Dinesh Singh Bhatia s/o Amarjeet Singh v Public Prosecutor
[2005] SGHC 63

Case Number : MA 10/2005

Decision Date : 05 April 2005

Tribunal/Court : High Court

Coram : V K Rajah J

Counsel Name(s) : K Shanmugam SC and Ganga Avadiar (Allen and Gledhill) for the appellant; Han Ming Kuang (Deputy Public Prosecutor) for the respondent

Parties : Dinesh Singh Bhatia s/o Amarjeet Singh — Public Prosecutor

Criminal Procedure and Sentencing – Sentencing – Benchmark sentences – Appropriate application of benchmark sentences – Whether fine appropriate sentence for offence of consumption of cocaine – Section 8(b), Schedule A Misuse of Drugs Act (Cap 185, 1998 Rev Ed)

Criminal Procedure and Sentencing – Sentencing – Principles – Whether district judge failing to attach adequate weight to mitigating factors – Whether sentence taking into account specific facts and circumstances of offence and offender – Whether sentence imposed manifestly excessive

5 April 2005

V K Rajah J:

1 On 19 January 2005, appearing before a district court, Dinesh Singh Bhatia s/o Amarjeet Singh ("the Appellant"), 35 years of age, pleaded guilty to a charge of consumption of a Class A controlled drug, "Benzoylecgonine", on 7 October 2004 in Singapore. This drug is more commonly known as cocaine. He also admitted committing another offence of consumption relating to yet another Class A controlled drug, "a-Methyl-3, 4-(methylenedioxy) penethylamine", on the same occasion. The Appellant consented to have the second charge taken into consideration for the purposes of sentencing.

2 On 1 February 2005, the Appellant was sentenced to 12 months' imprisonment by the district court. He now appeals against that sentence. Counsel for the Appellant, Mr K Shanmugam SC, contends that in the light of the Appellant's background and his solitary act of drug consumption, only a fine should have been imposed on the Appellant. The sentence of 12 months' imprisonment, it is argued, is manifestly excessive. The Prosecution, however, maintains that the district judge correctly applied the current sentencing guidelines and that his decision should not be disturbed.

Factual matrix

3 Mariana bte Abdullah ("Mariana") was the Appellant's girlfriend for about 15 months, from September 2000 until the beginning of 2002. At that point, soon after the Appellant's business venture failed, they ended their relationship, parting as friends.

4 Subsequently, Mariana began a relationship with Guiga Lyes Ben Laroussi ("Laroussi").

5 In or around February 2002, the Appellant met Katarina, who later became his fiancée. In June 2004, their daughter was born. Around the third week of August 2004, the Appellant and Katarina brought their baby daughter to Sweden for a holiday to visit Katarina's family, also seeking their blessing for the couple to get married. They had planned to get married shortly thereafter. Katarina decided to remain in Sweden a little longer to allow her parents to spend more time with the baby, while the Appellant returned to work in Singapore on or about 17 September 2004.

6 Even after the Appellant met Katarina, he and Mariana continued to keep in touch with each other through phone calls from time to time. It bears mention that prior to the incident on 7 October 2004, the Appellant had no knowledge or reason to believe that Laroussi was trafficking drugs or that he had introduced drugs to Mariana. On 20 September 2004, Mariana called the Appellant on his mobile phone and suggested that they meet. The Appellant agreed to do so when it was convenient. This telephone call was the precursor to a series of unfortunate events precipitating the charges on which the Appellant has now been convicted.

7 On the night of 6 October 2004, at some point after 9.00pm, the Appellant received an invitation to join friends at a club in Havelock Road for drinks. Without consuming any dinner, he joined his friends at around 10.00pm. The Appellant then consumed a few glasses of whiskey mixed with Coca-Cola between approximately 10.00pm and 1.00am.

8 At about 1.00am on 7 October 2004, as the Appellant and his friends were about to leave the club, he called Mariana on her mobile phone number. Laroussi answered the call. The Appellant enquired about Mariana. Laroussi informed him that Mariana was with him and that they were staying at Hotel 81 at Balestier Road ("the hotel"). Laroussi then invited the Appellant to join them for a drink.

9 The Appellant accepted the invitation to meet them at the hotel. On the way to the hotel, the Appellant received a call from Laroussi. He informed the Appellant that they were short of beer and requested that the Appellant obtain some from a "7-Eleven" store near the hotel. The Appellant duly stopped at the "7-Eleven" store and bought a pack (six cans) of cold beer.

