CACC 106/2022, [2025] HKCA 234

On Appeal From [2022] HKCFI 2595

**in the high court of the**

**hong kong special administrative region**

**court of appeal**

criminal appeal no 106 of 2022

(on appeal from HCCC NO 10 of 2022)

|  |
| --- |
|  |

BETWEEN

|  |  |  |  |
| --- | --- | --- | --- |
| HKSAR | | | Respondent |
| and | | |  |
| Huang Ruifang (黃瑞芳) | | | Applicant |
|  |

Before: Hon Macrae Acting CJHC, Zervos and M Poon JJA in Court

Date of Hearing: 20 December 2024

Date of Judgment: 5 March 2025

|  |
| --- |
| J U D G M E N T |

Hon Macrae Acting CJHC (giving the Judgment of the Court):

1. There is a long and intricate history to this matter. The applicant was originally charged some 8 years ago on 8 April 2017 with a single offence of trafficking in a dangerous drug, namely 6,960 millilitres of a liquid, containing 4,470 ‍grammes of cocaine, contrary to section 4(1)(a) and (3) of the Dangerous Drugs Ordinance, Cap 134. She was committed to the High Court by a magistrate on 18 December 2017 and subsequently convicted after trial before Deputy Judge Lugar-Mawson and a jury on 6 ‍November ‍2018. She received a sentence of 28 years and 4 months’ imprisonment.
2. Thereafter, the applicant sought leave to appeal against her conviction, which was allowed by this Court (as presently constituted) on 11 February 2022[[1]](#footnote-1). The reasons for what appear to be the excessive delay in processing her first appeal were set out and explained by Zervos JA, sitting as a Single Judge, in his judgment on the leave application on 12 ‍January 2021[[2]](#footnote-2).
3. A retrial was duly ordered by this Court and the applicant was subsequently retried on a fresh indictment before Deputy Judge Martin ‍Hui, SC and a jury. On 12 July 2022, she was again convicted and, this time, sentenced to 27 years and 10 months’ imprisonment. She again appealed against her conviction, which, on 30 August 2024, was dismissed by a majority[[3]](#footnote-3). She had not appealed against her sentence. However, the Court observed at the end of its judgment on conviction that during the protracted history of this matter, and after the date of her first conviction in 2018, a number of important sentencing authorities dealing with the trafficking of dangerous drugs, and in particular very large quantities of dangerous drugs, had been published by this Court since the decision in *HKSAR v Abdallah*[[4]](#footnote-4); namely *HKSAR v Herry Jane Yusuph*[[5]](#footnote-5), *HKSAR v Lee ‍Ming Ho*[[6]](#footnote-6), *HKSAR v Raman Kapusamy*[[7]](#footnote-7) and *HKSAR v Sum* ‍*Ka Wa*[[8]](#footnote-8). The Court went on to explain[[9]](#footnote-9):

“In *Lee Ming Ho*, this Court reconsidered aspects of *Abdallah*, decided more than 15 years ago, concerning the supplementary guidelines for aggravating factors, although the guidelines for the different quantities of dangerous drugs themselves were left intact. We would now like to take the opportunity to reconsider the appropriateness of the *Abdallah* guidelines themselves. This case, falling as it does within the third classification in *Abdallah*, namely 26 to 30 years’ imprisonment for trafficking between 4,000 and 15,000 grammes of narcotic, presents us with that opportunity; particularly since the Court is now comprised of three judges rather than two and is representative of both divisions of the Court of Appeal.”

1. Accordingly, the Court said it “would like to hear full argument as to the correctness of the guidelines in *Abdallah*”[[10]](#footnote-10), for which it granted the applicant an appeal aid certificate in respect of sentence. In due course, on 16 September 2024, the applicant filed a Form XI Notice ‍of Application for leave to appeal against sentence out of time[[11]](#footnote-11). She has again, for the purposes of the present application, been represented by leading counsel Mr Andrew Bruce, SC, with him Mr *‍*Martin *‍*Li, on the instructions of the Director of Legal Aid, as well as Mr Allen Judge, who acted on a *pro bono* basis.
2. On 20 December 2024, we heard full argument from both parties as to the appropriateness of the *Abdallah* guidelines. Inevitably, the scope of our consideration of the authorities broadened as the argument developed and it thus became necessary also to examine the guidelines for heroin set out in *R v Lau Tak-*‍*ming*[[12]](#footnote-12), which the Court in *Abdallah* had extended, as well as the guidelines concerning methamphetamine hydrochloride (commonly referred to as “Ice”) set out in *HKSAR v Tam* ‍*Yi* ‍*Chun*[[13]](#footnote-13). The latter guidelines became engaged, since for quantities of 600 ‍grammes of “Ice” and above, the Court in *Tam* ‍*Yi* ‍*Chun* had held that “the same tariffs as are prescribed in *Abdallah*” were to be applied[[14]](#footnote-14).

The facts of this case

1. On 8 April 2017, the applicant landed at Hong Kong International Airport after travelling from São Paulo in Brazil, with a stopover in Johannesburg in South ‍Africa. She was intercepted by a Customs ‍officer at the green channel[[15]](#footnote-15) and found to be carrying a total of nine ‍cans of liquid cocaine in her two suitcases. The liquid was 6,960 ‍millilitres in volume, containing 4,770 grammes of cocaine, with a street value of HK$3,830,310. Besides the dangerous drugs found, the applicant was also carrying a quantity of dried seafood and boxes of chocolates in her luggage[[16]](#footnote-16).
2. Upon the discovery of the dangerous drugs, the applicant was arrested and cautioned and subsequently attended a video-recorded interview. In essence, at interview, she denied knowledge of the cocaine found in her possession. She explained that she was a courier of general goods for other people. In respect of this particular trip, she was carrying dried seafood for a person called “Ching Tse”, who was a trusted friend. She also carried the nine cans of what were found to contain liquid cocaine because Ching Tse had told her that they were Acai juice and were gifts for her nephews. The applicant said she had checked the sealed cans and found nothing suspicious about them. It never occurred to her that they would contain dangerous drugs[[17]](#footnote-17).
3. At the retrial, the applicant elected not to give evidence. She relied on what she had said in interview as her version of the events leading up to her arrest. By their verdict, the jury must have been satisfied so that they were sure that the applicant knew at the time she entered Hong Kong she was importing and trafficking in liquid cocaine[[18]](#footnote-18).

Mitigation

1. At the time of her sentence at the retrial, the applicant was a 54-year-old divorced woman. She had been born in mainland China and later became a permanent resident of Brazil. Prior to 2016, the applicant had operated a shop trading in handmade jewellery, for which she would earn about 8,000 Brazilian Real a month. After the death of her father in 2016, the applicant needed to travel to mainland China from time to time to look after her aged mother. As a result, the applicant closed her shop and thereafter took up odd jobs[[19]](#footnote-19).
2. Defence counsel at the retrial submitted, in mitigation, that since her arrest in 2017, the prolonged legal proceedings had resulted in immense stress and hardship for the applicant, which had been accentuated by her mother’s declining health.

Reasons for sentence

1. The judge applied the guidelines for cocaine as set out in *Abdallah*[[20]](#footnote-20). Since the sentencing bracket for trafficking in 4,000 to 15,000 grammes of cocaine was between 26 and 30 years’ imprisonment, he derived an arithmetic starting point for 4,770 grammes of cocaine narcotic of 26 ‍years and 4 months’ imprisonment. The judge regarded the importation of cocaine from abroad as an aggravating factor and by reference to the case of *HKSAR v Fong* ‍*Yau* ‍*Heung*[[21]](#footnote-21), enhanced the starting point for this international element by 2 years, bringing the sentence to 28 ‍years and 4 ‍months’ imprisonment.
2. The judge nevertheless acknowledged the mental anguish and emotional strain for the applicant of undergoing two trials, with a significant period of delay in processing the first appeal, which could not be said to be the direct fault of the applicant, and, after considering her personal circumstances, he reduced the enhanced starting point by 6 ‍months, resulting in a final sentence of 27 years and 10 months’ imprisonment.

