme Court's decision in *Hessell v R* [2011] 1 NZLR 607 ("*Hessell*")) consists of a "third step" at which the court applies a discount to the presumptive sentence derived after the first two steps to account for the mitigating effect of any guilty plea. Concerning this "third step", the Court of Appeal commented that (*Terence Ng* at [38]):

> The only point on which we demur concerns the introduction of a "third step" for the application of a discount by reason of a plea of guilt or for the rendering of assistance to the police. In our opinion, these are offender-specific mitigating factors and can and should be taken into account at the second stage of the analysis instead of being considered separately.

Position under the Sentencing Guidelines

19 Having discussed the principles established in the case law, I turn now to examine the position under the Sentencing Guidelines.

Objectives and key principles of the Sentencing Guidelines

20 The objective of the Sentencing Guidelines is to encourage accused persons who are going to plead guilty to do so as early in the court process as possible, and to promote consistency in sentencing (Sentencing Guidelines at

para 3). Towards this objective of promoting consistency, the Sentencing Guidelines aim to set out clearly the reduction in sentence a court ought to consider based on when an accused person pleads guilty. A key principle spelt out in the opening paragraphs of the Sentencing Guidelines is that, where an accused person pleads guilty at the earliest possible stage, the reduction in sentence *ought to be significant* (at para 6).

21 Another key principle spelt out in the opening paragraphs of the Sentencing Guidelines is that an early plea of guilt can have the following benefits: (a) sparing the need for victims and witnesses to testify and (b) the saving of public resources (Sentencing Guidelines at para 4). It would not go unnoticed that this reflects only the utilitarian justifications recognised in *Terence Ng* but not the remorse-based justification. However, the Sentencing Guidelines also provide that, where the accused person has demonstrated remorse in other ways (apart from pleading guilty) the court may consider this a separate mitigating factor (independently of the sentencing discount to be given on account of a plea of guilt) (at para 8, Table 1, Step 1).

22 The scope of the Sentencing Guidelines is limited to imprisonment sentences. For sentences other than imprisonment, the Sentencing Guidelines suggests that the court may consider the mitigatory weight by reference to case law (Sentencing Guidelines at para 7).

The sentencing process under the Sentencing Guidelines

23 The sentencing process under the Sentencing Guidelines consists of three steps. In the first step ("Step 1"), the court determines the sentence that it would have imposed *if the accused person had been convicted after trial*. At Step 1, factors relating to the accused's guilty plea should *not* be considered.

However, as mentioned above, if the accused has demonstrated remorse in other ways besides the guilty plea, this would be a mitigating factor that could be taken into account at Step 1.

24 In the second step ("Step 2"), the court will determine what the applicable stage of the court proceedings is, and this would determine the applicable maximum reduction in sentence applicable to the offender. The applicable stage of proceedings would be determined according to Part III of the Sentencing Guidelines, where a criminal proceeding is broken down into four stages, carrying a maximum reduction in sentence of 30%, 20%, 10% and 5% respectively (Sentencing Guidelines at para 9, Table 2). The first stage ("Stage 1") refers to the period beginning from the first mention and ending 12 weeks after the Prosecution informs the court and the accused person that the case is ready for the plea to be taken. The second stage ("Stage 2") begins from the end of Stage 1 and ends when the court gives directions for filing of the Case for the Prosecution (in a case subject to the Criminal Case Disclosure procedures), or when the court first fixes trial dates (in other cases). The third stage ("Stage 3") begins from the end of Stage 2 and extends to the eve of the first day of trial. The final stage ("Stage 4") refers to the period on or after the first day of trial.

25 In Step 3, the final step of the analysis, the court would determine the appropriate reduction to be applied to the sentence determined in Step 1. This reduction *should generally not exceed* the maximum reduction for the applicable stage of proceedings determined in Step 2. The Sentencing Guidelines further provide that, where there are multiple charges, the total sentence is to be determined based on the prevailing sentencing principles (Sentencing Guidelines at para 8, Table 1, Step 3). This presumably would refer to the principles such as the totality principle and the one-transaction rule (see

eg, *Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 and *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998). The Sentencing Guidelines also provide that, where there are co-accused persons, the final sentence may be calibrated based on considerations of parity (at para 8, Table 1, Step 3).

26 Significantly, the Sentencing Guidelines expressly provide that the strength of the evidence against the accused person should *not* be taken into account when determining the level of reduction (Sentencing Guidelines at para 8, Table 1, Step 3).

27 Finally, the reduction in sentence provided in the Sentencing Guidelines for each stage of the court proceedings is worded as a *maximum* reduction as opposed to a fixed reduction. (See the use of the phrase "up to" in Table 2 of the Sentencing Guidelines.) Thus, a court applying the Sentencing Guidelines retains the discretion to give a sentencing reduction which is less than the maximum provided for in the Sentencing Guidelines.

Juridical nature of the Sentencing Guidelines

28 As the survey at [11]–[18] above and [23]–[27] above indicates that there may be some potential differences between the approach under the Sentencing Guidelines and the approach under existing case law, it would be useful to consider the juridical nature of the Sentencing Guidelines before examining what these differences might be and how a court might handle these differences.