10 It is pertinent to mention at this juncture that the Prosecution does not challenge the Appellant's evidence that he did *not* go to the hotel with the intention of consuming drugs.

11 The threesome drank beer and chatted. This consisted generally of small talk, the details of which the Appellant does not now recollect save that Mariana enquired about his daughter and his recent trip to Sweden. The Appellant also remembers asking Mariana and Laroussi if they would be getting married. The Appellant consumed two cans of beer with them and stayed for over an hour.

12 Towards the end of the visit, the Appellant recalls, Laroussi suddenly offered him some drugs. This offer was entirely unsolicited. Laroussi intimated that the Appellant was looking tired and asked him to take the drugs, as they would make him "feel good". The Appellant impulsively consumed some of the drugs he was offered. Shortly afterwards, he headed home. The amount of drugs he had consumed apparently did not impair his ability to find his way back home. He does not recall either Laroussi or Mariana consuming any substance in his presence during his visit.

13 At about 5.00pm on 7 October 2004, the Appellant was arrested at his residence by officers from the Central Narcotics Bureau. Laroussi has been charged with drug trafficking but he subsequently absconded while on bail. Mariana has recently been convicted for the consumption of drugs. A number of others who also obtained cocaine from Laroussi have been charged similarly and convicted for the consumption of cocaine. In this judgment, I refer to these cases collectively as the "Laroussi cluster of cases"; see [43] to [51].

Cocaine – the "most lethal drug of the 1980s"

14 An article published in the May 1985 issue of *Criminal Law Review* (see Patrick Bucknell, "Notes on Some Controlled Drugs" [1985] Crim LR 260 at 265), contains some pertinent and instructive observations on the usage of cocaine and its detrimental effects:

> Cocaine is usually used in the form of cocaine hydrochloride. A natural alkaloid extracted from leaves of the coca shrub grown in Bolivia, Peru and Columbia, taking the form of a white powder looking like fresh snow. Cultivation and [manufacture] has increased dramatically in the last decade. The Indians living and working at high altitudes traditionally chewed the leaves to enable them to work for longer periods without food or rest. In 1858 a process was discovered for extracting the alkaloid. …
>
> *Effect* — potentiates adrenaline; a small quantity induces happiness and an abundance of energy. The appetite is depressed. It is said to act as a sexual stimulant. Large doses induce excessive self-confidence and hallucinations. The effect lasts one to two hours and is followed by depression. It causes psychic dependence but does not lead to withdrawal symptoms. (Cocaine can be used as a surface anaesthetic). *Cocaine acts by preventing the removal of adrenalin from its site of action. Blood pressure is raised and the action of the heart may become irregular – which is why injections and "freebasing" can be fatal.*
>
> *Prolonged ingestion by sniffing is said to damage the nasal tissues. Abuse has been said to lead to sleeplessness, mental disturbance, stomach disorder and emaciation. Regular users complain of a feeling as if insects were creeping below their skin*.
>
> …
>
> Cocaine is occasionally mixed with heroin to produce a "speedball" for intravenous injection in which the subject enjoys the euphoria induced by heroin without the narcotic effect.
>
> [emphasis added]

15 In *R v Martinez*, *The Times* 24 November 1984, Lord Lane CJ made certain trenchant observations on the usage of cocaine:

> Some of the different ways of taking cocaine were more dangerous than others. They could result in an enormous craving for the drug and the addict tended to become compulsive and less able to control the amounts of the drug used. *In addition to the psychological dependency resulting from the drug there was no doubt that its abuse resulted in a very serious physical addiction.*
>
> Withdrawal symptoms were commonplace. It could also cause psychosis in the shape of a feeling of persecution, which might have extremely dangerous consequences. *One expert had stated "the bad or dangerous effects make cocaine potentially the most lethal drug of the 1980s"*.
>
> [emphasis added]

16 In the light of cocaine's severely pernicious effects and the lethal nature of its addictive potency, the courts in England and Hong Kong in the 1980s unhesitatingly assigned cocaine-related offences "to the upper hard end of the scale"; see *Attorney General v Leung Pang-chiu* [1986] HKLR 608 at 611 (Hong Kong Court of Appeal); and also *R v Atkins* (1981) 3 Cr App R (S) 257, *R v Ross* (1981) 3 Cr App R (S) 291 and *R v Davies* [1983] Crim LR 46 (all decisions of the English Court of Criminal Appeal).