The grounds of appeal against sentence

1. Mr Bruce, on behalf of the applicant, advanced essentially two grounds of appeal against sentence. Firstly, it was submitted that the quantity-based approach to sentence in reliance on *Abdallah* had unjustly resulted in a crushing sentence, in circumstances where *Abdallah* was no ‍longer consistent with this Court’s subsequent decisions in *Herry* ‍*Jane* ‍*Yusuph*, *Lee Ming Ho*, *Raman Kapusamy*, and *Sum Ka Wa*. Secondly, it was argued that the judge’s reduction in sentence for delay and the stress of having to undergo two trials and an appeal over a 7-year period was inadequate.
2. In his written argument, Mr Bruce criticised the quantity-‍based approach of the Hong Kong courts going back to its earliest articulation in *R v Chan Chi-ming*[[22]](#footnote-22) in 1979, which had subsequently been built upon by the decisions of *Lau Tak-ming* and *Abdallah*. In the process, sentences had become increasingly heavier with little room remaining for really serious cases of trafficking, a problem which the Court in *Abdallah* itself appeared to recognise. The Court in *Lee Ming Ho* had rightly noted that the *Abdallah* guidelines were already very severe, leaving little room for manoeuvre in sentencing where very large quantities of dangerous drugs were concerned, or for distinguishing between mere couriers or storekeepers and those who played a more serious role in the organisation and trafficking of dangerous drugs[[23]](#footnote-23). However, the ranges of sentence set out in *Abdallah* for quantities above 600 grammes of heroin or cocaine had been left undisturbed in these recent decisions.
3. Mr Bruce nevertheless made clear in oral argument that what he sought to challenge was not the notion of sentencing guidelines itself. Rather, he contended that the guideline bands within them were flawed and had led to excessive and unfair sentences. He placed two proposals before the Court for its consideration: the first was to revise *all* guidelines downwards; the second was to give judges greater discretion to reflect a defendant’s personal mitigating circumstances in sentence.

Proposal 1: downward revision

1. It was submitted that the current starting points after trial set out in *Abdallah* were manifestly excessive, and did not allow sufficient room for sentencing exceptionally large quantities of dangerous drugs, especially given the effective 35-year ceiling as the practical sentencing limit. Moreover, it was suggested that offenders sentenced in respect of smaller quantities were being disproportionally penalised. By means of a graph, Mr Bruce sought to demonstrate that where a defendant trafficked up to 10 ‍grammes of heroin or cocaine, each additional gramme of the drug produced an increase of 3.6 months’ imprisonment; whereas for a defendant trafficking between 4,000 and 15,000 grammes of the drug, each additional gramme would produce an increase of a mere 0.004 months’ imprisonment (or about 3 ‍hours). It was submitted that the initial sentencing curve was too steep as a result of which it tapered off too sharply, instead of producing the “gradual” curve envisaged by the Court in *R v Cheng* ‍*Yeung*[[24]](#footnote-24) for quantities above 1,000 grammes of narcotic. Such a steep climb followed by an abrupt plateauing effect were the direct result of the current high starting points employed by the courts and had led to an incongruity whereby the smaller the quantity, the harsher the sentence.
2. The effect of the steep curve and the abrupt plateauing effect had also resulted in what were described as a “crowding” of sentences at the top of the range. As an example, Mr Bruce pointed to the case of *HKSAR v Hau Chun Hin*[[25]](#footnote-25), where a 19-year-old courier had trafficked 14,500 grammes of cocaine across the border in his luggage, for which a starting point of 30 years’ imprisonment was adopted. Yet, in *Lee* ‍*Ming* ‍*Ho*, where the applicant had organised the arrival in Hong Kong of 34,232 grammes of “Ice” by speedboat from the Mainland, their transfer to a light goods vehicle in Repulse Bay and an ensuing convoy of vehicles through the streets of Hong ‍Kong island and Kowloon, the starting point adopted was 33 years’ imprisonment, not significantly higher than that approved in *Hau Chun Hin*. The applicant argued that the current regime of sentencing not only caused sentences to be condensed at the top end of the range but arguably encouraged traffickers to deal in even larger quantities.
3. Mr Bruce invited the Court to compare the *Abdallah* guidelines with what were said to be the starting points in other serious criminal offences, such as rape[[26]](#footnote-26), wounding or causing grievous bodily harm with intent[[27]](#footnote-27), robbery[[28]](#footnote-28), and voluntary manslaughter[[29]](#footnote-29). It was argued that there is a mismatch in the proportionality of sentencing between these offences and drug trafficking and that no right-minded person would regard it as more serious for a courier to traffic in 1.5 ‍kilogrammes of heroin than to kill another person under provocation. However, the starting point of the former[[30]](#footnote-30) was more than double the range of the latter[[31]](#footnote-31), at least in the context of domestic manslaughter[[32]](#footnote-32).
4. To compensate for the existing high starting points as well as the limited discretion for courts to have regard to mitigating factors, it was argued that some judges had been driven to bend the guidelines by applying a discount at Step 6 of the *Herry Jane Yusuph* approach, when considering the question of totality. He cited sixteen cases at first instance in the High ‍Court in order to demonstrate a strong and widespread concern about the propriety and rigidity of current sentencing guidelines[[33]](#footnote-33). It was acknowledged, however, that this Court, in *Lee Ming Ho*, has already criticised the artificiality of using Step 6 of *Herry Jane Yusuph* to trim sentences in this way, describing it as a “flawed approach”, which “should not be followed”[[34]](#footnote-34).

Proposal 2: wider discretion to consider mitigating factors

1. The other change urged upon the Court by the applicant was to give sentencing courts, at Step 5 of the *Herry Jane Yusuph* approach to sentence, a wider, unrestricted discretion to take into account mitigating factors such as youth or old age, economic pressures and special difficulties faced by foreign defendants undergoing local imprisonment. Currently, the availability of such mitigating factors had been specifically and unfairly curtailed by the courts in the interests of: (i) maintaining consistency in sentencing; (ii) confirming the overwhelming importance of deterrence; and (iii) reducing the risk of exploitation of the vulnerable by those who organised the trafficking of dangerous drugs. Against these policy arguments, Mr Bruce contended, firstly, that a failure to give credit for personal mitigating factors might of itself create inconsistency where a defendant with no personal mitigation received the same treatment by virtue of quantity alone. Secondly, the deterrent effect of severe sentences in this area of criminal sentencing may well be overestimated when offences of trafficking in dangerous drugs had continued to proliferate despite the application of ever-increasing sentences. Thirdly, there was no justification for thinking that those who organised drug trafficking, in total disregard of the interests of their drug abuser consumers, would somehow feel constrained by conscience from exploiting what Silke ‍VP in *Lau* ‍*Tak-*‍*ming* described as “the blind, the maimed, the halt, the young and the aged in the carrying out of their nefarious trade”[[35]](#footnote-35).
2. Mr Bruce initially recommended the practice in the United‍ Kingdom for sentencing in cases of trafficking dangerous drugs but, upon further consideration, retreated from suggesting that Hong Kong should go along the same route, given the long and entrenched history and application of guidelines in this jurisdiction.