29 The Sentencing Guidelines are promulgated by the SAP. The SAP is established by the Government after consultation by the Ministry of Home Affairs and the Ministry of Law with various stakeholders, including the

Judiciary and the Attorney-General's Chambers ("AGC") (*Singapore Parliamentary Debates*, *Official Report* (5 March 2021), Vol 95, Mr K Shanmugam, Minister of Law and Home Affairs) (the "Ministerial Statement"). The SAP is chaired by a Justice of the Court of Appeal and includes members from the Ministry of Law, Ministry of Home Affairs, the Singapore Police Force, AGC and the Bar as well as several other members from the Judiciary (Ministry of Law, "Establishment of the Sentencing Advisory Panel", press release (2 June 2022)). As explained in the Ministerial Statement, the guidelines published by the SAP will be persuasive but not binding on the Courts. In fact, the Sentencing Guidelines expressly provide (at para 2) that:

> *SAP guidelines, unlike judicial guidelines, are not binding on any court.* The court may decide whether to adopt the guidelines in a given case, and if so, how the guidelines should be applied. …
>
> [emphasis added]

30 The implications of the Sentencing Guidelines being persuasive but not binding on the sentencing court are:

(a) Where the Sentencing Guidelines are at variance with an existing judicial precedent which is merely persuasive but not binding on the sentencing court, the sentencing court is free to choose whether to follow the Sentencing Guidelines or the existing judicial precedent.

(b) Where the Sentencing Guidelines are at variance with an existing judicial precedent which is binding on the sentencing court, the sentencing court should follow the binding judicial precedent instead of the Sentencing Guidelines.

Further support for the view that this is how the Sentencing Guidelines are intended to operate may be found at para 10 of the Sentencing Guidelines and the illustration there.

31 At first blush, it may appear slightly odd, from a policy perspective, that there should be instances where the sentencing court is not allowed to give effect to the Sentencing Guidelines but remains obliged to apply judicial precedents pre-dating the Sentencing Guidelines, since this may be said to impair the efficacy of the Sentencing Guidelines. Nevertheless, this is a result which flows naturally and inevitably when the juridical nature of the Sentencing Guidelines, which carry no statutory force and are not binding on the courts, is juxtaposed against the doctrine of *stare decisis*.

Possible differences between the approach of the Sentencing Guidelines and the approach under existing case law

32 Having outlined the approach to guilty pleas under existing case law and that under the Sentencing Guidelines, I turn now to examine some possible differences between the respective approaches. The list of possible differences discussed below are not meant to be exhaustive. Instead, I focus only on those possible differences that may be relevant to the sentences to be meted out in the present case.

33 The first possible difference arises from the provision in the Sentencing Guidelines that the strength of the evidence against the accused person should not be taken into account when determining the level of reduction in sentence (see [26] above). This provision is relevant in the present case as both Iskandar and Farid may be said to have been caught red-handed. At first blush, this provision may appear to be at variance with some earlier judicial precedents which held that a plea of guilt should be given little mitigating weight if the

strength of the evidence against the accused person is overwhelming, particularly when the accused person is "caught red-handed" (see [14] above). In my view, any alleged variance between the Sentencing Guidelines and *applicable* judicial precedents on this issue is more perceived than real. As explained at [15] above, following the recognition of the utilitarian justifications by the Court of Appeal in *Terence Ng*, post-*Terence Ng* cases have begun according substantial mitigatory weight to a plea of guilt in "caught red-handed" cases. As a result, there is no real variance between this provision in the Sentencing Guidelines and the *current*, post-*Terence Ng*, judicial precedents.

34 The second possible area of difference is in the quantum of sentencing discount. Under the Sentencing Guidelines the reduction in sentence attributable to the plea of guilt is expressed as a *percentage of* the sentence determined after Step 1, and that percentage differs according to the timeliness of the guilty plea. As noted at [16] above, the Court of Appeal had, in *Terence Ng* at [70], declined to follow the approach in the UK Sentencing Guideline in setting prescribed sentencing discounts based on the timeliness of the plea of guilty. In my view, this does not preclude the lower courts from applying the percentage discounts spelt out in the Sentencing Guidelines. This is because, in declining to follow the approach in the UK Sentencing Guideline, the reason given by the Court of Appeal was that (at [70]):

> … the setting of *fixed* sentencing discounts does not allow the court to take into account the many and varied reasons for which a plea of guilt is entered and the effects it might have on the victim and the criminal justice process as a whole …
>
> [emphasis added]

In this regard, it is pertinent to note that the Sentencing Guidelines do not prescribe *fixed* sentencing discounts but merely provide for a maximum reduction applicable to a particular stage of the criminal proceedings. This

means that, under the Sentencing Guidelines, the sentencing court may continue "take into account the many and varied reasons for which a plea of guilt is entered and the effects it might have on the victim and the criminal justice process as a whole" (*Terence Ng* at [70]). Therefore, a lower court which applies the sentencing discounts set out in the Sentencing Guidelines would not be acting inconsistently with this aspect of the *Terence Ng* decision if the lower court remains mindful that it retains the discretion to give a sentencing discount which is less than the maximum provided for in the Sentencing Guidelines.

