Loo Pei Xiang Alan *v* Public Prosecutor
[2015] SGHC 217

Case Number	: Magistrate's Appeal No 56 of 2015
Decision Date	: 20 August 2015
Tribunal/Court	: High Court
Coram	: Chao Hick Tin JA
Counsel Name(s)	: The appellant in person; Teo Lu Jia (Attorney-General's Chambers) for the respondent.
Parties	: Loo Pei Xiang Alan — Public Prosecutor

Criminal Procedure and Sentencing – Sentencing – Drug trafficking – Enhanced sentences for repeat offenders

20 August 2015 Judgment reserved.

Chao Hick Tin JA:

1 The appellant pleaded guilty to four drug-related charges, with nine other drug-related charges taken into consideration, and was given a total sentence of 17 years and three months' imprisonment and 18 strokes of the cane. He now appeals against sentence. The four charges to which he pleaded guilty and the corresponding sentences imposed were as follows:

(a) One charge for trafficking 11.64 grams of methamphetamine – 16 years' imprisonment and 15 strokes of the cane;

(b) One charge for consumption of methamphetamine – five years' imprisonment and three strokes of the cane; and

(c) Two charges for possession of two different Class A drugs – 15 months' imprisonment on each charge.

The sentence for one of the possession charges was ordered to run consecutively with the sentence for the trafficking charge.

2 This was not the first time the appellant had committed drug-related offences: he had prior convictions for drug trafficking and consumption. In view of these antecedents, the mandatory minimum sentences prescribed under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA") applied for both the trafficking charge and the consumption charge. As to the trafficking charge, since methamphetamine is a Class A drug, under s 33(4A)(i) of the MDA, the minimum sentence was 10 years' imprisonment and 10 strokes of the cane. As for the consumption charge, since the appellant also had a prior admission to a Drug Rehabilitation Centre, under s 33A(1) of the MDA the minimum sentence was five years' imprisonment and three strokes of the cane.

3 The appellant's previous convictions for drug trafficking and consumption were handed down in 1997. At just 17 years of age, he pleaded guilty to three drug-related charges, with a further two drug-related charges taken into consideration. The total sentence imposed on him was 15 years' imprisonment and 24 strokes of the cane. The three charges to which he pleaded guilty and the

corresponding sentences imposed for those charges were as follows:

(a) One charge for trafficking 297.2 grams of cannabis – 14 years' imprisonment and 12 strokes of the cane;

(b) One charge for trafficking 623.2 grams of cannabis mixture – 14 years' imprisonment and 12 strokes of the cane; and

(c) One charge for the offence of consumption of "Ecstasy" – one year's imprisonment.

The sentence for the consumption charge was ordered to run consecutively with the sentence for one of the trafficking charges. The appellant completed serving sentence on 7 February 2007. Subsequent to that, and before his present brush with the law, the appellant committed an offence of disorderly behaviour in 2007, for which he was fined $600, and offences of voluntarily causing hurt in 2012, for which he was fined a total of $2,400.

Facts

4 The pertinent facts relating to the charges which are the subject of this appeal are these. On 11 March 2013, narcotics officers raided the appellant's flat and found a number of items on the floor of his bedroom that were subsequently analysed and found to contain drugs. In particular, there were yellow tablets and a yellow substance that contained a total of 1.24 grams of N,α-Dimethyl-3,4-(methylenedioxy)phenethylamine, a Class A drug. This gave rise to one of the charges for possession of a Class A drug. The appellant was arrested and later released on bail.

5 Subsequently, on 12 June 2013, while the appellant was out on bail, he was arrested by narcotics officers. A car key was found in the appellant's possession but he refused to divulge the vehicle's location. The narcotics officers eventually used the key to gain access to a vehicle parked in the carpark where the arrest took place. A number of packets of crystalline substance were found in the vehicle and in the appellant's possession. These packets were analysed as three different exhibits and were found to contain 11.64, 7.76 and 0.97 grams of methamphetamine. Investigations revealed that the packets containing 11.64 grams of methamphetamine were meant for sale to one Chua for an agreed price of $1,350, and that the remaining packets – containing a total of 8.73 grams of methamphetamine – were meant for the appellant's own consumption. This gave rise to the trafficking charge as well as the other charge for possession of a Class A drug.