The respondent’s submissions

1. Mr Derek Lau, with him Mr Derek Wong, began his submissions by contending that the *Abdallah* guidelines should be maintained. To provide the Court with a full picture of the recent trends of arrests and seizures of dangerous drugs, the respondent applied to adduce fresh evidence concerning statistics provided by law enforcement authorities on the number of trafficking cases, arrests and seizures of heroin, cocaine and “Ice”, as well as their relative street values from 2009 (when *Abdallah* was decided) to 2023 (the last full year when statistics were available). There was no objection to this course from Mr Bruce.
2. From these statistics, it was submitted that since *Abdallah* was decided, there had been no remarkable decrease in the trafficking of heroin, cocaine or “Ice”. On the contrary, the number of trafficking cases and seizures of dangerous drugs appeared to be increasing in recent years. Over the past 15 years, Mr Lau pointed out that cases of trafficking in narcotics in large quantities of over 600 grammes but less than 15,000 ‍grammes have generally increased for both cocaine and “Ice”. For heroin, the number has remained at the same level for cases handled by Customs and Excise, but increased for police cases. Cases involving the trafficking in exceptionally large amounts of narcotics, namely over 15 ‍kilogrammes, have remained at a low level for heroin, cocaine and “Ice”. However, the trend over the last five years appeared to be an upward one.
3. The respondent submitted that the *Abdallah* guidelines remained necessary and appropriate to adequately reflect the criminality involved in the quantity of narcotics trafficked by an offender. As recognised in *Lee Ming Ho*, quantity was still the primary ‍sentencing gauge for trafficking in dangerous drugs[[36]](#footnote-36). When the *Abdallah* ‍guidelines were ‍properly applied in accordance with the modern approach to sentencing in *Herry* ‍*Jane* ‍*Yusuph* and *Lee Ming Ho*, there would still be enough room to allow sufficient flexibility for the courts to impose sentences that were fair, just and balanced in cases involving very or exceptionally large quantities of narcotics.
4. Addressing the criticism of the sentencing curve initially being too steep, Mr Lau argued that this had been intentional, for general deterrence has always been the dominant sentencing principle in cases at this level of trafficking. He noted that in *Secretary for Justice v Hii* ‍*Siew* ‍*Cheng*[[37]](#footnote-37), the Court had remarked[[38]](#footnote-38):

“It has to be remembered that at the lower end of the sentencing range for drug traffickers … there is a large measure of deterrence built into the tariff. Thus, a relatively small-scale trafficker will receive a comparatively heavy sentence when the weight of the drugs in which he has trafficked is set alongside the sentence of the trafficker in far greater amounts”.

1. Similarly, sentences for trafficking in very or exceptionally large quantities of dangerous drugs also required a strong deterrent element. However, he acknowledged that general deterrence could have a diminishing or marginal effect for very or exceptionally large quantities of dangerous drugs. On the other hand, the plateauing effect operates to maintain sufficient room for the most serious cases within the upper range of the guidelines. Even before *Sum Ka Wa*, the courts had formed the view that there must be an approximate ceiling for sentencing in this field. The Court in *Abdallah* had itself noted that such ceiling might well be 35 ‍years’ imprisonment and acknowledged that it was a “practical reality” that room must be left for the most serious cases[[39]](#footnote-39).
2. Mr Lau registered his concern about any relaxation of the existing guidelines. Robust, lengthy sentences were necessary to afford sufficient deterrence against the persisting drug problem in Hong ‍Kong. If the guidelines were relaxed, it might send the public an extremely misleading and dangerous message.
3. In this regard, the respondent submitted that meaningful comparisons could not be drawn by measuring the sentencing guidelines for drug trafficking against the normal sentences for other serious offences. Drug trafficking was a particular vice and a daily concern affecting the whole fabric of society at every level: accordingly, strong deterrent sentences were essential in the community’s interests.
4. As for the applicant’s call for a wider, unrestricted discretion for the sentencing judge to consider personal mitigating factors, the respondent pointed out that the *Herry Jane Yusuph* approach did not preclude a judge from factoring into the sentencing exercise relevant and exceptional personal circumstances. The Court in *Raman Kapusamy* had stated that judges will approach such circumstances “with realism, fairness and common sense”[[40]](#footnote-40); indeed, the recent decision in *HKSAR v* *Michalakopoulos Theodoros*[[41]](#footnote-41) was an example of the Court doing precisely that.
5. Accordingly, the respondent submitted there was no error in the applicant’s sentence in accordance with current authority. The arithmetic starting point was applied because the applicant’s role was that of a courier. Although the approach of treating the international element as a discrete aggravating factor, instead of as a matter going to role and culpability, had been revised in the later case of *Lee Ming Ho*, there existed no risk of double counting aggravating factors in this case, since the judge had fully explained how the sentence had been arrived at. Furthermore, the 2-‍year ‍enhancement was within the proper range.
6. As for the applicant’s personal circumstances, such as her clear record, her emotional suffering from the prolonged proceedings and her mother’s illness, the respondent submitted that none of these matters was so exceptional as to constitute valid mitigation in a case of such gravity. The judge was not obliged to give any reduction for the history of this matter and the apparent effect it had had on the applicant but, nevertheless, exercised his discretion, as he was entitled to do, by granting her a 6-month discount. Since this was a purely discretionary matter, the extent to which it should have reduced the overall sentence could not sensibly be challenged on appeal.
7. It is fair to say, however, that from this original position as set out in the respondent’s written arguments, Mr Lau was prepared to acknowledge certain oddities in relation to the existing guidelines, particularly as to the trajectory of the sentencing curve when the guidelines in *Abdallah* were grafted onto those in *Lau Tak-ming*. In his oral argument, he modified his original position, accepting that there was a need to “rationalise” the guidelines, whilst at the same time ensuring that they maintained their deterrent effect. He also helpfully raised the necessity of dealing with the guidelines in *Tam Yi Chun*, since the Court there had effectively grafted the *Abdallah* guidelines onto their own newly devised ones. We were grateful for the respondent’s realistic approach to the issues before us and for Mr Lau’s articulate and conscientious submissions.

Discussion

1. Hong Kong was one of the first jurisdictions in the common law world to devise arithmetical guidelines for those who traffic in dangerous drugs. In *Chan Chi-ming*, the earliest guideline case to be decided in this jurisdiction, the Court identified the quantity of the drug possessed by an accused as “the most important single factor in determining the proper sentence”[[42]](#footnote-42). Forty-five years on, in the recent decision of *Lee ‍Ming Ho*, the Court has once again reiterated the principle that “quantity must remain the primary determinant in sentencing for trafficking in dangerous drugs”[[43]](#footnote-43).
2. Between 1979 and 2024, further guideline cases have been issued by the Court, which have refined, extended or replaced earlier authorities. This has become necessary because the patterns and prevalence of drug usage, the types of drugs used and their potency, as well as the scale and ingenuity of offending, have changed, and will continue to change in the future. Such changes will necessarily require the Court to reassess its sentencing policy and approach from time to time. As the Court in *Lee Ming Ho* explained[[44]](#footnote-44):

“A reassessment and realignment of an approach to sentencing policy is not new and should not be viewed as unorthodox or heretical: the circumstances, patterns and habits of offending behaviour change over the decades, while the policies designed to deal with particular types of offence are often shaped by prevalence and experience, the shifting attitudes of society to the offence or the offender and by greater general and scientific knowledge as well as understanding of the offence itself. Such developments, and the changes they bring to sentencing policy, are more evolutionary than revolutionary.”

1. The present case concerns 6,960 millilitres of a liquid containing 4,770 grammes of cocaine. Forty-five years ago, the trafficking of cocaine (let alone in liquid form) was unknown in Hong ‍Kong. Indeed, in 1986 in *Attorney General v Leung ‍Pang-‍chiu*[[45]](#footnote-45), it had been submitted on behalf of the appellant that a deterrent element in sentence was not necessary when dealing with such a novel drug. Of this submission, the Court said:

“(Counsel) has urged us not to follow the English lead. There is here, he says, no ‘upward spiral’ of abuse which caused such anxiety to the English Court of Appeal in *Martinez*[[46]](#footnote-46) and which was indicated by the increasing number of seizures. Here cocaine is comparatively unknown. Indeed this is, so far as Counsel are aware, the first prosecution that has been brought. It is therefore not necessary to impose a deterrent sentence at this stage.

With every respect we are unable to accept that submission in the present circumstances. It is better to eradicate a bad habit before rather than after it has taken a firm hold. Cocaine has made a start in this territory, appropriate sentences are necessary to nip the process in the bud. We would suggest for the present the adoption of guidelines similar to those recommended, in *The ‍Queen v Chan Chi-ming* [1979] HKLR 491.”