35 The third possible area of difference concerns the requirement in the Sentencing Guidelines for the court to first determine the sentence that would have been imposed if the accused person had been convicted after trial (Step 1), and to only thereafter apply a discount to the sentence so determined on account of the guilty plea as a separate step (Step 3). This approach is akin to the "third step" in the *Taueki* methodology which the Court of Appeal had demurred on in *Terence Ng* at [38] (see [18] above). The question therefore arises as to whether the lower courts are precluded by this aspect of the *Terence Ng* decision from considering the mitigating effect of the guilty plea separately as envisaged in the Sentencing Guidelines. In my view, the lower courts are not precluded from doing so. This is because the use of the words "demur" and "can and should" in *Terence Ng* at [38] indicates that the Court of Appeal probably did not intend to lay down an immutable rule that is incapable of being adapted according to the circumstances. I am therefore of the view that the lower courts need not wait for the Court of Appeal to reconsider this aspect of *Terence Ng* before they can legitimately give effect the provision in the Sentencing Guidelines that the mitigatory effect of the guilty plea be considered in a separate step.

The sentencing regime for drug trafficking and drug importation offences

36 Pursuant to s 33(1) of the MDA, the punishment for various offences under the MDA are set out in the Second Schedule to the MDA, except as provided in ss 33(4A), 33(4B), 33(4C) and 33A. For the offence of drug trafficking, row (1) in the part of the Second Schedule dealing with offences against s 5 of the MDA prescribes different punishments for trafficking in different classes of drugs. Diamorphine is a Class A drug. The punishment prescribed for trafficking in a Class A drug is a minimum of five years' imprisonment and five strokes of the cane and a maximum of 20 years' imprisonment and 15 strokes of the cane. These same prescribed punishments also apply to the offence of drug importation (see row (1) in the part of the Second Schedule dealing with offences against s 7 of the MDA).

37 However, where the amount of diamorphine involved is not less than 10g and not more than 15g, row (4) in these two parts of the Second Schedule provide that the minimum sentence is increased to 20 years' imprisonment and 15 strokes of the cane while the maximum term of imprisonment is increased to 30 years. Where the amount of diamorphine involved exceeds 15g, the punishment is death.

38 In addition, s 33(4A) of the MDA provides that, where a person convicted of trafficking in or importing a Class A drug has previously been convicted of drug trafficking or drug importation, he shall be subject to a minimum punishment of 10 years' imprisonment and 10 strokes of the cane and a maximum punishment of 30 years' imprisonment and 15 strokes of the cane. Section 33(4D) clarifies that the punishment prescribed in s 33(4A) does not displace the punishments for trafficking in not less than 10g of diamorphine referred to in the preceding paragraph.

39 As the foregoing account demonstrates, the punishment regime for trafficking in or importing diamorphine is rather complicated, with different levels of minimum sentences and different levels of maximum sentences depending on the quantity of diamorphine involved and depending on whether the accused person is a repeat offender. Putting aside cases involving more than 15g of diamorphine, for which the punishment is death, the punishment prescribed for trafficking in or importing diamorphine may be summarised in the following table:

Weight of diamorphine	**First-time offender**	**Repeat offender**
Up to 10g	Minimum: 5 years 5 strokes **Maximum: 20 years 15 strokes**	Minimum: 10 years 10 strokes **Maximum: 30 years 15 strokes**
10 to 15g	Minimum: 20 years 15 strokes **Maximum: 30 years (or life) 15 strokes**	

40 In *Vasentha d/o Joseph v Public Prosecutor* [2015] 5 SLR 122 ("*Vasentha*"), the High Court developed a sentencing framework for the offence of trafficking in diamorphine *for amounts up to 10g*. This framework sets out different indicative starting sentences which vary with the quantity of diamorphine involved. The court explained (at [44(a)]) that "because the quantity of the diamorphine reflects the degree of harm to the society and is a reliable indicator of the seriousness of the offence, it will provide a good starting point". The indicative starting sentence so identified may then be adjusted based on the offender's culpability and relevant aggravating or mitigating circumstances to arrive at the final sentence.

41 The framework devised in *Vasentha* was approved by the Court of Appeal in *Suventher Shanmugam v Public Prosecutor* [2017] 2 SLR 115 ("*Suventher*"). *Suventher* concerned an offender charged with importing 499.9g of cannabis. This quantity is just short of the death penalty threshold of 500g of cannabis. (This means that the charge in *Suventher* was, for all intents and purposes, similar in seriousness to a charge for importing or trafficking in 14.99g of diamorphine.) The Court of Appeal in *Suventher* reviewed a number of cannabis importation and cannabis trafficking cases decided between 2005 and 2017 which involved quantities close to the death penalty threshold, and found that, in most of these cases, the sentences imposed were at or close to the mandatory minimum sentence of 20 years' imprisonment. The Court of Appeal concluded that (at [26]):

> We do not think that such a trend is consistent with the need for proportionality between the potential harm to society and the sentence imposed. The decided cases suggest that a first-time offender charged with importing 499.99g of cannabis may expect to receive a sentence that is at the lower end of the sentencing range, one that is not significantly higher than an offender charged with importing 330g. Such a sentencing trend also does not seem consistent with the strong deterrent stance that Parliament has taken against drug offences. Parliament has, for this purpose, enacted a range of possible sentences starting at 20 years and reaching 30 years or even life imprisonment. It is therefore the duty of the court to consider the full spectrum of sentences in determining the appropriate sentence.