17 There can be no doubt that while the reported abuse of cocaine in Singapore to date indicates that the Laroussi cluster of cases (see [43] to [51]) is a new development rather than part of an established pattern, its usage cannot be countenanced or tolerated in any measure

whatsoever. Other jurisdictions have come down hard on its consumption and for good reason – its potency and addictive allure have caused untold misery. It is noteworthy that the Hong Kong Court of Appeal in 1986, *per* Cons JA in *Attorney General v Leung Pang-chiu* at 611, pointedly declared:

> 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.

18 The need for deterrent sentencing in connection with cocaine-related offences is both axiomatic and compelling. A permissive culture of cocaine consumption cannot be allowed to take root in Singapore. Any existing consumers of cocaine must be uncompromisingly weeded out and adequately punished. It follows that cocaine-related offences must invariably attract a custodial sentence. A mere fine would be wholly inappropriate even for first-time offenders. It might even lead unduly to the disquieting perception that the well heeled can barter their way out of a prison sentence. The Prosecution has rightly pointed out that it "is clear from … this cocaine bust [ie, the Laroussi cluster of cases], the offenders move in high society and are sophisticated, highly educated, well connected, cultured and wealthy".

19 Cocaine is widely viewed as a "high society" drug and can potentially be even more dangerous than heroin. In sentencing cocaine offenders the unequivocal message of deterrence incontrovertibly overrides all the other usual sentencing considerations. The Laroussi cluster of cases seems to distinctly indicate that cocaine users are mature, intelligent, worldly-wise and financially well-off individuals – in short, the financially privileged. A mere financial rap on the knuckles would therefore be wholly inadequate and ineffectual in deterring similar violations by similarly placed individuals.

20 The courts will not want to usually make any arbitrary distinction between drugs which figure in the same class within Schedule A to the Misuse of Drugs Act (Cap 185, 1998 Rev Ed) (see *Ooi Joo Keong v PP* [1997] 2 SLR 68 ("*Ooi*'s case") at [14]). Nonetheless, given the lethal attributes of cocaine, the special niche of high-society consumers it attracts and the fact that it seems to have just found its way to our shores, deterrent measures are ineluctably called for so as to single it out and to nip its spread in the bud.

Reliance on benchmarks and tariffs in sentencing

21 In *Wan Kim Hock v PP* [2003] 1 SLR 410 at [28], Yong Pung How CJ declared:

> The process of sentencing is a matter of law that involves manifold factors such that no two cases would ever be totally identical for the purposes of sentencing. *Thus, while past cases are clearly helpful in providing guidelines for the court, that is all that they are, mere guidelines. In sentencing the offender, the court must look to each case on its unique facts*. [emphasis added]

In the case of *Viswanathan Ramachandran v PP* [2003] 3 SLR 435 at [43], the Chief Justice reiterated:

> It is clear that any precedent cases can always be distinguishable on the facts. Despite all this, precedent cases are useful in serving as guidelines for the sentencing court. *However, that is all that they are: guidelines. At the end of the day, every case turns on its own facts. The sentencing court must look to the facts of each case and decide on an appropriate sentence based on those facts*. [emphasis added]

22 This brief overview of the relevance of tariffs and sentencing precedents would not be

complete unless I also include a reference to the decision of *Abu Syeed Chowdhury v PP* [2002] 1 SLR 301 where the Chief Justice, with his usual acuity, explained the role of sentencing benchmarks at [15]:

> … A 'benchmark' is a sentencing norm prevailing on the mind of every judge, ensuring consistency and therefore fairness in a criminal justice system. It is not cast in stone, nor does it represent an abdication of the judicial prerogative to tailor criminal sanctions to the individual offender. *It instead provides the focal point against which sentences in subsequent cases, with differing degrees of criminal culpability, can be accurately determined*. A good 'benchmark' decision therefore lays down carefully the parameters of its reasoning in order to allow future judges to determine what falls within the scope of the 'norm', and what exceptional situations justify departure from it. [emphasis added]

23 I also find the following passage from D A Thomas's *locus classicus*, *Principles of Sentencing* (Heinemann, 2nd Ed, 1979) at p 29 instructive:

> The use in the context of sentencing of the term "tariff", although at least a century old, is unfortunate. *The expression suggests a process of relating penalties to offences by the application of an inflexible scale and without consideration of the circumstances of the individual offender. Neither implication is true of the complex body of principles which has evolved to guide the sentencer in calculating the length of a sentence of imprisonment*. The principles of the tariff constitute a framework by reference to which the sentencer can determine what factors in a particular case are relevant to his decision and what weight should be attached to each of them. *Properly used, they offer a basis for maintaining consistency in the sentencing of different offenders, while observing relevant distinctions, making appropriate allowances for individual factors and preserving adequate scope for the exercise of judicial discretion*. [emphasis added]

24 The circumstances of each case are of paramount importance in determining the appropriate sentence. Benchmarks and/or tariffs (these terms are used interchangeably in this judgment) have significance, standing and value as judicial tools so as to help achieve a certain degree of consistency and rationality in our sentencing practices. They provide the vital frame of reference upon which rational and consistent sentencing decisions can be based. They ought not, however, to be applied rigidly or religiously. No two cases can or will ever be completely identical or symmetrical. The lower courts, while obliged to pay careful and thoughtful attention to tariffs and/or sentencing precedents, must not place them on an altar and obsessively worship them. The judicial prerogative to depart in a reasoned and measured manner from sentencing and precedent guidelines in appropriate cases should not be lightly shrugged off. Sentencing is neither a science nor an administrative exercise. Sentences cannot be determined with mathematical certainty. Nor should they be arbitrary. The sentence must fit the crime. Every sentence reflects a complex amalgam of numerous and various factors and imponderables and requires the very careful evaluation of matters such as public interest, the nature and circumstances of the offence and the identity of the offender. Most crucially, it calls for the embodiment of individualised justice. This in turn warrants the application of sound discretion. General benchmarks, while highly significant, should not by their very definition be viewed as binding or fossilised judicial rules, inducing a mechanical application.

Sentencing guidelines in Singapore for consumption of Class A drugs

25 The first offence of consumption under ss 8(b)(i) and 8(b)(ii) of the MDA entails a maximum term of imprisonment of ten years or a fine of $20,000 or both. No minimum sentences are legislatively prescribed for first offenders. The second or subsequent offences under s 8(b)(i) of the MDA carry a minimum mandatory term of three years' imprisonment. The maximum term, however, remains at ten

years.

26 A helpful summary of sentencing precedents in this area can be found in *Sentencing Practice in the Subordinate Courts* (Lexis Nexis, 2nd Ed, 2003) at p 691:

> The courts have always viewed the consumption of controlled drugs of any kind as a very serious offence. Prior to the guideline decision of Chief Justice Yong Pung How in *Ooi Joo Keong v PP* [1997] 2 SLR 68 handed down on 5 December 1996, a heavy fine or a short term of imprisonment up to three months was normally imposed on first offenders*. However, since the said decision, stiff custodial sentences have been the norm for first offenders. The said guideline case, which involved the consumption of ecstasy, sets the sentencing tariff for a first offender [at] between 12 to 18 months' imprisonment.* Shortly thereafter, in *PP v Mohd Tahir bin Kadir* (DAC 16119 & 16120/97) which involved the consumption of methamphetamine, popularly known as 'ice', the Senior District Judge adopted the said tariff. He added that the sentence should be close to the upper end of the tariff since "ice" is more addictive and more readily available.
>
> *After the said two cases, the clear sentencing pattern that emerges for offences involving the consumption of Class A drugs like diamorphine, morphine, ecstasy, 'ice' and cannabis is the imposition of imprisonment terms ranging from 12 months to 18 months*. The rationale of this is as stated by Chief Justice Yong in the said guideline case, namely, 'It is generally not for the courts to determine the relative dangers of various drugs, especially where Parliament has, no doubt with expert advice, deemed it proper or even necessary to classify the drug as belonging to a class which can be described as the most dangerous.'
>
> However, in three cases thereafter, *Ng Kheng Tiak v PP* (MA 248/97/01); *Muhammad Razali bin Ishak v PP* (MA 56/98/01); *Pililis Nikiforos v PP* (MA 198/99/01), sentences of imprisonment imposed by District Courts were set aside on appeal and a fine of $20,000 substituted in the first case, an order of probation in the second case and a fine of $5,000 in the third case. *These three decisions stand by themselves*. As no written grounds were delivered by the High Court in these cases*,* it can only be surmised that whilst deterrence is the primary focus in sentencing, a non-custodial sentence should be imposed where it would be the most productive disposition for the rehabilitation of the offender*. In another case, Yap Boon Tiong v PP (MA 349/96/01), an 18-year-old student who pleaded guilty to consumption of ecstasy was fined $5,000. On appeal by the Public Prosecutor against the inadequacy of the sentence, the High Court departed from the tariff and imposed a term of six months' imprisonment*.
>
> [emphasis added]