1. It is instructive to note in this regard that according to the statistics helpfully placed before us by the respondent for the year 2023, which was the last full year for which figures were provided, a total quantity of 1,598,710 grammes of cocaine were seized by the police in Hong Kong, as against 291,370 grammes of heroin. Correspondingly, in the same year, Customs and *‍*Excise seized 2,003,114.96 *‍*grammes of cocaine, as against 331,734.74 grammes of heroin. Clearly, there has been a significant shift in drug habits over the past four decades.
2. Meanwhile, the quantity of “Ice” seized in 2023 by the police was 530,403 grammes; and by Customs and Excise officers, 2,207,686.42 ‍grammes. By contrast, in 2009, the police seized 9,900 ‍grammes of methamphetamine, while Customs and Excise seized a total of 30,702.20 *‍*grammes[[47]](#footnote-47). The first recorded case of trafficking in “Ice” came before the High Court in 1983[[48]](#footnote-48). Thereafter, the drug had minimal presence in Hong Kong until 1991, when the Court in *Attorney ‍General v Ching ‍Kwok-hung*[[49]](#footnote-49) resolved, following two seizures of the drug in 1989 and sixteen in 1990, that “‘Ice’ has made a start in this Territory. We should attempt to nip that process in the bud”[[50]](#footnote-50).
3. It follows that from time to time, this Court, as the jurisdiction with primary responsibility for laying down guidelines in dangerous drug cases, will have cause to issue new guidelines for new drugs, or the changing potencies of existing drugs, and sometimes revisit its earlier decisions in the light of developments and experience, as well as changing societal habits and attitudes. It will be remembered that the 1979 ‍guidelines in *Chan Chi-ming*, which concerned what was then known as ‘No 3’ heroin, were adapted by the Court in 1989 for ‘No 4’ heroin in *Cheng Yeung* and then, “after performing yeoman service”, were “retired” by the Court in the 1990 decision of *Lau ‍Tak-ming[[51]](#footnote-51)*. Many people today would not know what ‘No 3’ heroin was, what “chasing the dragon” involved in this context, or how it differed in appearance, potency and usage from ‘No 4’ heroin. The guidelines for heroin narcotic set out in *Lau Tak-ming* have remained unaltered for almost 35 years, during the course of which they have been applied to cocaine by the Court in *Attorney* ‍*General v Pedro Nel Rojas*.
4. Other changes in respect of other drugs have also taken place over the decades. In respect of the trafficking of “Ice”, the relevant guidelines set out by the Court in 1991 in *Ching ‍Kwok-hung* were revised in 2014 in *Tam ‍Yi ‍Chun*. Most recently, the guidelines for trafficking in, and cultivation of, cannabis earlier set out in 1987 in *Attorney* ‍*General v Chan ‍Chi Man*[[52]](#footnote-52), and later in 1995 in *Attorney General v Tuen ‍Shui ‍Ming*[[53]](#footnote-53), were replaced by the guidelines set out in the 2023 *‍*decision of *HKSAR v Nguyen Thang Loi*[[54]](#footnote-54). While in *HKSAR v Ko* ‍*Wai Shing*[[55]](#footnote-55), this Court devised guidelines for trafficking in two new dangerous drugs, namely Gamma-hydroxybutyric acid (commonly referred to as “GHB”) and Gamma-butyrolactone (commonly referred to as “GBL”).
5. Accordingly, it is right and necessary that the guidelines in respect of dangerous drugs are not immutable but are kept under review by this Court. It was observed during argument by counsel on both sides that the trend over the years has been for the courts to increase sentences for trafficking in dangerous drugs rather than to reduce them. That trend can be seen, for example, in the heroin guidelines as between *Chan Chi-ming* and *Lau Tak-ming*, although it should be remembered that the former was concerned with the weight of *mixture* of ‘No 3’ heroin (salts of esters of morphine) rather than its content, while the latter dealt with the weight of heroin *narcotic* in whatever form. It may also be seen in the guidelines for “Ice” as between *Ching ‍Kwok-hung* and *Tam Yi Chun*. And it may further be seen in the cannabis guidelines as between *Tuen* ‍*Shui* ‍*Ming* and *Nguyen Thang Loi*.
6. In *Lau Tak-ming*, the limit of the highest bracket for trafficking in 600 grammes of heroin narcotic was set at 20 years’ imprisonment, while in *Ching Kwok-hung*, the limit was 18 years’ imprisonment for the same quantity of “Ice”, subsequently revised to 20 ‍years’ imprisonment in *Tam Yi Chun*. We do not know why the Court adopted guidelines up to only 600 grammes for heroin: perhaps that was the general experience of law enforcement authorities and the courts at the time. Clearly and inevitably, there came a time when much larger quantities needed to be catered for by the courts.
7. In due course, the case of *Abdallah* in 2009 extended the guidelines for both heroin and cocaine to 30 years’ imprisonment for trafficking in 15,000 grammes of narcotic; while the Court in *Tam Yi Chun* took the opportunity, not only to raise the sentencing levels for “Ice”, but to extend the *Abdallah* guidelines to very large quantities of “Ice” as well.
8. Inevitably, the trend of increasing sentences as well as the extensions for quantities above 600 grammes of narcotic forged by *Abdallah* (and, subsequently, *Tam Yi Chun*) have resulted not only in very long sentences for trafficking in dangerous drugs, but have reduced the room for manoeuvre by sentencing courts where very or exceptionally large quantities of heroin, cocaine and “Ice” are concerned. This problem was compounded by the supplementary guidelines in *Abdallah*, which resulted in the enhancement of the starting point whenever certain aggravating features were present; although these have now been comprehensively dealt with by the Court in *Lee ‍Ming Ho*[[56]](#footnote-56).
9. The problem of reducing the room for manoeuvre for the courts where very or exceptionally large quantities of dangerous drugs are involved was also specifically addressed in *Lee Ming Ho*[[57]](#footnote-57):

“66. With such high sentences, and the extension of the ranges of sentence, the room for manoeuvre of courts sentencing in respect of very large quantities of dangerous drugs, and the ability to distinguish between those who are mere couriers or storekeepers and those who are much more involved in the organisation of a drug trafficking enterprise, becomes more and more limited and restricted. This concern has been voiced on a number of occasions by this Court since *Abdallah* was decided: for example, in *HKSAR v Leung Wai Man*[[58]](#footnote-58); in *Kilima Abubakar Abbas*[[59]](#footnote-59); and in *HKSAR v Godson Ugochukwu Okoro*[[60]](#footnote-60). Indeed, it seemed to be acknowledged by the Court in *Abdallah* itself[[61]](#footnote-61):

[37] An important consideration in our thinking has been that the courts should have sufficient flexibility to deal with cases where even larger quantities of heroin are trafficked than that in the present case. …

[38] We have in mind, therefore, not merely as a theoretical possibility but as a matter of practical reality, that room must be left for heroin trafficking sentences which fall into the highest range.

However, with respect, it is not simply a matter of ever‑increasing quantities of dangerous drugs coming before the *‍*courts. Rather, as McWalters JA put the concern in *Kilima ‍Abubakar Abbas*[[62]](#footnote-62):

The sentencing regime must allow for the possibility that there will be large seizures of dangerous drugs and also for the possibility that persons, other than couriers, who are more heavily involved in this criminal activity, will be prosecuted. When these possibilities coincide, I fear that courts may find that the sentencing range available to them to reflect these aggravating factors may not enable them to adequately distinguish the culpability of the courier from that of the organizer.

67. Mr Lui has produced for us a table of cases heard since *Abdallah* was decided in March 2009, in which very large quantities of ‘Ice’, heroin or cocaine[[63]](#footnote-63), and quantities greater, sometimes significantly greater, than the one with which we are concerned, have been the subject of prosecution. As at 2 *‍*August 2023, there were 13 such cases of larger quantities than the one with which we are concerned, the largest of which involved more than 422 kilogrammes of cocaine; the second largest, 232 kilogrammes of cocaine. The earlier case of *Ng ‍Muk Kam*, referred to *supra*[[64]](#footnote-64), involved 306 kilogrammes of heroin narcotic. The concerns expressed by various members of the Court, therefore, over the past 15 years are real andcertainly not theoretical.”