The Court of Appeal went on to hold that "to ensure that the policy of the law on drug offences is given effect to, and to achieve consistency in sentencing" the sentencing approach in *Vasentha* should also be applied to drug trafficking and drug importation offences involving higher weight ranges where the minimum term of imprisonment prescribed is 20 years and the maximum is 30 years or life (at [28]).

42 *Vasentha* and *Suventher* both concerned first-time offenders. In the subsequent case of *Public Prosecutor v Lai Teck Guan* [2018] 5 SLR 582 ("*Lai Teck Guan*"), the High Court had to consider how the *Vasentha/Suventher* framework should be adapted or applied in the case of repeat offenders. The sentencing framework eventually developed in *Lai Teck Guan* is set out in the following table:

Weight of diamorphine	**Indicative starting sentence for first-time offender**	**Indicative uplift for repeat offender**
Up to 3g	5 – 6 years 5 – 6 strokes	5 – 8 years 5 – 6 strokes
3 – 5g	6 – 7 years 6 – 7 strokes	5 – 8 years 4 – 5 strokes
5 – 7g	7 – 8 years 7 – 8 strokes	5 – 8 years 4 – 5 strokes
7 – 8g	8 – 9 years 8 – 9 strokes	4 – 7 years 3 – 4 strokes
8 – 9g	10 – 13 years 9 – 10 strokes	4 – 7 years 3 – 4 strokes
9 – 9.99g	13 – 15 years 10 – 11 strokes	3 – 6 years 2 – 3 strokes
10 – 11.5g	20 – 22 years 15 strokes (mandatory)	3 – 6 years
11.5 – 13g	23 – 25 years 15 strokes (mandatory)	2 – 4 years
13 – 15g	26 – 29 years 15 strokes (mandatory)	1 – 2 years

In this table, the second column sets out the indicative starting sentence for first-time offenders under the *Vasentha/Suventher* framework while the third column sets out the indicative uplift to be applied to this indicative starting sentence in the case of repeat offenders.

Issues arising in the application of the Sentencing Guidelines to drug trafficking and drug importation cases

43 With the foregoing description of the sentencing regime for drug trafficking and drug importation offences in mind, I turn now to consider the issues that may arise with the application of the Sentencing Guidelines to drug trafficking and drug importation offences. Given that the *Lai Teck Guan* framework provides for different indicative sentences for first-time offenders and repeat offenders involving the same quantity of drugs, the issues arising in the case of first-time offenders may differ from those arising in the case of repeat offenders. I shall therefore consider the situation of first-time offenders and repeat offenders separately.

Application to first-time offenders

44 The key issue concerning first-time offenders is the interaction of the 30% discount provided for in the Sentencing Guidelines with the two different tiers of mandatory minimum sentences for two different weight ranges – one for up to 10g of diamorphine and one for 10g to 15g of diamorphine. In this regard, the Prosecution helpfully submitted the following table to demonstrate what sort of sentences could be expected if the courts were to apply the full 30% discount to cases of trafficking in or importation of diamorphine:

Weight of diamorphine	**Indicative starting sentence (for first-time offender)**	**Sentence after applying 30% reduction (assuming no other aggravating or mitigating circumstances)**
Prescribed sentence range: 5 to 20 years' imprisonment		
Up to 3g	5 to 6 years	5 years
3g to 5g	6 to 7 years	5 years
5g to 7g	7 to 8 years	5 years to 5 years 7 months
7g to 8g	8 to 9 years	5 years 7 months to 6 years 3 months
8g to 9g	10 to 13 years	7 years to 9 years 1 month
9g to 9.99g	13 to 15 years	9 years 1 month to 10 years 6 months
Prescribed sentencing range: 20 to 30 years' or life imprisonment		
10g to 11.5g	20 to 22 years	20 years
11.5g to 13g	23 to 25 years	20 years
13g to 15g	26 to 29 years	20 years to 20 years 3 months

45 The foregoing table demonstrates that:

(a) For trafficking and importation offences involving up to 7g of diamorphine (which represents 70% of the 0g to 10g range), the

sentences arrived at after applying the full 30% discount will be at or near the mandatory minimum of 5 years.

(b) For trafficking and importation offences involving 10g to 15g of diamorphine, *all* of the sentences (including sentences for offences involving 14.99g of diamorphine) will be at or near the mandatory minimum of 20 years if the full 30% discount is applied.

46 This clustering of sentences at or near the mandatory minimum irrespective of the actual quantity of drugs involved is the precise mischief that the *Vasentha/Suventher* framework was devised to prevent. As noted at [41] above, the Court of Appeal in *Suventher* held (at [26]) that:

(a) there is a need for proportionality between the potential harm to society and the sentence imposed;

(b) it is the duty of the court to consider the full spectrum of sentences in determining the appropriate sentence; and

(c) it would not be consistent with the strong deterrent stance that Parliament has taken against drug offences for an accused person facing a charge involving 499.99g of cannabis (and, by extension, a charge involving 14.99g of diamorphine) to receive a sentence that is at the lower range of the sentencing range.

For the foregoing reasons, I agree with the Prosecution that it would be contrary to the principles enunciated by the Court of Appeal in *Suventher* for a sentencing court to apply the full 30% discount for drug trafficking and drug importation offences. Consequently, I hold that, as a general rule, the full 30% discount

provided for in the Sentencing Guidelines should *not* be applied to drug trafficking and drug importation offences.