6 Following the appellant's arrest, a urine sample was taken from him and analysed. The sample was found to contain methamphetamine. This gave rise to the consumption charge.

The enhanced sentencing regime for repeat drug traffickers

7 Drug trafficking is an offence under s 5(1) of the MDA. The punishments to be imposed for this offence are defined in the Second Schedule of the MDA. Minimum and maximum sentences are laid down according to the type of drugs trafficked, *ie*, whether they are Class A, B or C drugs. In addition to this general regime, harsher punishments are prescribed where the quantity of certain drugs – such as methamphetamine, cannabis and diamorphine – exceeds stipulated levels.

8 The punishments laid down in the Second Schedule are applicable where an offender is convicted of drug trafficking for the first time. But if the offender has been convicted of drug trafficking on one or more previous occasions, then his subsequent offences of the same nature will attract enhanced minimum and maximum sentences depending on the class of drugs trafficked and

the quantity pursuant to s 33(4A) of the MDA which took effect in May 2013. For Class A drugs, the minimum sentence is 10 years' imprisonment and 10 strokes of the cane, and the maximum is 30 years' imprisonment and 15 strokes of the cane. Section 33(4A)(i) provides:

> **Punishment for offences**
>
> **33.**—(1) …
>
> …
>
> (4A) Where —
>
> (a) any person is convicted of an offence under section 5(1) or 7; and
>
> (b) that person is again convicted of an offence under section 5(1) of 7,
>
> that person so convicted shall be punished with —
>
> (i) in relation to a Class A drug —
>
> (A) imprisonment for a term of not less than 10 years and not more than 30 years; and
>
> (B) not less than 10 strokes and not more than 15 strokes of the cane;
>
> …

The decision below

9 In the present case, the District Judge was obliged to impose a minimum sentence of 10 years' imprisonment and 10 strokes of the cane on the appellant for the trafficking charge because of his earlier drug trafficking convictions. In the result, the District Judge thought fit to impose a sentence which exceeded that minimum by a margin of six years' imprisonment and five strokes of the cane. He gave his reasons in his grounds of decision published as *Public Prosecutor v Loo Pei Xiang Alan* [2015] SGDC 89 ("the GD").

10 On the trafficking charge, the District Judge agreed with defence counsel's submission that the appellant's drug trafficking antecedents "would have been factored into the prescribed mandatory minimum sentence". But he held that there were a number of aggravating factors that together showed the appellant's "blatant disregard" for the law and his "contemptuous attitude" towards it. These factors were: (i) he committed the offence while on bail, (ii) the drugs involved were Class A drugs, and (iii) he stood to gain a profit of $1,350. In the circumstances, the District Judge thought that the length of the imprisonment term to be imposed for this charge "should be significantly more than the previous sentence of 14 years imprisonment", and he accordingly ordered 16 years' imprisonment (at [15]–[16] of the GD).

11 On the consumption charge, the District Judge "did not find any compelling reason to impose an imprisonment term of more than the mandatory minimum of five years". Accordingly, he so sentenced the appellant (at [13] of the GD). On the two possession charges, the District Judge noted that the drugs were Class A drugs and that the quantity of drugs in the appellant's possession "could not be said to be small". That, coupled with the appellant's "blatant disregard for the law", warranted in his view a sentence of 15 months' imprisonment for each charge (at [17] of the GD). Finally, considering

the total sentence to impose, the District Judge opined that 17 years and three months' imprisonment and 18 strokes of the cane was "[neither] disproportionate nor crushing" (at [20] of the GD).