1. The problem has arguably been made even more acute by the recent decision of this Court in *Sum Ka Wa*, which held, *inter ‍alia*, that “realistically and for all practical purposes, there is a prevailing sentencing limit for the offence of trafficking in dangerous drugs, which is 35 years’ imprisonment after trial”[[65]](#footnote-65). The Court nevertheless recognised that the maximum sentence for the offence of trafficking in dangerous drugs is life ‍imprisonment under the legislation. Accordingly, 35 years’ imprisonment cannot be an impenetrable ceiling, although it represents the highest sentence ever approved on appeal for this offence in Hong Kong. However, the room for manoeuvre between a starting point of 30 years’ imprisonment for trafficking in 15,000 grammes of heroin, cocaine or “Ice”, in accordance with *Abdallah*, and a realistic, practical maximum of 35 ‍years’ imprisonment, borne of the experience of the courts, does not seem to give judges much room to reflect far more serious cases involving exceptionally large quantities of dangerous drugs and the far more culpable roles of defendants than mere couriers.
2. In 2020, in *Herry Jane Yusuph*, this Court conducted a detailed review of the case law both in Hong Kong and other common law jurisdictions over some 40 years relating to the sentencing for trafficking in dangerous drugs, setting out a modern approach for Hong Kong to tackling sentences in this area of the criminal law. This was followed by the Court’s decisions in *Lee Ming Ho* in February 2024; *Raman ‍Kapusamy* in April 2024; and *Sum Ka Wa* in August 2024. These four decisions of this Court have redefined the sentencing approach to trafficking in dangerous drugs in the modern era. To ‍this quartet of authorities may be added *Michalakopoulos* ‍*Theordoros*, delivered in October 2024, which, as discussed above, illustrated a particular aspect of *Raman Kapusamy*.
3. In *Lee Ming Ho*, whilst we redefined the sentencing approach to the supplementary guidelines in *Abdallah*, we left the arithmetical guidelines themselves intact; particularly in the absence of any empirical evidence, which we have now called for and received. We have concluded that the time has come to reconsider the *Abdallah* guidelines in respect of heroin and cocaine, which must inevitably encroach to some extent on the venerable guidelines in *Lau Tak-ming*, of which *Abdallah* was an extension, as well as the related guidelines in respect of “Ice” in *Tam ‍Yi Chun*. Since this Court is comprised of three members representing both divisions of the Court of Appeal, the present case gives us that opportunity.
4. The reason for this reassessment, apart from wishing to adopt a more holistic approach to sentence for what are three of the most serious and potent dangerous drugs coming before the courts in Hong Kong, is that when the *Abdallah* guidelines were grafted onto the guidelines in *Lau ‍Tak-‍ming*, certain slightly odd features emerged. Before we analyse those features, we should say that we agree with Mr Lau that it has long been an accepted sentencing principle in this jurisdiction that there must be a greater element of deterrence built into the guidelines for relatively lower quantities of dangerous drugs than for higher quantities; it follows from that principle that there must come a time when sentences for higher quantities begin to plateau or level off. Were it otherwise, sentences would quickly reach well beyond the life of an average person as quantities become larger and larger. As was stated by the Court in *R v Lau Lun-fu*[[66]](#footnote-66):

“The Courts of Hong Kong are and must be concerned to impose sentences in this field which do not involve incarcerating individuals for life, and must therefore have an approximate ceiling. Accordingly when very large quantities of dangerous drugs with high values are found possessed for the purposes of trafficking, no very great distinction can be made between particular possessors.”

1. Similarly, in *Attorney General v Dil Bahadur Gurung*[[67]](#footnote-67), the ‍Court put the matter in this way[[68]](#footnote-68):

“When a court is considering quantities of dangerous drugs, whatever their nature, which exceed the top level set out in guideline cases such as *Lau Tak-ming* – or for that matter *Chan ‍Chi-man* – it is a principle of sentencing that the mathematical progression tapers off.”

1. The reasoning behind the tapering off of any mathematical progression has recently been explained by the Court of Appeal of Western *‍*Australia in *The State of Western Australia v Edwards*[[69]](#footnote-69). Acknowledging that the Court “must, consistently with *Wong*[[70]](#footnote-70), regard general deterrence as a predominant sentencing consideration for serious drug offences”[[71]](#footnote-71), it held[[72]](#footnote-72):

“41. …If sentences of around 15 years’ imprisonment are insufficient to deter a person from acting in a role such as a drug courier for such a comparatively modest reward, then it is difficult to imagine there will be many cases where sentences of around 20 years’ imprisonment would do so. That is, once very lengthy sentences are reached, the marginal general deterrent effect[[73]](#footnote-73) of further increases in sentence severity must at least diminish.

42.Therefore, in our view, the length of a sentence that is justified by considerations of general deterrence in cases concerning very large quantities of drugs will not have the linear relationship with the weight of the drugs involved in the offending that is suggested by the State’s submission. While considerations of general deterrence ordinarily require very long sentences for very serious drug offences, those considerations do not necessarily demand increases in the severity of sentences that are proportional to the quantity of drugs involved, particularly where the benefit obtained by the individual offender for his or her role in the criminal enterprise remains relatively modest.”

1. The remarks in *Edwards* concerning the relationship between, and approach to, relatively small and large quantities of dangerous drugs echoed the earlier sentiments of the Court in *Cheng ‍Yeung*, when discussing the *Chan Chi-ming* guidelines[[74]](#footnote-74):

“The dominant sentencing principle behind the present tariff is deterrence, and in this respect it would seem to have had little noticeable effect. At the lower end, the tariff recognises, as is the fact, the immense harm that can be done by comparatively small quantities of dangerous drugs. The tariff is based upon a correlation between quantum and harm. Fairness to those in possession of less than 1 kg suggests that those in possession of more, in the range simply of 1 kg to 10 kg, should be dealt with not necessarily proportionately, but at least not significantly more leniently. Put another way the graph may start to curve at 1 kg, but the curve should only be gradual.”

The Court in *Cheng Yeung* went on to say of those convicted of possessing dangerous drugs for the purpose of trafficking[[75]](#footnote-75):

“…a point is on any view reached where sensible distinctions based upon quantity can no longer be drawn”.