47 The next question is whether I should accept the Prosecution's submission that the maximum discount of 30% be replaced by a maximum of only 10% in the case of drug trafficking and drug importation offences. On this issue, I agree with the Defence's submission that a cap of 10% seems too restrictive. In fact, the Prosecution also recognised in its written submissions that 10% is a "relatively narrow range". Consequently, the Prosecution submitted that if 10% is adopted as the maximum discount for a guilty plea entered at Stage 1, it would not be practical to set out separate percentage reduction ranges for guilty pleas entered at Stages 2, 3 and 4. In my view, this is not an acceptable result, as it would be contrary to the Sentencing Guideline's objective of encouraging early pleas of guilt by setting out, in a transparent manner, the sentencing discount that could be given for guilty pleas entered at different stages of the court proceedings. In my view, the objectives of the Sentencing Guidelines would be better served if a slightly wider range of discount for Stage 1 is adopted, so that this range could be meaningfully subdivided into respective ranges applicable to Stages 2, 3 and 4.

48 A survey of decided cases reveals that, in recent years, in respect of first-time offenders, where the weight of the drugs involved was close to the death penalty threshold, the general trend was for a sentence of around 25 years to be imposed after taking into account the plea of guilt and other mitigating factors. (See *eg*, the cases of *Vashan, Murugesan a/l Arumugam, Public Prosecutor v Hari Krishnan Selvan* [2017] SGHC 168, *Adri Anton Kalangie v Public Prosecutor* [2018] 2 SLR 557, *Public Prosecutor v Muhammad Rais bin Abdul Rashid* [2022] SGHC 99 and *Public Prosecutor v Muhammad Hakam bin Suliman* [2022] SGHC 160.) As a sentence of 25 years is about 14% lower than

the indicative starting sentence of 29 years under the *Vasentha/Suventher* framework, I am of the view that an appropriate maximum reduction for drug trafficking and drug importation offences would be 15%. This would sufficiently ameliorate the anomalies identified by the Prosecution in relation to a maximum reduction of 30%, while preserving consistency with the sentences meted out under existing case law.

49 The result of applying 15% as the maximum reduction is illustrated in the following table:

Weight of diamorphine	**Indicative starting sentence (for first-time offender)**	**Sentence after applying 15% reduction (assuming no other aggravating or mitigating circumstances)**
Prescribed sentence range: 5 to 20 years' imprisonment		
Up to 3g	5 to 6 years	5 years to 5 years 1 month
3g to 5g	6 to 7 years	5 years 1 month to 6 years
5g to 7g	7 to 8 years	6 years to 6 years 10 months
7g to 8g	8 to 9 years	6 years 10 months to 7 years 8 months
8g to 9g	10 to 13 years	7 years 8 months to 11 years
9g to 9.99g	13 to 15 years	11 years to 12 years 9 months
Prescribed sentencing range: 20 to 30 years' or life imprisonment		

10g to 11.5g	20 to 22 years	20 years
11.5g to 13g	23 to 25 years	20 years to 21 years 3 months
13g to 15g	26 to 29 years	22 years 1 month to 24 years 8 months

As the foregoing table demonstrates, with the maximum discount of 15%, there will no longer be any clustering of sentences at or near the mandatory minimum sentences.

50 Accordingly, I am of the view that the appropriate maximum reduction for the different stages in Step 2 of the sentencing process should be as follows:

(a) where the accused pleads guilty at Stage 1 of court proceedings: a maximum reduction of 15%;

(b) where the accused pleads guilty at Stage 2 of court proceedings: a maximum reduction of 10%; and

(c) where the accused pleads guilty at Stages 3 or 4 of court proceedings: a maximum reduction of 5%.

I have proposed that the same 5% maximum should apply to both Stage 3 and Stage 4 because, once it is decided that 5% should apply to Stage 3, there is a risk of the court going into overly granular figures and adopting an excessively mathematical approach if a smaller percentage such as 3% or 2% were to be adopted for Stage 4.

51 Before turning to consider the application of the Sentencing Guidelines to repeat offenders, I should emphasise that the percentage reductions set out in

the preceding paragraph are *maximum* reductions. This means that the sentencing court applying the Sentencing Guidelines retains the discretion to give a smaller discount in appropriate cases.

52 As for how the court should exercise its discretion to determine the appropriate reduction, given the lack of specific guidance in the Sentencing Guidelines, I am of the view that, apart from the admonition in the Sentencing Guidelines not to take into account the strength of the evidence, all other factors recognised in existing case law on the mitigatory weight of a plea of guilt may still be considered by the sentencing court. This would involve assessing the extent to which the guilty plea constitutes evidence of remorse, the extent to which the guilty plea saves victims and witnesses from having to testify, and the extent to which public resources are saved.