The consumption and possession charges

12 I should say at the outset that I do not think the sentences imposed on the consumption and possession charges should be disturbed. The sentence of five years' imprisonment and three strokes of the cane imposed on the consumption charge was the minimum that the District Judge could have imposed, and hence it cannot possibly be said to be excessive. As for the possession charges, the amounts of drugs involved were not very substantial, but given the appellant's recalcitrance and disregard for the law in re-offending on bail, I do not think the sentence of 15 months' imprisonment for each charge can be said to be manifestly excessive.

The trafficking charge

The small quantity of drugs trafficked

13 All that remains for consideration is the sentence for the trafficking charge. In my view, the proper starting point in determining the appropriate sentence is the quantity of methamphetamine trafficked. This is because, as Sundaresh Menon CJ noted in the very recent decision of *Vasentha d/o Joseph v Public Prosecutor* [2015] SGHC 197 ("*Vasentha*"), the sentencing framework in the MDA for drug trafficking "rests primarily on the *type* and *quantity* of the drugs" (at [14]), meaning that "the quantity of drugs involved in a trafficking charge will inevitably have a strong bearing on the sentence to be imposed in any given case" – a sensible approach given that "the quantity of the drugs will usually be proportionate to the harm" that would be caused to society, and would thus serve "as a reliable indicator of the seriousness of the offence" (at [23]).

Guidance from the indicative starting points for first-time offenders

14 In *Vasentha*, Menon CJ further developed this notion of a correlation between the quantity of drugs trafficked and the sentences to be imposed by establishing the following "indicative starting points" for sentencing first-time offenders trafficking in diamorphine (which his case was concerned with) according to the quantity of diamorphine trafficked (at [47]):

Quantity	Imprisonment	Caning
Up to 3g	5–6 years	5–6 strokes
3–5g	6–7 years	6–7 strokes
5–7g	7–8 years	7–8 strokes
7–8g	8–9 years	8–9 strokes
8–9g	10–13 years	9–10 strokes
9–9.99g	13–15 years	10–11 strokes

15 These indicative starting points pronounced in *Vasentha* are of course not strictly applicable to the appellant in this case since he is not a first-time offender. Moreover, Menon CJ took pains to emphasise that the indicative starting points were not determinative of the sentence but would have

to be adjusted where appropriate "to reflect the offender's culpability and the presence of aggravating or mitigating circumstances" (at [48]), such as whether the offender was directing the drug trade on a commercial scale, or involving others in the operation, or motivated by financial or other advantage, or performing only a limited function under direction (at [51]). Indeed, on the facts of that case, Menon CJ thought that "a significant reduction from the indicative starting point" would be warranted (at [80]).

16 Nevertheless, I think it is appropriate for me to take some measure of guidance from the indicative starting points in *Vasentha*. There is no reason why the quantity of drugs trafficked should not be a vital determinant in sentencing repeat offenders as it is in sentencing first-time offenders; I cannot imagine it was Parliament's design in enacting s 33(4A) of the MDA to diminish the relevance of that factor. The indicative starting points in *Vasentha* demonstrate, in a rough and general way, the proper relationship between the quantity of drugs trafficked and the sentence to be imposed, bearing in mind the need to utilise the full sentencing range prescribed by the statute. Since this relationship holds in cases involving repeat trafficking offenders, *Vasentha* is pertinent even in the present appeal. Let me explain.

Indicative starting points where the drug trafficked is methamphetamine

17 I am cognisant of the fact that the drug trafficked in *Vasentha* was diamorphine whereas the drug in this case was methamphetamine. Trafficking one gram of diamorphine is of course not necessarily equivalent to trafficking one gram of methamphetamine. But I consider that it is possible to derive some sort of conversion scale, or "exchange rate", so to speak, between diamorphine and methamphetamine. This is because the Second Schedule of the MDA prescribes the exact same minimum and maximum punishments for trafficking between 10 and 15 grams of diamorphine and trafficking between 167 and 250 grams of methamphetamine – the minimum is 20 years' imprisonment and 15 strokes of the cane, and the maximum is imprisonment for life or 30 years and 15 strokes of the cane. This means that, all other things being equal, an offender who traffics between 10 and 15 grams of diamorphine is to be considered *as culpable as* a person who traffics between 167 and 250 grams of methamphetamine. Doing the arithmetic, the culpability of an offender who traffics one gram of diamorphine is equivalent to the culpability of an identically-situated offender who traffics 16.7 grams of methamphetamine.