1. Accepting, therefore, these sentencing principles, there are two curious features which emerge when the case of *Lau Tak-ming* is considered together with *Abdallah*. We would not necessarily term them “anomalies”, for when each case is viewed individually, these features are less obvious and must have been intentional. Moreover, each Court would have considered carefully the guidelines they were promulgating and they have clearly served the times ever since. However, in viewing the position holistically 35 and 15 years on respectively, they seem to have contributed to the problem we have earlier discussed, namely of very high sentences with limited room for manoeuvre by sentencing courts at the upper end of the spectrum.
2. These curiosities are perhaps best represented in the following graph showing the relationship between quantity and imprisonment when the *Lau Tak-ming* and *Abdallah* guidelines are put together:
3. The first obvious thing to notice from this diagram is that while a curve begins to develop between 50 and 200 grammes and continue between 200 and 400 grammes under *Lau Tak-ming*, it then resumes a more upward trajectory between 400 and 600 grammes. The reason for this curiosity is that between 50 grammes and 200 grammes (a spread of 150 ‍grammes), there is a sentencing differential of 4 years, namely 8 to 12 ‍years’ imprisonment. Between 200 grammes and 400 grammes (a ‍spread of 200 ‍grammes), the difference becomes 3 years, namely 12 to 15 years’ imprisonment. Thus the gradual curve, contemplated in *Cheng* ‍*Yeung*, begins to manifest itself. However, between 400 and 600 ‍grammes (also a spread of 200 grammes), the differential is 5 years, namely 15 to 20 years’ imprisonment, thus causing the line to straighten and deviate from its anticipated curve.
4. The second oddity depicted in this diagram is that when the guidelines in *Abdallah* are grafted onto those in *Lau Tak-ming*, what emerges is a rather abrupt right‑angled turn rather than a smooth and gradual curve. Accordingly, because of this curiosity, which derives from the last category in *Lau* ‍*Tak-ming*, we do not think that we can properly address the guidelines in respect of very or exceptionally large quantities of dangerous drugs under *Abdallah* without at the same time reconsidering the guidelines for lesser quantities under *Lau Tak-ming*.
5. A similar phenomenon or curiosity appears when we examine the “Ice” guidelines in *Tam Yi Chun*. Between 10 and 70 grammes, the differential is 4 years, namely 7 to 11 years’ imprisonment; between 70 and 300 grammes, it is also 4 years, namely 11 to 15 years’ imprisonment; but between 300 grammes and 600 grammes, the differential becomes 5 years, namely 15 to 20 years’ imprisonment. This results in the connection between 70 grammes (warranting 11 years’ imprisonment) and 600 ‍grammes (warranting 20 ‍years’ imprisonment) proceeding in a straight upward line rather than continuing the curve that had commenced between 10 grammes (warranting 7 years’ imprisonment) and 300 grammes (warranting 15 years’ imprisonment). We suspect that the Court perhaps was concerned to ‍arrive at 600 grammes and 20 years’ imprisonment to tie in with *Lau* ‍*Tak-*‍*ming* before the application of the *Abdallah* guidelines to “Ice”. Whatever the reason, a similar right-angled turn (albeit not as acute as in the diagram above) is occasioned rather than a smooth and gradual curve. Accordingly, in the interests of consistency as well as logic, we consider that we should also re-assess the guidelines in *Tam* ‍*Yi* ‍*Chun* when addressing the guidelines for very or exceptionally large quantities of “Ice”.
6. Before we do so, however, it is worth making certain observations about the evidence adduced by the respondent in respect of the seizures of heroin, cocaine and “Ice” in recent years. We should bear in mind what appears to be a distortion during the ‘Covid years’ (2020-‍2022) when, for example, the total number of arrests for the importation of dangerous drugs by Customs and ‍Excise, in respect of quantities of all three dangerous drugs, fell from 28 in 2019 to 16 in 2021 (heroin); from 183 in 2019 to 94 in 2021 (cocaine); and from 102 in 2019 to 44 in 2021 (“Ice”). As for the exportation of dangerous drugs during the same period, the numbers fell from 4 in 2019 to 2 in 2021 (heroin); from 42 in 2019 to 2 in 2021 (cocaine); and from 13 ‍in 2019 to 2 ‍in 2021 (“Ice”). These figures can obviously be explained by the severe travel restrictions in place both in and out of Hong ‍Kong during 2020 and 2021.
7. In terms of local trafficking in dangerous drugs, the figures supplied by the police for the total seizures of more than 400 grammes of narcotic (gross weight) went down from 331,938 grammes in 2021 to 213,643 ‍grammes in 2022 (heroin); from 1,874,677 grammes in 2021 to 1,178,102 grammes in 2022 (cocaine); but went up from 685,246 grammes in 2021 to 876,177 grammes in 2022 (“Ice”). However, although an increase in the latter, the number of cases and arrests in respect of “Ice” in fact fell significantly.
8. The ‘Covid years’ aside, the trends for all three drugs are not the same. In terms of detection by Customs and Excise, the total number of arrests in the decade between 2013 and 2023 went down from 99 in 2013 to 51 in 2023 (heroin) and from 212 in 2013 to 68 in 2023 (“Ice”), but rose from 92 in 2013 to 169 in 2023 (cocaine). As for the police, the figures all show a rise over the same decade but a reduction in terms of arrests and seized quantities in respect of “Ice” as between 2022 and 2023.
9. In 2018, it was said in *Kilima Abubakar Abbas*[[76]](#footnote-76):

“The one thing that has struck me, having had to consider in the past few months the trends and statistics for the seizures, arrests and convictions in respect of a wide spectrum of dangerous drugs in Hong Kong since January 2015[[77]](#footnote-77), is that rather than being swamped by a problem which is out of control, as other countries seem to have been, the problem in Hong Kong is being steadily contained, if not, in certain respects, reduced.”

We do not see that this summary of the position seven years ago is very much different from today, except that the figures in respect of seizures and arrests for trafficking in cocaine have substantially increased since 2018. Certainly, there is no cause for complacency, but the statistics do suggest that Hong Kong’s harsh, but consistent, sentencing policy for drug trafficking is at least controlling a problem, which unfortunately can never be eradicated.

New guidelines

1. In light of these considerations, and in the hope of adjusting and rationalising the guidelines to suit modern conditions, we have decided to modify the guidelines for trafficking in heroin and cocaine for all quantities; and also the guidelines for trafficking in “Ice” for all quantities.

Heroin and cocaine

1. As from the handing down of this decision, the guidelines for trafficking in heroin and cocaine, which as dangerous drugs have been treated in the same way in this jurisdiction since 1994, as indeed they are under the current sentencing regime operating in the United Kingdom, will be as follows after trial:
2. Up to 10 grammes of narcotic: 2 to 5 years’ imprisonment;
3. Between 10 grammes and 50 grammes: 5 to 8 years’ imprisonment;
4. Between 50 grammes and 200 grammes: 8 to 12 years’ imprisonment;
5. Between 200 grammes and 500 grammes: 12 to 16 years’ imprisonment;
6. Between 500 grammes and 1,500 grammes: 16 to 20 years’ imprisonment;
7. Between 1,500 grammes and 5,000 grammes: 20 to 24 years’ imprisonment;
8. Between 5,000 grammes and 15,000 grammes: 24 to 27 years’ imprisonment;
9. Between 15,000 grammes and 30,000 grammes: 27 to 30 ‍years’ imprisonment.

Above 30,000 grammes, sentences will fall within the discretion of judges bearing in mind the practical and realistic ceiling of 35 years’ imprisonment, as established in *Sum Ka Wa*, and the legislative maximum of life imprisonment for cases of truly exceptional gravity.

1. Accordingly, the graph showing the relationship between the quantity of narcotic and the length of imprisonment now becomes as follows:

“Ice”

1. In respect of “Ice”, it was recognised in *Ching Kwok-hung* in 1991 that “Ice” was “a drug to be taken very seriously indeed. In ways it is more deleterious to its abusers, and to society in general, than is heroin”[[78]](#footnote-78). In *Tam Yi Chun*, the Court in uplifting the guidelines for “Ice” accepted evidence from then Consultant and Deputy Director of the Hong ‍Kong Poison Information Centre of the Hospital Authority, who endorsed much of what had earlier been said in *Ching Kwok-hung* about the properties and dangers of “Ice”. The Court continued[[79]](#footnote-79):

“26. …It is, he said, usually of very high purity and can be used or reused readily. The average abuse dosage for new or infrequent users of the drug is in the range of 0.05 to 0.1 g per day; whereas, for this group, the average daily consumption of a heroin user is in the range of 0.25 to 0.7 g. ‘For such new or infrequent users [of ICE],’ he said, ‘each “hit” can bring about an effect lasting up to 12 hours and they often purchase half a gram to be shared among them, using a single bottle to smoke the ICE together. This method of abuse may appeal to them socially and can help to spread the abuse of ICE among peer groups and increase the ease in “hooking up” new users up to several of them at a time. In this regard, ICE, in my opinion, is a drug more dangerous to young people than heroin.’

27.As for regular users of ICE, the average daily consumption is in the range of 0.1 to 0.5 g; whereas the average daily consumption of a heroin user is in the range of 0.25 to 0.7 ‍g. In that the Court in *Ching Kwok hung*said that ‘an ICE addict needs far less of the substance than does a heroin addict,’ and that ‘ICE can be used and reused,’ Dr Tse says that if that was the rationale for imposing a heavier sentencing deterrent in respect of ICE (as we see in relation to the lower bands) it remains a valid rationale.”

1. The Court said of “Ice” that it was “highly addictive, as addictive as heroin; but it has features in its effect different from heroin and in some respects more alarming and deleterious”[[80]](#footnote-80). In the result, the Court opted to increase the sentences for trafficking in quantities below 600 grammes of “Ice” but equated sentences for large quantities above 600 ‍grammes with heroin and cocaine. Accordingly, it held[[81]](#footnote-81):

“The result of this evidence and our acceptance of it, is that there is now no acceptable rationale for a distinction in sentencing for trafficking in large quantities of ICE on the one hand and large quantities of heroin on the other. Trafficking in large quantities of ICE is, and has for some time since *Ching* ‍*Kwok Hung* become a major problem, a problem not reflected by the 1991 guidelines. That fact needs now to be reflected in sentencing. On the other hand, there remains good reason for rendering sentences heavier for trafficking in the lesser quantities of ICE than for similar quantities of heroin. It could be said that the logic for smaller quantities should apply as well to the large quantities, but so stiff are the sentences for very large quantities of heroin that it would be difficult to justify still heavier sentences for large quantities of ICE than those prescribed by *Lau Tak Ming* for heroin.”