53 As the third consideration bears a direct relationship to the stage at which the guilty plea is entered, this consideration is not likely to feature heavily in the exercise of the court's discretion in cases where the Sentencing Guidelines is applied. This is because the effect of third consideration is already largely accounted for in the gradation of maximum discounts for different stages of the proceedings. The second consideration will feature most strongly is cases like rape or other sexual offences, slight less strongly in other crimes against the persons as well as property crimes, and even less strongly in crimes without a specific identifiable victim such as drug trafficking and drug importation. The number of witnesses involved who are being spared the trouble to attend court may also be taken into account. As for remorse, even though the Sentencing Guidelines states that remorse expressed in other ways besides guilty pleas, such as restitution and voluntary surrender to the authorities may be taken as a mitigating factor in Step 1, the Sentencing Guidelines do not expressly exclude remorse as a relevant consideration when assessing the amount of reduction to

apply in Step 3. I would therefore consider that the extent to which a guilty plea represents remorse on the part of the accused person may continue to be taken into account by the sentencing court in determining the actual amount of reduction to apply.

54 In addition, a court sentencing for an offence involving 9.99g of diamorphine may be justified in applying a smaller than usual reduction in order to avoid an overly pronounced "cliff effect" between sentences for trafficking in or importing 10g of diamorphine and those for trafficking in or importing 9.99g of diamorphine.

Application to repeat offenders

55 As noted at [42] above, for repeat offenders, the *Lai Teck Guan* framework provides for an indicative uplift over and above the indicating starting sentences for first-time offenders obtained under the *Vasentha/Suventher* framework. In my view, the application of this indicative uplift presents no difficulties in the way of adopting the same maximum discount of 15% discount in the case of repeat offenders. Adopting a maximum discount of 15% for repeat offenders would similarly ameliorate the anomalies which have been identified by the Prosecution in relation to the maximum reduction of 30% in the case of first-time offenders.

56 However, the Prosecution submitted that a different treatment should apply for cases at the highest band of the *Lai Teck Guan* framework – *ie*, cases involving 13g to 15g of diamorphine. For ease of reference, I set out the indicative starting sentence and indicative uplift for the highest sentencing band in the *Lai Teck Guan* framework in the following table:

Weight of diamorphine	**Indicative starting sentence for first-time offender**	**Indicative uplift for repeat offender (to the indicative starting sentence)**
13 – 15g	26 – 29 years	1 – 2 years

57 Thus, in the case of a repeat offender charged with trafficking 14.99g of diamorphine, the combination of the indicative starting sentence and the indicative uplift will produce an indicative sentence of 30 years (being the maximum prescribed prison term in cases where the court does not impose life imprisonment). Applying a 15% discount to the indicative sentence of 30 years would produce a final sentence of 25 years 6 months. This gives rise to the following two difficulties:

(a) As a noted at [48] above, the typical sentence for a first-time offender who pleads guilty to trafficking in or importing drugs of an amount just below the death penalty threshold is around 25 years. A sentence of 25 years 6 months represents an uplift of merely 6 months for repeat offenders. Such a small uplift does not sufficiently account for the requirement of specific deterrence and the principle of escalation.

(b) A sentence of 25 years 6 months is quite a distance away from the maximum determinate sentence of 30 years, and therefore does not appear to be commensurate with the culpability of the offender and the severity of the offence in the case of a repeat offender guilty of trafficking in or importing an amount of drugs just below the death penalty threshold.

58 In the light of these difficulties, the Prosecution submits that an offender coming within this category should generally receive a *final* sentence of 28 to 30 years' imprisonment (after factoring any sentencing discount for the guilty plea). I agree with this submission, especially having regard to the fact that the *actual* prescribed maximum sentence for this category of offences is life imprisonment, and not 30 years' imprisonment.

59 Paragraph 13(b) of the Sentencing Guidelines provide that where the court is of the view that it would be contrary to the public interest to apply the Sentencing Guidelines to specific cases, the court may apply a reduction in sentence which is just and proportionate without reference to reductions provided for in the Sentencing Guidelines. For the reasons given at [57] above, I consider that, in order to safeguard the public interest in securing adequate punishment for cases falling within the highest sentencing band of the *Lai Teck Guan* framework, the Sentencing Guidelines should not be applied in such cases. Instead, the sentencing court should apply the traditional (pre-Sentencing Guidelines) approach of considering the mitigating effect of the guilty plea together with the other aggravating and mitigating factors. (Under this traditional approach, the aggravating factors could be balanced directly against the mitigatory effects of the guilty plea and, in some cases, this could result in the aggravating and mitigating effects of these factors cancelling each other out.)

The sentence to be imposed on the accused persons

Parties' cases

The Prosecution's case

60 For Iskandar's First Charge and Farid's First Charge of trafficking in not less than 14.99 g of diamorphine, the Prosecution sought a sentence of 29 to 30 years' imprisonment for Iskandar and at least 28 years's imprisonment for Farid. As both Iskandar and Farid are repeat offenders, the Prosecution submitted that the indicative starting point is 29 years' imprisonment, and that the appropriate uplift under the *Lai Teck Guan* framework is 1 to 2 years, which would bring the indicative sentence to the maximum of 30 years.

61 As for Iskandar, the Prosecution submitted that he is a recalcitrant drug trafficker, pointing to his four previous drug trafficking offences committed over three occasions, spanning across 30 years. The Prosecution submitted that the lengthy time of 20 years spent incarcerated had failed to deter Iskandar. Instead, his offending had escalated to trafficking in a quantity at the highest end of the non-capital range. Therefore, the Prosecution submitted, referring to *Public Prosecutor v Low Ji Qing* [2019] 5 SLR 769, that the principle of escalation squarely applies to Iskandar such that the indicative sentence should be enhanced to the maximum term of 30 years' imprisonment.