The decision of the district judge

27 The district judge held ([2005] SGDC 31 at [3]):

> An offence under s.8(b)(i) of the Misuse of Drugs Act is punishable with a maximum fine of $20,000 or imprisonment for 10 years or both. Imprisonment is not mandatory and a court can in appropriate circumstances impose a fine. However, for consumption of Class A drugs, courts in Singapore have (ever since benchmark sentences of 12 months to 18 months proposed by the Senior District Judge and affirmed by the Honourable the Chief Justice in the case of *Ooi Joo Keong v. P.P. [1997] 2 SLR 68)* unless there were circumstances warranting a departure from the norm, *always been imposing sentences in line with the proposed benchmarks*. [emphasis added]

28 As the decision in *Ooi*'s case appears to be the genesis of the present sentencing benchmark

for first-time offenders of Class A (*ie* Class A of the First Schedule of the MDA) drug consumption, it is important to carefully scrutinise and evaluate the facts of that case. I turn first to the decision at first instance.

29 That case was the first instance in which the District Court had considered full submissions from counsel in assessing the proper sentencing approach for the offence of consumption of the drug known as "ecstasy", a drug falling within the rubric of Class A. The appellant in that case had a deeply disturbing catalogue of variegated antecedents. He was charged with having committed an offence of consumption under s 8(b) of the MDA. The Senior District Judge in his Grounds of Decision ([1996] SGMC 1) highlighted at [39] that:

> The Court accordingly, took into account the Appellant's antecedents. He had a previous conviction for an offence of a similar nature as well for dissimilar offences. He had been convicted for possession of a controlled drug in 1991 and had been sentenced to 2 months' imprisonment. It was certainly inappropriate to impose a 1 to 2-week's imprisonment on the Appellant as urged by his learned Defence Counsel. Including this offence, the Appellant, since 1989 to 1996, had been convicted or had admitted to 16 offences, namely:
>
> 1 offence of armed robbery,
>
> 1 offence of criminal intimidation
>
> 2 offences of touting
>
> 4 offences of criminal trespass
>
> 6 offences of having carnal connection with a girl under 14 years of age
>
> 1 offence for voluntarily causing hurt to deter a public servant.
>
> 1 offence for possession of drug.

30 In considering the appropriate tariff to apply in that case the Senior District Judge declared at [46]:

> It was the Court's view that *the tariff in the instant case* should be not less than 12 months' imprisonment. In considering the tariff, the Court recognised that the Appellant had pleaded guilty at the first opportunity and that this was the first case in which the Court heard submissions on the sentencing approach to a consumption of ecstasy offence. *A range from 12 months' imprisonment to 18 months' imprisonment, given the above sentencing principles and antecedents like that of the Appellant would have been an appropriate sentence*. The tariff was proscribed [*sic*] by the fact that the Court was sitting as a Magistrate's Court and could only exercise the attributed powers, namely maximum fine of $2,000 or 2 years' imprisonment or both. [emphasis added]

31 It is as plain as a pikestaff that the Senior District Judge in that case was addressing the appropriate tariff for, *inter alia* , individuals with "antecedents like that of the Appellant".

32 In fact, on appeal, the Chief Justice himself clearly stated and affirmed in his judgment at [8], [16] and [18]:

> As regards the argument that the appellant was a first time abuser of the drug and that the drug

was relatively new in Singapore so that the appellant did not know of the effects of the drugs, I did not find this argument persuasive. *It might have carried some weight had the accused been a first time offender. However, the appellant was hardly a babe in the woods. His antecedents spoke for themselves* …

It is true that other offenders caught at about the same time as the appellant had gotten away with much lesser sentences. Consistency in sentencing is of course desirable. However, the court need not and should not be fettered by sentences passed by other courts when it is its view that the previous sentences were manifestly or even woefully inadequate. …

Given the appellant's antecedents, including a similar offence for possession of drugs (the appellant says cannabis), the sentence of 12 months' imprisonment is not manifestly excessive. …