18 In the present case, the quantity of methamphetamine trafficked was 11.64 grams. That is not a large amount, as the District Judge himself noted (at [14] of the GD). Applying the conversion scale which I have indicated in the preceding paragraph, trafficking 11.64 grams of methamphetamine is an act of equivalent culpability to trafficking 0.70 grams of diamorphine. Returning to the indicative starting points in *Vasentha*, that quantity of diamorphine would fall within the *lower end* of the *lowest band* encompassing quantities under 3 grams. Had the appellant in this case been a first-time offender, the indicative starting point for trafficking 11.64 grams of methamphetamine would thus have been five to six years' imprisonment and five to six strokes of the cane.

Precedents involving first-time traffickers in methamphetamine

19 The Prosecution has brought to my attention two precedents in which first-time traffickers who dealt in similar quantities of methamphetamine were given sentences that exceeded this indicative starting point for the lowest band indicated in *Vasentha* by a substantial amount. To that extent these precedents might appear at first glance to be inconsistent with the indicative starting points in *Vasentha*. In *Public Prosecutor v Ng Kian Hoe* [2012] SGDC 364 ("*Ng Kian Hoe*"), the offender was sentenced to eight years' imprisonment and five strokes of the cane for trafficking 19.77 grams of methamphetamine. He appealed against sentence but I dismissed the appeal in January 2013. In *Seah*

Soon Huat William v Public Prosecutor [2001] SGDC 366 ("*Seah William*"), the offender was sentenced to eight years' imprisonment and six strokes of the cane for trafficking 20.69 grams of methamphetamine. He lodged an appeal but subsequently withdrew it.

20 In my view, *Ng Kian Hoe* and *Seah William* do not suggest that the indicative starting points suggested in *Vasentha* are inapplicable where the drug trafficked is methamphetamine and not diamorphine. On the premise that trafficking about 20 grams of methamphetamine is of equal culpability to trafficking 1.20 grams of diamorphine such that the indicative starting point is five to six years' imprisonment and five to six strokes of the cane, the circumstances of those two precedents disclose significant aggravating factors that provide ample justification for going well beyond that starting point. In *Ng Kian Hoe*, the key aggravating factor was that the offender "had an established pattern of procuring and selling his drugs" for profit and was not merely a "naïve or inexperienced dealer" (at [14]–[15]). In *Seah William*, the key aggravating factor was that the offender had "jumped bail" and failed to attend the mention at which he was to have pleaded guilty, and had committed his trafficking offence while on the run (at [15]).

21 That said, I should express reservations about observations that were made in these two precedents. In *Ng Kian Hoe*, the District Judge expressed the view that the quantity of methamphetamine trafficked – 19.77 grams – was "fairly high" (at [14]), and in *Seah William*, the District Judge opined that 20.69 grams of the drug was a "large" quantity (at [14]). With respect, I do not think the District Judges were quite correct to characterise the quantity of methamphetamine trafficked in that manner. Although 20 grams of methamphetamine is not an insignificant amount, it is not large either. As I have said, it would fall within the *lowest band* of indicative starting points mentioned in *Vasentha*, and it is in this context that the seriousness of trafficking that quantity of methamphetamine should be assessed.

The indicative starting point and aggravating factors in this case

22 Returning to the present case, I reiterate that, had the appellant been a first-time offender, the indicative starting point for trafficking 11.64 grams of methamphetamine would have been that for the lowest band pronounced in *Vasentha*, which is five to six years' imprisonment and five to six strokes of the cane. Given this position, I think that the indicative starting point for trafficking that quantity of methamphetamine for a repeat offender would be very close to the mandatory minimum of 10 years' imprisonment and 10 strokes of the cane stipulated by s 33(4A) of the MDA, if not the minimum itself.