62 As for Farid, the Prosecution similarly proposed an indicative sentence of 30 years' imprisonment, noting that he is a second time drug trafficker and that an uplift in his sentence is warranted.

63 As for the adjustments to the indicative sentence based on culpability, aggravating and mitigating factors, the Prosecution submitted that culpability is

a neutral factor because there were no factors which were aggravating *per se*. The Prosecution submitted that some aggravating weight to be accorded Iskandar's TIC Charges, which comprise: (a) possessing not less than 1.4g of diamorphine for trafficking; (b) possessing not less than 4.29g of diamorphine; and (c) possessing not less than 82.4g of methamphetamine. Farid consented to two charges of drug consumption being taken into consideration for the purpose of sentencing.

64 The Prosecution submitted that there are no significant mitigating factors in either Iskandar's or Farid's case.

65 As for the appropriate reduction for Iskandar's and Farid's guilty pleas, the Prosecution pointed out that Iskandar and Farid were caught "red-handed", since they were both already being observed by the CNB officers. As for Farid, the Prosecution highlighted that he was arrested with the drugs in his possession. The Prosecution submitted that under the traditional approach, little or no mitigating weight would be given to their plea of guilt, unless genuine remorse is evinced. However, since the Sentencing Guidelines provide that the strength of the evidence of should generally not be taken into account when determining the level of reduction, the Prosecution accepted that some weight should be given to their plea of guilt notwithstanding them being caught red-handed. Accordingly, the Prosecution submitted that a reduction of up to one year is appropriate for Iskandar such that he ought to receive 29 to 30 years' imprisonment, while Farid should receive a reduction of two years, resulting in a final sentence of 28 years' imprisonment.

66 As for Iskandar's Second Charge, the Prosecution submitted that a sentence of 12 years and seven months' imprisonment is appropriate. The Prosecution submitted that the indicative starting sentence based on the weight

of methamphetamine (82.4 g) is seven years (applying the rate of conversion adopted in *Loo Pei Xiang Alan v Public Prosecutor* [2015] 5 SLR 500 at [17], 82.4g of methamphetamine would be equivalent to 4.9g of diamorphine for the purpose of the *Vasentha/Suventher* framework), and the applicable uplift for repeat offending is five to eight years by reference to the *Lai Teck Guan* framework. In this case, the Prosecution submitted that given Iskandar's antecedents, the appropriate uplift is at least seven years (the higher end of the applicable range).

67 Finally, as for Iskandar's Fourth Charge, Farid's Fourth Charge and Farid's Fifth Charge, the Prosecution sought the mandatory minimum sentences of three years', three years' and 10 years' imprisonment respectively.

Iskandar' case

68 Counsel for Iskandar accepted that the indicative starting point for Iskandar's First Charge was 26 to 29 years' imprisonment and six to seven years' imprisonment for Iskandar's Second Charge.

69 Counsel for Iskandar argued that based on the list of culpability, aggravating and mitigating factors listed in *Vasentha*, Iskandar's culpability should be regarded as low. Counsel highlighted that Iskandar was diagnosed with human immunodeficiency virus ("HIV") infection since 2004 and also suffers from various illness. In 2019, Iskandar heard about the new treatment which gave him hope that he could be cured of his HIV infection if he were able to afford the treatment. Driven by desperation to obtain a cure for his illness, Iskandar resorted to committing the offences in the hope of finding a quick source of income.

70 Secondly, as for the relevant mitigating factors, counsel submitted that Iskandar was extremely remorseful, that he had extended his full co-operation to the authorities, and that his actions were indicative of his genuine remorse. Counsel further argued that there is no risk of re-offending as Iskandar is already 56 years old and that he does not have much time to live given his illness.

71 Finally, counsel referred to two cases where accused persons who pleaded guilty to trafficking or importing not less than 14.99g of diamorphine were sentenced to 25 years' imprisonment – the first case is *Vashan* and the second case is that of a co-accused named Shahriman who was mentioned in the judgment in *Public Prosecutor v Vikneswaren Ramu and another* [2018] SGHC 138 ("*Vikneswaren Ramu*") at [2].

Farid's case

72 Counsel for Farid did not express a position in his written submissions on the specific sentences to be imposed for the individual offences, but instead provided factors in general mitigation, seeking a global sentence of 26 years' imprisonment. As for Farid's mitigating factors, counsel submitted that the relevant factors are Farid's financial predicament, his remorse and his promise to never re-offend.

My decision on sentence

Sentence imposed on Iskandar

73 For Iskandar's First Charge, I agree with the Prosecution that the indicative sentence should be 30 years' imprisonment. This is because the offence involved 14.99g of diamorphine, for which the indicative starting point before applying the *Lai Teck Guan* uplift would be 29 years.

74 As I have indicated at [59] above, the Sentencing Guidelines should not be applied in the case of a repeat offender pleading guilty to trafficking in or importing an amount of drugs close to the death penalty threshold. Accordingly, for Iskandar's First Charge, I apply the traditional approach of considering the mitigatory effect of his guilty plea together with the other aggravating and mitigating factors. In this regard, I agree with the Prosecution that Iskandar's TIC Charges are aggravating factors. Balanced against the mitigating weight of the plea of guilt, I arrive at a final sentence of 29 years.