[emphasis added]

33 In the instant scenario, the Prosecution nonetheless submits that the Chief Justice, in upholding the tariff adverted to by the Senior District Judge, signalled that this tariff was to henceforth apply to all Class A offences under s 8(b) of the MDA. It relies on the following passage from the judgment of the Chief Justice at [19]:

For these reasons, I was of the view that the sentence was not excessive, much less manifestly excessive. *The tariff of 12 to 18 months' imprisonment for a first offender suggested by the senior district judge is more appropriate*. To that extent, the appellant was lucky that his was the first case in which detailed submissions were made on sentencing for the offence of consuming Ecstasy. Accordingly I dismissed the appeal. [emphasis added]

34 The District Court in the instant case and the editors of *Sentencing Practice in the Subordinate Courts* have similarly chosen to construe this passage as a virtual *edict* that such a sentencing tariff must be applied "*unequivocally*" to all first-time Class A consumption offences. I do not think this is correct. First of all, it appears to me that the Chief Justice had gone no further than approve in a general manner the tariff that had been postulated by the Senior District Judge in that case (see [30] above). The latter, on a plain reading, does not appear to have suggested an immutable tariff for all first-time offenders. It is plain that the *context* of the case in question, relating as it does to the actual facts and circumstances therein, must also be taken into account. This leads to a second and more crucial point. Subsequent to *Ooi*'s case, the High Court had on several occasions taken the view that the sentence should be tailored to the circumstances of the case and the offender, even in the case of Class A offenders. The Chief Justice himself did not apply this "tariff" in three subsequent cases involving Class A drug consumption offenders. Indeed, as the editors of *Sentencing Practice in the Subordinate Courts* have themselves pointed out (see [26] above):

However, in three cases thereafter, *Ng Kheng Tiak v PP* (MA 248/97/01); *Muhammad Razali bin Ishak v PP* (MA 56/98/01); *Pililis Nikiforos v PP* (MA/198/99/01), sentences of imprisonment imposed by District Courts were set aside on appeal and a fine of $20,000 substituted in the first case, an order of probation in the second case and a fine of $5,000 in the third case. *These three decisions stand by themselves*. [emphasis added]

35 In addition, there is the further decision of *Yap Boon Tiong v PP* (Magistrate's Appeal No 349 of 1996) ("*Yap*'s case") where an 18-year-old student who had been fined $5,000 for the consumption of ecstasy, was on an appeal by the Prosecution, sentenced by the High Court to six

months' imprisonment (see [26] above).

36 The editors of *Sentencing Practice in the Subordinate Courts* conclude, rather abruptly, that these three cases "stand by themselves". No genuine or reasoned attempt was made to rationalise these post-*Ooi*'s case decisions. This perhaps explains why the district judge in this case may have felt constrained to apply the tariff as the starting point for sentencing in the present case, regardless of its own particular circumstances.

37 In my view the three *subsequent* decisions of the Chief Justice ought not to be cursorily treated as unfounded aberrations or lightly dismissed as stand-alone cases. On the contrary, they should be interpreted as a stark and valuable reminder to the lower courts not to apply benchmarks or tariffs willy-nilly irrespective of the circumstances of the case. It bears emphasis that not one of these four cases (including *Yap*'s case decided earlier) applied the purportedly rigid tariff of 12 to 18 months. It is fundamental that the lower courts assiduously apply this salutary exhortation by the Chief Justice in *Soong Hee Sin v PP* [2001] 2 SLR 253 at [12]:

> At the end of the day, every case which comes before the courts must be looked at on its own facts, each particular accused in his own circumstances …

38 It is axiomatic that the High Court, while taking a very serious view of Class A drug offences, has not rigidly or unfailingly imposed the purported benchmark custodial sentence as a mandatory starting point in punishing all first-time offenders. While the Senior District Judge again adverted to a blanket tariff of 12 to 18 months in *PP v Mohd Tahir bin Kadir* (District Arrest Cases Nos 16119 and 16120 of 1997), a case involving another first-time offender, he unfortunately did not or could not reconcile the disparate sentences that had already been meted out by the various courts since *Ooi*'s case. In my view, while it is clearly desirable to have clear sentencing guidelines in this difficult and knotty area of sentencing, it would serve no real public interest to adopt a calcified and rigid approach in establishing precise and unwavering sentencing benchmarks. What started off as an approval by the Chief Justice of a general guideline appears to have now evolved, in the subordinate courts, into a proverbial Procrustean bed. I would prefer to apply a more measured and textured approach – one that permits adequate consideration to be accorded to genuine mitigating circumstances. It appears from the summary of cases adverted to earlier that the range of sentences for imprisonment starts at six months (*Yap*'s case, for a young 18-year-old offender) and extends right up to 18 months for a first-time offender. I consider this to be an appropriate spectrum.