We think that approach holds good today.

1. Accordingly, the revised guidelines in respect of trafficking in “Ice” will be as follows after trial:
2. Up to 10 grammes of narcotic: 3 to 7 years’ imprisonment;
3. Between 10 grammes and 70 grammes: 7 to 11 years’ imprisonment;
4. Between 70 grammes and 300 grammes: 11 to 15 years’ imprisonment;
5. Between 300 grammes and 600 grammes: 15 to 18 years’ imprisonment;
6. Between 600 grammes and 1,500 grammes: 18 to 20 years’ imprisonment;
7. Between 1,500 grammes and 5,000 grammes: 20 to 24 years’ imprisonment;
8. Between 5,000 grammes and 15,000 grammes: 24 to 27 years’ imprisonment;
9. Between 15,000 grammes and 30,000 grammes: 27 to 30 years’ imprisonment.

Above 30,000 grammes, sentences will similarly fall within the discretion of judges in the same way as for heroin and cocaine.

1. Accordingly, the graph showing the relationship between the quantity of narcotic and the length of imprisonment will become as follows:

We should make clear that for quantities above 1,500 grammes, we have treated the guidelines in respect of heroin, cocaine and “Ice” as the same because any differences in potency and harm become eclipsed by the sheer size of the quantity.

1. These revised guidelines, in respect of heroin, cocaine and “Ice”, will take effect from the handing down of this judgment and must now replace those set out in *Lau Tak-ming*, *Tam Yi Chun* and *Abdallah*. Whilst some of the principles enunciated in these three earlier authorities remain sound, the quantum of sentence they suggest must now give way to the guidelines and approach set out in this judgment. We further wish to make clear that the cases of *Herry* ‍*Jane Yusuph*, *Lee Ming Ho*, *Raman ‍Kapusamy* and *Sum Ka Wa* should be read together with this decision. All five judgments should fully equip courts and practitioners for sentencing in this important area of the criminal law as we enter the second quarter of the 21st ‍century.

The applicant’s sentence

1. If we were to apply these new guidelines on a purely arithmetical basis to the 4,470 grammes of cocaine narcotic concerned in the present case, the starting point would be about 23½ years’ imprisonment. However, this was an elaborate and well-organised crime to evade the authorities and ensure that a very large and valuable quantity of an extremely serious and insidious drug entered Hong Kong across the border disguised as innocuous cans of drink. The Customs and Excise officers concerned are to be complimented for detecting such a significant and cleverly disguised shipment of cocaine into Hong Kong.
2. The applicant’s culpability in importing such a large quantity of dangerous drugs so disguised was very serious indeed. Clearly, as a matter of common sense, she cannot have been far removed from those who organised this elaborate scheme, in which she was to play such a pivotal and crucial role in bringing cocaine across the border. In our judgment, the applicant’s role and culpability in this offence merited an overall starting point of 25½ years’ imprisonment.
3. There was no discernible personal mitigation capable of reducing such a sentence after trial: the applicant knew exactly what she was doing and fully played her part in an elaborate and highly organised charade, which aimed to put more than 4 ‍kilogrammes of cocaine worth over HK$4.8 million onto the streets of Hong Kong. We are not able to agree with Mr Bruce’s submission that “foreign” drug traffickers can use the fact that they will have to serve their sentences in an alien jurisdiction as a mitigating factor. It has long been the position in Hong Kong that those who enter this jurisdiction in order to break the law will not be treated any differently, and certainly not more leniently, than those who normally reside here, whatever the particular difficulties and deprivations they will face in a foreign prison: see *HKSAR v Hong Chang Chi*[[82]](#footnote-82).
4. We shall nevertheless honour the judge’s reduction of the sentence by 6 months’ imprisonment for the additional stress the applicant has suffered by virtue of the trial and appeal processes she has undergone during the past 8 years. The sentence thus becomes one of 25 years’ imprisonment.
5. For the above reasons, we grant the applicant leave to appeal against her sentence out of time, allow the appeal and reduce the sentence from 27 years and 10 months’ imprisonment to 25 years’ imprisonment.

|  |  |  |
| --- | --- | --- |
| (Andrew Macrae)  Acting Chief Judge  of the High Court | (Kevin Zervos)  Justice of Appeal | (Maggie Poon)  Justice of Appeal |

Mr Derek Lau SADPP and Mr Derek Wong SPP, of the Department ‍of ‍Justice, for the Respondent

Mr Andrew Bruce SC and Mr Martin Li, instructed by Johnnie Yam, Jacky Lee & Co, assigned by the Director of Legal Aid and Mr Allen Judge (on a pro-bono basis), instructed by Johnnie Yam, Jacky Lee & Co, for the Applicant