23 Therefore, given the small quantity of methamphetamine trafficked by the appellant, there has to be good reason to impose a sentence that exceeds the mandatory minimum by a significant amount of six years' imprisonment and five strokes of the cane. The Prosecution in its submissions cited certain excerpts from the speech of Mr Teo Chee Hean, the Deputy Prime Minister and Minister for Home Affairs, in Parliament during the second reading of the Misuse of Drugs (Amendment) Bill (*Singapore Parliamentary Debates*, *Official Report* (12 November 2012) vol 89) in order to make the point that drug trafficking squarely engages the principle of general deterrence, particularly when the drug trafficked is methamphetamine:

> On the supply side, we are seeing greater quantities of methamphetamine and heroin being trafficked through Southeast Asia. This has worsened the regional drug situation, with a significant number of clandestine laboratories operating in East and Southeast Asia. …
>
> …

> Mr Speaker, Sir, the threat posed by organised drug syndicates is a very serious one. The global drug situation is worsening, with the number of drug users across the world increasing from 180 million to some 210 million over the last decade. Within our own region, the drug problem has become worse. Illicit drugs draw thousands of people every year into a web of addiction and despair. Their family members and the rest of society also pay a heavy price.
>
> Those who trade in illegal drugs are still attracted by the huge financial gains to be made, and deterring them requires the strictest enforcement coupled with the severest of penalties.
>
> We deal with the drug problem comprehensively by tackling both the demand and supply factors. On the demand side, we educate the young about the harmful effects of drugs, and impose severe penalties, including long-term sentences, on those who abuse drugs. …
>
> The measures in this Bill will send a strong deterrent message and enhance operational effectiveness of our enforcement agencies. They strengthen our ability to curb the demand for and the supply of drugs, in particular our ability to act against and deter those who target the young.

24 In my view, these broad and general statements in Parliament do not assist the Prosecution in the present case. At best, they explain why mandatory minimum sentences were thought to be necessary for repeat drug traffickers. I accept that general deterrence is a primary consideration in sentencing drug traffickers, and that is reflected in the minimum sentence that should be imposed for a repeat offender. But that hardly suggests that sentences for repeat drug trafficking should ordinarily or usually exceed the prescribed minimum by a substantial amount. On the contrary, Parliament must have considered that there would be cases of repeat drug trafficking that would warrant no more than 10 years' imprisonment and 10 strokes of the cane; obviously the discretion granted to the court is to enable the sentencing judge to impose an appropriate sentence having regard to the quantity of the drugs trafficked as well all the other pertinent circumstances.

25 Thus I reiterate that there has to be good reason on the facts of the instant case to justify the sentence of 16 years' imprisonment and 15 strokes of the cane on the trafficking charge. In my judgment, it is not good enough reason that the appellant is a repeat offender; that aggravating factor has, as indicated in the preceding paragraph, already been taken into account in the stipulation of a mandatory minimum sentence, and as Menon CJ warned in *Vasentha*, it "would not be appropriate to have regard to the offender's relevant antecedents *to the extent these have already been taken into account* in an enhanced sentencing regime" as that would constitute "double-counting" (at [55]).

26 The District Judge also thought that a stiffer sentence was warranted because the appellant stood to gain $1,350 in "profit" (at [15] of the GD). In the first place, I do not think that was indeed the extent of the appellant's profit – according to the Statement of Facts, the "agreed price was about" $1,350. The appellant says that, after deducting the cost of the drugs from the agreed price, his profit was no more than $150, and even if that is not the exact figure there is every reason to believe that the appellant's profit was much less than $1,350. The District Judge thus appears to have overstated the appellant's blameworthiness.