39 Adopting this wider spectrum of sentencing options for first-time offenders will allow adequate regard to be duly given to the many imponderables involved when such offences are committed, such as: What was the amount of drug(s) consumed (though admittedly evidence related to this may not invariably be reliable depending on how soon after the consumption of a drug the urine sample was taken); what was the occasion that led to the act of consumption; was it planned or incidental to some other event; were there several others simultaneously consuming drugs; was any payment involved; is the accused a first-time drug consumer, a casual consumer or an addict? While this is by no means a comprehensive or exhaustive list, it is intended to highlight some of the thought processes a sentencing judge should apply when determining the appropriate custodial sentence for drug consumption offences. Given that not all offences of consumption are the same, it follows that *not all acts of consumption ought to be punished identically with a rigid, immutable starting point that constitutes an end by itself*. It would be appropriate to provide a wider scale of calibration when grading different offending acts of consumption for the purpose of sentencing. While all consumption offences will almost inevitably attract a custodial sentence, it would not be correct to visit upon a first-time consumer precisely the same sentence that is meted out to an addict or even a casual user for that matter.

Fines

40 In what circumstances can a fine be imposed on a Class A drug consumer in lieu of a sentence of imprisonment? The case of *Pililis Nikiforos v PP* [1999] SGDC 2, a post-*Ooi*'s case decision, provides some, albeit tangential, guidance. The accused was 20 years old and it was undisputed that the act of consumption was a one-off incident inspired by curiosity. The accused was initially sentenced to a term of eight months' imprisonment. On appeal, the Chief Justice set aside the sentence and substituted it with a fine of $5,000. While no grounds of decision were given, it may be surmised that a fine may be imposed in very limited instances where a young offender with no antecedents is involved. It must also be pointed out that the drug involved in that case was morphine – a prohibited Class A drug which from time to time is used for medical purposes to alleviate pain. Youth and immaturity, while never a completely exculpatory factor, may therefore in exceptional cases warrant a less rigorous sentencing treatment than that meted out to a mature adult in similar circumstances.

41 Needless to say, the imposition of a mere fine cannot be the invariable practice for all young offenders: see *PP v Nurhidayah binte Abdullah* (Magistrate's Appeal No 281 of 2002), where a 17-year-old female received 12 months' imprisonment; *Edward Arifianto v PP* (Magistrate's Appeal No 298 of 1998) where a 16-year-old male who committed a number of drug-related offences received, *inter alia*, a 12-month sentence of imprisonment for a Class A drug consumption offence. To adopt such a practice could encourage a climate of permissiveness among students and younger persons, especially the well heeled, who might then imagine they can "buy their way out" of drug offences. It should also be noted that a young offender who lacks a strong and committed family unit willing to assume a critical role in ensuring that he stays on the straight and narrow would also have to face a custodial sentence: see *Wu Si Yuan v PP* [2003] SGHC 7.

42 I do not intend to catalogue the instances when a fine would be appropriate; suffice it to say that while the judicial discretion to impose a fine is *ex facie* statutorily conferred without any fetter, it should be employed, in so far as Class A drug offences are concerned, *only sparingly and in purely exceptional cases*. I should also add that a single instance of impulsive drug consumption made on the spur of the moment, while often a mitigating factor, should not *per se* be evaluated as an exceptional circumstance. This might quite easily be construed as a licence for drug experimentation which again would be wholly unacceptable.

The Laroussi cluster of cases

43 A collective consideration of these decisions is appropriate as they occurred in loosely connected circumstances. I emphasise the term "loosely" since, as I have taken great pain to point out, the individual circumstances of each case are paramount. Nevertheless, these cases are clearly of current relevance.