1. *HKSAR v Huang Ruifang* [2022] 1 HKLRD 1090. [↑](#footnote-ref-1)
2. *HKSAR v Huang Ruifang* [2021] HKCA 11, at [3]-[21]. [↑](#footnote-ref-2)
3. *HKSAR v Huang Ruifang (No 2)* [2024] 4 HKLRD 848. [↑](#footnote-ref-3)
4. *HKSAR v Abdallah* [2009] 2 HKLRD 437. [↑](#footnote-ref-4)
5. *HKSAR v Herry Jane Yusuph* [2021] 1 HKLRD 290. [↑](#footnote-ref-5)
6. *HKSAR v Lee Ming Ho* [2024] 1 HKLRD 1186. [↑](#footnote-ref-6)
7. *HKSAR v Raman Kapusamy* [2024] 2 HKLRD 955. [↑](#footnote-ref-7)
8. *HKSAR v Sum Ka Wa* [2024] 4 HKLRD 777. [↑](#footnote-ref-8)
9. *Huang Ruifang (No 2)*, at [163]. [↑](#footnote-ref-9)
10. *Ibid.*, at [164]. [↑](#footnote-ref-10)
11. By way of a notice of motion, the applicant has also applied for a certificate to appeal her conviction to the Court of Final Appeal out of time. Such application has been directed to be dealt with in a separate hearing. [↑](#footnote-ref-11)
12. *R v Lau Tak-ming* [1990] 2 HKLR 370. The heroin guidelines were subsequently applied to cocaine by the Court in *Attorney General v Pedro Nel Rojas* [1994] 2 HKCLR 69. [↑](#footnote-ref-12)
13. *HKSAR v Tam Yi Chun* [2014] 3 HKLRD 691. [↑](#footnote-ref-13)
14. *Ibid.*, at [32] and [34]. [↑](#footnote-ref-14)
15. It was a random stop check, according to the evidence of a Customs officer: see Appeal Bundle (“AB”), p 60D-**‍**G. [↑](#footnote-ref-15)
16. Admitted Facts at [2]-[17] & [31], AB, pp 8-13 & 33. [↑](#footnote-ref-16)
17. Admitted Facts at [15], [21], [23], AB, pp 12, 16, 19; AB, pp 37B-G, 65M-69I, 77M-78N. [↑](#footnote-ref-17)
18. AB, p 77M-N; p 101C-E. [↑](#footnote-ref-18)
19. AB, p 102G-K. [↑](#footnote-ref-19)
20. *HKSAR v Abdallah* [2009] 2 HKLRD 437. [↑](#footnote-ref-20)
21. *HKSAR v Fong Yau Heung* [2022] 2 HKLRD 99 [↑](#footnote-ref-21)
22. *R v Chan Chi-ming* [1979] HKLR 491. [↑](#footnote-ref-22)
23. *Lee Ming Ho*, at [65]-[67]. [↑](#footnote-ref-23)
24. *R v Cheng Yeung* [1989] 2 HKLR 258, at 264G. [↑](#footnote-ref-24)
25. *HKSAR v Hau Chun Hin* [2016] HKCA 529 (Unrep., 4 November 2016). [↑](#footnote-ref-25)
26. A normal starting point of 5 years’ imprisonment. [↑](#footnote-ref-26)
27. A normal starting point of 3-12 years’ imprisonment. [↑](#footnote-ref-27)
28. A normal starting point of 5 years’ imprisonment where a dangerous weapon is displayed and 7 **‍**years’ **‍**imprisonment where actual violence is inflicted. [↑](#footnote-ref-28)
29. A normal starting point of 3-9 years’ imprisonment for manslaughter by provocation in a domestic context. [↑](#footnote-ref-29)
30. A normal starting point exceeding 20 years’ imprisonment. [↑](#footnote-ref-30)
31. A normal starting point of 3-9 years’ imprisonment. [↑](#footnote-ref-31)
32. Outline of Submissions Concerning Sentence, at [57]; A Short Response by the Applicant, at [6]. [↑](#footnote-ref-32)
33. *HKSAR v Barragan Herrero Jose Antonio* [2021] HKCFI 1609 (DHCJ McWalters); *HKSAR v Kwan* ‍*Wai Fan* [2021] HKCFI 2036 (DHCJ McWalters); *HKSAR v Limbu* ‍*John* [2021] HKCFI 2022 (DHCJ McWalters); *HKSAR v Tang Wing Han Sean* [2021] HKCFI 2528 (DHCJ McWalters); *HKSAR v Lau Chung Shun* [2021] HKCFI 2674 (DHCJ McWalters**);** *HKSAR v Yip Yung Sang* [2021] HKCFI 1600 (DHCJ McWalters); *HKSAR v Chan Ho Kwai* [2021] HKCFI 2938 (DHCJ McWalters); *HKSAR v Chu Yick Yin* [2021] HKCFI 2939 (DHCJ McWalters); *HKSAR v Suen Yuk Hang* [2021] HKCFI 2940 (DHCJ McWalters); *HKSAR v Cheng Man Kit* [2021] HKCFI 3032(DHCJ McWalters); *HKSAR v Camara Kandja* [2021] HKCFI 3825 (DHCJ Derek Chan, SC); *HKSAR v Wu Guoyi* [2022] HKCFI 105 (DHCJ Derek Chan, SC); *HKSAR v Chang Ching Lam* [2022] HKCFI 1026 (DHCJ ‍Derek Chan, SC); *HKSAR v Sithole Mandisa Nolizwe* [2022] HKCFI 2905 (Recorder ‍Derek ‍Chan, SC); *HKSAR v Proietti Stefan* [2022] HKCFI 3589 (Recorder Derek Chan, SC); *HKSAR v Shum Tsun Lok* [2023] HKCFI 935 (Recorder Maggie Wong, SC). [↑](#footnote-ref-33)
34. *Lee Ming Ho*, at [83]-[86]. [↑](#footnote-ref-34)
35. *Lau Tak-ming*, at 386G. [↑](#footnote-ref-35)
36. *Lee Ming Ho*, at [68]. [↑](#footnote-ref-36)
37. *Secretary for Justice v* *Hii Siew Cheng* [2009] 1 HKLRD 1. [↑](#footnote-ref-37)
38. *Ibid.*, at [105]. [↑](#footnote-ref-38)
39. *Abdallah*, at [37]-[38]. [↑](#footnote-ref-39)
40. *Raman Kapusamy*, at [73]. [↑](#footnote-ref-40)
41. *HKSAR v Michalakopoulos Theodoros* [2025] 1 HKLRD 1. [↑](#footnote-ref-41)
42. *Chan Chi-ming.*, at p 492. [↑](#footnote-ref-42)
43. *Lee Ming Ho*, at [48]. [↑](#footnote-ref-43)
44. *Ibid.*, at [48]. [↑](#footnote-ref-44)
45. *Attorney General v Leung Pang-chiu* [1986] HKLR 608 [↑](#footnote-ref-45)
46. *R v Martinez*, The Times Law Reports, 24 November 1984. [↑](#footnote-ref-46)
47. The quantities of dangerous drugs mentioned are gross weights. [↑](#footnote-ref-47)
48. HCCC No 87 of 1983. [↑](#footnote-ref-48)
49. *Attorney General v Ching Kwok-hung* [1991] 2 HKLR 125. [↑](#footnote-ref-49)
50. *Ibid.*, at p128. [↑](#footnote-ref-50)
51. *Lau Tak-ming*, at p385H. [↑](#footnote-ref-51)
52. *Attorney General v Chan Chi Man* [1987] HKLR 221. [↑](#footnote-ref-52)
53. *Attorney General v Tuen Shui Ming* [1995] 2 HKC 798. [↑](#footnote-ref-53)
54. *HKSAR v Nguyen Thang Loi* [2023] 1 HKLRD 1329. [↑](#footnote-ref-54)
55. *HKSAR v Ko Wai Shing* [2012] 5 HKLRD 725. [↑](#footnote-ref-55)
56. *Lee Ming Ho*, at [52]-[70]. [↑](#footnote-ref-56)
57. *Ibid*., at [66]-[67]. [↑](#footnote-ref-57)
58. *HKSAR v Leung Wai Man* ( Unrep., CACC 24/2007, [2010] 1 HKLRD C2, 7 December 2009), [6]-[10], *per* McMahon J. [↑](#footnote-ref-58)
59. *HKSAR v Kilima Abubakar Abbas* [2018] 5 HKLRD 88, at [45], *per* Lunn V-P; and [148], *per* ***‍***McWalters JA. [↑](#footnote-ref-59)
60. *HKSAR v Godson Ugochukwu Okoro* [2019] 2 HKLRD 451, [52], *per* Zervos JA. [↑](#footnote-ref-60)
61. *Abdallah*, at [37]-[38], *per* Stuart-Moore VP. [↑](#footnote-ref-61)
62. *Kilima Abubakar Abbas*, at [148]. [↑](#footnote-ref-62)
63. One case, *HKSAR v Wong Ka Ho & Anor* [2021] HKCFI 494, was concerned with a combination of over 80 kilogrammes of cocaine and ketamine. [↑](#footnote-ref-63)
64. See Footnote 3 of *Lee Ming Ho*. [↑](#footnote-ref-64)
65. *Ibid.*, at [26]. [↑](#footnote-ref-65)
66. *R v Lau Lun-fu* (Unrep., CACC 443/1987, 15 February 1989), at p 3. [↑](#footnote-ref-66)
67. *Attorney General v Dil Bahadur Gurung* [1994] 2 HKC 476. [↑](#footnote-ref-67)
68. *Ibid.*, at 482C-D. [↑](#footnote-ref-68)
69. *The State of Western Australia v Edwards* [2022] WASCA 141. [↑](#footnote-ref-69)
70. *Wong v The Queen* (2001) 207 CLR 584. [↑](#footnote-ref-70)
71. *The State of Western Australia v Edwards*, at [40]. [↑](#footnote-ref-71)
72. *Ibid.*, at [41]-[42]. [↑](#footnote-ref-72)
73. That is, the extent to which increases in the severity of sentences for a kind of offence, without any change in the perceived risk of apprehension and conviction, increases the general deterrent effect of those sentences. [↑](#footnote-ref-73)
74. *Cheng Yeung*, at p264F-H. [↑](#footnote-ref-74)
75. *Ibid.*, at p264H-I. [↑](#footnote-ref-75)
76. *Kilima Abubakar Abbas*, at [71]. [↑](#footnote-ref-76)
77. See *HKSAR v Chan Ka Yiu* [2018] 4 HKC 591. The drugs, in respect of which statistics were provided to the court by the respondent on that occasion, were heroin, cocaine, “Ice”, ketamine, ecstasy and cannabis. [↑](#footnote-ref-77)
78. *Ching Kwok-hung*, at 130A-B. [↑](#footnote-ref-78)
79. *Tam Yi Chun*, at [26]-[27]. [↑](#footnote-ref-79)
80. *Tam Yi Chun*, at [28]. [↑](#footnote-ref-80)
81. *Ibid.*, at [31]. [↑](#footnote-ref-81)
82. *HKSAR v Hong Chang Chi* [2002] 1 HKLRD 486, at [21]. [↑](#footnote-ref-82)