27 More fundamentally, where repeat traffickers are concerned, I do not think the fact that the offender stands to profit financially from drug trafficking or the fact that the offender appears to be more than a mere "courier" or pawn are significant aggravating factors. This is because, for the vast majority of repeat traffickers, the primary reason that they re-offend is probably a desire for financial gain. First-time traffickers, in contrast, are likely to have more diverse motivations in that many of

them may have been pressured by their peers into criminal activity or committed their offences unthinkingly in youthful folly, meaning that many of them might not have been drawn into their criminal activity by the prospect of profit such that it would be meaningful to distinguish between those who are profit-driven and those who are not. Also, repeat traffickers are by definition highly unlikely to be naïve and incidental participants in the drug trade. It is to be expected such repeat traffickers are in the business for the money either to feed their own drug addiction or to make money for some other purposes. Thus I consider that the fact of financial profit *per se* and the fact that the offender cannot be characterised as inexperienced and ignorant in the world of illicit drugs have already been taken into account as aggravating factors in the prescription of a mandatory minimum sentence, and it would generally be double-counting to consider them aggravating factors that warrant a further increase beyond that minimum. It may not be double-counting where a repeat trafficker's trade is unusually lucrative or where he is particularly experienced or established in the drug trade. Even so, it is likely that the quantity of drugs involved will be larger and that in turn will undoubtedly attract a higher sentence.

28 The District Judge also thought that another aggravating factor was that the drug trafficked by the appellant was a Class A drug (at [15] of the GD). In my view, however, the District Judge committed an error of double-counting. Given that s 33(4A) of the MDA prescribes different mandatory minimum sentences for Class A, B and C drugs, the fact that a Class A drug was trafficked has already been taken into account as an aggravating factor and should not be given additional weight. Although the Minister highlighted that greater quantities of methamphetamine (and heroin) were being trafficked in the excerpts from his speech in Parliament reproduced above (at [23]), I do not think that this suggests that higher sentences should be imposed for trafficking methamphetamine than for trafficking other Class A drugs. In the absence of specific provision in the MDA that trafficking methamphetamine should attract even higher sentences, I cannot read the Minister's comments as indicating that this drug should be singled out for special treatment. Taken at their highest, those comments merely explain the context and background against which the amendments to the MDA were proposed.

29 In my judgment, there is only one good reason for elevating the appellant's sentence beyond the indicative starting point – which is very close to or at the mandatory minimum of 10 years' imprisonment and 10 strokes of the cane – and it is the fact that he committed the offences while out on bail. It demonstrates a disregard for the law and a recalcitrance that calls for an increased sentence on principles of specific deterrence and prevention. But I do not think that this factor alone warrants a sharp increase of six years' imprisonment and five strokes of the cane from the minimum. I am therefore of the opinion that, for the trafficking charge, the sentence of 16 years' imprisonment and 15 strokes of the cane imposed on the appellant by the District Judge was manifestly excessive. In my view, 12 years' imprisonment, two years more than the prescribed minimum, and 10 strokes of the cane would be an appropriate sentence.

Precedents involving repeat traffickers

30 The sentence of 12 years' imprisonment and 10 strokes of the cane is not out of line with precedents. In *Public Prosecutor v Muhammad Raffie Bin Saide* [2015] SGDC 115 ("*Muhammad Raffie*"), a case from the State Courts, the offender was a repeat trafficker who was sentenced to 12 years' imprisonment and 10 strokes of the cane on a trafficking charge under s 33(4A) of the MDA. That case involved 9.01 grams of diamorphine, a much larger amount of drugs than in this case. But this was thought to warrant an increase of just two years' imprisonment from the mandatory minimum, and the prosecution did not lodge an appeal against sentence. An identical sentence of 12 years' imprisonment and 10 strokes of the cane in this case would not, by comparison, be at all inadequate. I should add that in light of the sentences imposed on the offender in *Muhammad Raffie* on account

of other drug related charges brought against him, he received a global sentence of 14 years' imprisonment and 24 strokes of the cane.