75 As for the submission that Iskandar committed the offences out of desperation to find a cure for his illness, I make two observations. First, ill health is not in and of itself a mitigating factor. Second, a plea that an accused person committed an offence out of desperation is generally given little mitigating weight by the court. The present case is not one where Iskandar found himself suddenly in an exceptional predicament which he had no reasonable means to resolve. Iskandar had been living with HIV for many years. News of new treatments being discovered would surface from time to time over the years. Iskandar's desire to find money to afford some new treatment he heard of is not a situation which is so exceptional as to be of significant mitigating weight. In any event, I am not persuaded that Iskandar was motivated solely by his illness to commit the offence, and not motivated in any way by personal financial gain, given the large amount of drugs involved. (The actual amount of drugs recovered was 21.96g of diamorphine, which was almost one and a half times the death penalty threshold.)

76 As for the two cases cited by Iskandar's counsel at [71] above, they are distinguishable as they both concern first-time offenders (see *Vashan* at [10] and the court file in *Public Prosecutor v Mohd Shahriman bin Mohamad Sababri* Criminal Case No 6 of 2018).

77 As for Iskandar's Second Charge, given that 82.4g of methamphetamine was involved, the indicative starting point for a first-time offender would have been 7 years. I agree with the Prosecution that a *Lai Teck Guan* uplift of 7 years should be applied given the Iskandar's long list of antecedents, thus arriving at the sentence of 14 years' imprisonment at the end of Step 1 of the Sentencing Guidelines. At Step 2, it was undisputed that Iskandar had entered his guilty plea during Stage 1 of the court proceedings. The maximum discount that may be given on account of his guilty plea in Step 3, based on the framework I devised at [50] above, would be 15%. I therefore decide to reduce the sentence to 12 years' imprisonment (which translates to a discount of 14.3%).

78 As for Iskandar's Fourth Charge, I impose the mandatory minimum of three years' imprisonment.

79 As Iskandar is convicted of three charges, I am obliged under s 307 of the Criminal Procedure Code 2010 (the "CPC") to run at least two of the sentences consecutively. I decide to run the sentences for Iskandar's First Charge (being the charge carrying the longest sentence) and Iskandar's Fourth Charge (being the charge carrying the shortest sentence) consecutively to arrive at a global sentence of 32 years.

80 Iskandar is 56 years old and therefore cannot be subject to caning. The Prosecution did not urge the court to impose an enhanced imprisonment term in lieu of caning pursuant to s 325(2) of the CPC.

81 On the totality principle, I considered that with the one-third remission and backdating of the sentence to the date of arrest, Iskandar would be released when he is 72 years old. I am of the view that this sentence is not crushing in

the circumstances and therefore make no further adjustments on account of the totality principle.

Sentence imposed on Farid

82 For the reasons I have given in relation to the sentence for Iskandar's First Charge, I impose a sentence of 28 years' imprisonment for Farid's First Charge. I peg Farid's sentence slightly lower than Iskandar's on the account of the smaller number of antecedents and TIC charges in Farid's case.

83 I find Farid's mitigation to be unpersuasive. Mere promises not to re-offend and statements of remorse and regret count for little when seen in the light of the gravity of the charge Farid is convicted of. The fact that he had pleaded guilty and saved the resources of the State had been considered and given due effect in arriving at the sentence of 28 years' imprisonment.

84 As for Farid's Fourth Charge and Farid's Fifth Charge, I impose the mandatory minimum sentences of 3 years' and 10 years' imprisonment respectively.

85 I direct that the sentences for Farid's First Charge and Farid's Fourth Charge be run consecutively, thus arriving at a global sentence of 31 years' imprisonment.

86 Farid is 55 years old and therefore cannot be subject to caning. The Prosecution did not urge the court to impose an enhanced imprisonment term in lieu of caning pursuant to s 325(2) of the CPC.

87 Considering the totality principle, with the one-third remission and backdating of the sentence to the date of arrest, Farid would be released when

he is 67 years old. I am of the view that the sentence is not crushing in the circumstances and therefore make no further adjustments on account of the totality principle.

Conclusion

88 I sentence Iskandar to 29 years' imprisonment for Iskandar's First Charge, 12 years' imprisonment for Iskandar's Second Charge and three years' imprisonment for Iskandar's Fourth Charge. The sentences for Iskandar's First Charge and Iskandar's Fourth Charge are to run consecutively to arrive at a global sentence of 32 years' imprisonment.

89 I sentence Farid to 28 years' imprisonment for Farid's First Charge, three years' imprisonment for Farid's Fourth Charge and 10 years' imprisonment for Farid's Fifth Charge. The sentences for Faird's First Charge and Farid's Fourth Charge are to run consecutively to arrive at a global sentence of 31 years' imprisonment.

90 Pursuant to s 318 of the CPC, I direct that the sentences for both Iskandar and Farid are to commence from 22 May 2019, the date of their arrest.

Pang Khang Chau
Judge of the High Court

Anandan Bala, Claire Poh, Ng Jun Kai and Kevin Liew (Attorney-General's Chambers) for the Prosecution;
Boon Khoon Lim (Dora Boon & Company) for the first accused;
Jason Peter Dendroff (J P Dendroff & Co) for the second accused.