31 Another precedent is *Public Prosecutor v Tan Thiam Eng* [2014] SGDC 430 ("*Tan Thiam Eng*"). The offender there was convicted after trial of trafficking 8.59 grams of ketamine, a Class A drug, and since he had trafficking antecedents he was liable to the mandatory minimum of 10 years' imprisonment and 10 strokes of the cane. He was sentenced to 10 years and nine months' imprisonment and 10 strokes of the cane on this charge, and as he also pleaded guilty to three other drug-related charges, his total sentence was 12 years and nine months' imprisonment and 10 strokes of the cane. The offender's appeal against sentence in Magistrate's Appeal No 156 of 2014 was dismissed on 16 January 2015.

32 In imposing sentence, the trial judge in *Tan Thiam Eng* took into account the offender's egregious behaviour in conducting his defence at trial: he observed that the offender had "cast baseless aspersions" against prosecution witnesses and had "wasted Court and Prosecution's time in protracting the case", unequivocally demonstrating that he was "not remorseful" (at [40] of the trial judge's decision). The trial judge went so far as to say that the offender was "toying with the system" (at [41]). Despite these strong criticisms of the offender's conduct, the trial judge thought fit to exceed the minimum sentence for the trafficking charge by just nine months' imprisonment. This suggests that it would not be inadequate in the present case to add two years' imprisonment to the mandatory minimum.

33 The final precedent is *Public Prosecutor v Mohammed Shahdat Bin Mohd Kemarudin* [2012] SGDC 312 ("*Mohammed Shahdat*"), which the Prosecution brought to my notice. The offender was a repeat trafficker who trafficked 18.92 grams of methamphetamine, which is not much more than the quantity trafficked in the instant case; this offender had not merely one but two trafficking antecedents, for which he had been sentenced in 1988 to a stint of three years' duration in a juvenile home and in 1994 to 10 years' imprisonment and 10 strokes of the cane (at [9]). For his latest trafficking offence he was sentenced to 13 years' imprisonment and 13 strokes of the cane. His appeal to the High Court was dismissed. This case was disposed of before the mandatory minimum sentences for repeat traffickers prescribed in s 33(4A) of the MDA came into effect in May 2013, but in my judgment the sentence imposed there would have been appropriate within the current regime of enhanced punishments.

34 I should mention that in *Mohammed Shahdat* the offender had numerous previous convictions, not only for drug-related offences but also for robbery and a sexual offence. The District Judge thought that it was right to impose 13 years' imprisonment and 13 strokes of the cane in view of the "persistent pattern of reoffending" and the fact that the offender had committed his most recent set of offences "soon after release from custody" (at [20]). Although the appellant in the present case has exhibited a degree of recalcitrance, his re-offending is not as protracted and pronounced as that of the offender in this precedent, and accordingly I do not think it would be wrong to impose a lower sentence of 12 years' imprisonment and 10 strokes of the cane in the present case.

Relevance of the sentences imposed in respect of the appellant's antecedents

35 It seems that an important reason why the District Judge thought a sentence of 16 years' imprisonment and 15 strokes of the cane was warranted was that the sentence for this trafficking charge ought to be more severe than the sentence imposed on the appellant for his previous trafficking charges in 1997, which was 14 years' imprisonment and 12 strokes of the cane on each charge (see [16] of the GD). To the extent that this suggests that the sentence for a repeat trafficking charge must *necessarily or categorically* be higher than the sentence for a prior trafficking

charge, it is wrong in principle. The specific circumstances of the charges cannot be disregarded, and it is not difficult to envisage situations in which an offender would be less culpable on the subsequent occasion than on the earlier one, *eg*, where the quantity of drugs trafficked on the subsequent occasion was significantly smaller than that trafficked on the earlier occasion.

36 Here, the amounts of drugs trafficked in respect of the 1997 charges were very much more substantial than the amount trafficked in respect of the present charge. As to the 1997 charges, 297.2 grams of cannabis and 623.2 grams of cannabis mixture were trafficked. The Second Schedule of the MDA prescribes a minimum sentence of 20 years' imprisonment and 15 strokes of the cane for trafficking between 330 and 500 grams of cannabis and between 660 and 1,000 grams of cannabis mixture; the quantities of cannabis and cannabis mixture trafficked by the appellant on that earlier occasion thus came fairly close to the threshold beyond which a very hefty minimum sentence would have to be imposed. What this goes to show is that the 1997 charges concerned a large amount of drugs. The present trafficking charge, on the other hand, pertains to 11.64 grams of methamphetamine, and that, as I have endeavoured to show, is a relatively small amount. As I have endeavoured to show at [13] to [18] above, the quantum of the drugs trafficked is a weighty factor in determining the severity of the punishment.

Conclusion on the trafficking charge

37 Seen in this light, it is a wholly acceptable outcome if the sentence for the present trafficking charge is less severe than the sentence imposed for each of the 1997 trafficking charges. I see no impediment so far to the course of action I am inclined to take, which is to reduce the sentence for the present trafficking charge to 12 years' imprisonment and 10 strokes of the cane.

The total sentence

38 The District Judge decided that the sentence for the trafficking charge should run consecutively with the sentence for one of the possession charges. But since I am minded to reduce the sentence for the trafficking charge to 12 years' imprisonment and 10 strokes of the cane, the question then is whether it is appropriate to order that this reduced sentence run consecutively with the sentence for the consumption charge instead, which is five years' imprisonment and three strokes of the cane. That would result in a total sentence of 17 years' imprisonment and 13 strokes of the cane, not far off from the total sentence of 17 years and three months' imprisonment and 18 strokes of the cane imposed by the District Judge.

39 In my judgment, it would not be right to order that the sentences for the trafficking and consumption charges run consecutively. The reason is that both the charges attracted mandatory minimum sentences due to the appellant's antecedents. Running the sentences consecutively would be tantamount to "double-whammy" of an aggravating factor – the appellant's re-offending. Accordingly, the sentence for the trafficking charge should run consecutively with the sentence for one of the possession charges, as the District Judge ordered.

40 This would make the total sentence 13 years and three months' imprisonment and 13 strokes of the cane. I consider this an appropriate sentence taking into account the appellant's overall criminality as manifested in the four charges proceeded with and the nine taken into consideration. No doubt it is less than the total sentence imposed on the appellant in respect of the 1997 charges, which was 15 years' imprisonment and 24 strokes of the cane. But I see no reason why that is wrong in principle – there is no reason why the total sentence imposed when an offender has re-offended should necessarily or categorically be higher than the sentence imposed for his previous convictions. It must necessarily depend on the circumstances. And given that the appellant's 1997 offences

involved a much larger quantity of drugs, I see no difficulty if the total sentence imposed on the appellant now is lower than that imposed on him in 1997.

41 Instead, a global sentence of 13 years and three months' imprisonment and 13 strokes of the cane appears to be appropriate given that the offender in *Muhammad Raffie* received a global sentence that was not a great deal higher than what I propose to impose on the appellant in this case. This is even though the offender in *Muhammad Raffie* can be considered to be substantially more culpable overall than the appellant in this case. I consider that the offender in *Muhammad Raffie* was more culpable because he faced roughly the same number of charges which were broadly of a similar nature to the ones in the present case, except that the trafficking charges in *Muhammad Raffie* concerned a much larger quantity of drugs than in the present case – the offender there had trafficked a total of 9.03 grams of diamorphine. If 14 years' imprisonment and 24 strokes of the cane was not thought to be inadequate in *Muhammad Raffie*, I do not think that 13 years and three months' imprisonment and 13 strokes of the cane can be considered insufficient in the present case.

Conclusion

42 I therefore allow the appeal and reduce the sentence on the trafficking charge from 16 years' imprisonment and 15 strokes of the cane to 12 years' imprisonment and 10 strokes of the cane. The total sentence is accordingly reduced from 17 years and three months' imprisonment and 18 strokes of the cane to 13 years and three months' imprisonment and 13 strokes of the cane.