PP v Simmonds Nigel Bruce *(District Arrest Cases Nos 45356, 45357, 48252, 48253 and 48254 of 2004)*

44 On the first three charges, Nigel Bruce Simmonds ("Simmonds") was sentenced on 10 December 2004 to 12 months' imprisonment each for (a) possession of 'ice', (b) consumption of cocaine (12.7mg/ml of bezoylecgonine was found in his urine), (c) consumption of 'ice'. Two other charges for the possession of paraphernalia used for the consumption of 'ice' and for the consumption of 'ecstasy' were taken into consideration for the purposes of sentencing. He had *bought* the drugs from Laroussi. Simmonds' Statement of Facts sets out, *inter alia*, that:

> Investigations further revealed that the accused purchased various controlled drugs, namely, "Cocaine", "Ice" and "Ecstasy", from a person known to the accused as "The Arab". The real identity of "The Arab" was later established to be one Guiga Lyes Ben Laroussi.

45 Simmonds was sentenced to a total of 24 months' imprisonment, with the third sentence to run concurrently. Unlike Simmonds, who regularly and systematically consumed drugs bought from Laroussi, the Appellant did not regularly take drugs and the subject incident was a one-off incident. Simmonds also had drugs and related paraphernalia in his possession for future consumption. It is also noteworthy that the metabolite of cocaine detected in the Appellant's urine (1mg/ml) was 12 times lower than that in Simmonds' urine. While there are admittedly other imponderables involved in a comparison of this nature, this last fact arguably lends some corroboration to the Appellant's contention that he did not consume a substantial amount of drugs.

PP v Veale Andrew William *(District Arrest Cases Nos 47327 and 47328 of 2004)*

46 Andrew William Veale ("Veale") was sentenced on 14 December 2004 to 12 months' imprisonment for one count of consumption of cocaine (23.5mg/ml of benzoylecgonine was detected in his urine). Interestingly, the Appellant had only 1mg/ml of benzoylecgonine (23 times less) in his urine. However, there was cogent evidence to indicate, as in the preceding case, *a pattern of purchase and consumption* by Veale. The Statement of Facts sets out, *inter alia*, that:

> The accused had purchased various controlled drugs, namely "Cocaine" and "Ecstasy", from a person known to the accused as "Lyas". The real identity of "Lyas" was later established to be one Guiga Lyes Ben Laroussi.

PP v Mermilliod Francois Fabien *(District Arrest Case No 45363 of 2004)*

47 Francois Fabien Mermilliod ("Francois"), 29 years of age, pleaded guilty to *possession* of 0.5g of cocaine which he admitted he *purchased* for $150 from Laroussi for his own consumption. He was sentenced to 12 months' imprisonment. Once again, this appeared to be a premeditated purchase indicating that Francois was, at the very least, a casual if not a regular user of this drug.

PP v Pang Su-Yin Penelope *(District Arrest Case No 47305 of 2004)*

48 Penelope Pang Su-Yin ("Penelope"), also 35 years of age like the Appellant, was sentenced on 24 December 2004 to *11 months' imprisonment* for one count of consumption of cocaine (0.4 mg/ml of benzoylecgonine was detected in her urine). She claimed in mitigation that she had been suffering from a chronic back pain and took the cocaine to alleviate her pain. Penelope's consumption of cocaine, even if one were to accept her mitigation plea, was decidedly *premeditated*. She was aware that the cocaine had been purchased by her boyfriend, Veale. There was clearly, at the very least, a pattern of cocaine consumption.

PP v Mariana bte Abdullah *(District Arrest Case No 75 of 2005)*

49 Mariana (see [4] above) was at the material time Laroussi's girlfriend. She is 25 years of age. She pleaded guilty to a charge of consuming morphine on 7 October 2004 as well as to a charge of theft of $1,000 from a DBS Bank automated teller machine on 6 June 2003. She also agreed to have an additional charge for the consumption of cocaine on 7 October 2004 and two other charges of theft on two separate occasions from DBS Bank automated teller machines, amounting in total to $1,500, taken into consideration for the purposes of sentencing.

50 In mitigation, her counsel pleaded that she "was mixing with a circle of people, whose friendship was woven [together] by a common thread called drug (sic)".

51 She was sentenced on 25 January 2005 to a total of 13 months' imprisonment. From her counsel's mitigation plea, it can reasonably be surmised that the episode of drug consumption she was ultimately charged with was not a solitary instance. She was also clearly, at the very least, an individual with an established pattern of cocaine consumption. It is also pertinent to point out that the sentence took into consideration not just the consumption of cocaine but two other instances of theft.

An overview of the Laroussi cluster of cases

52 Three salient features emerge from this overview of cases involving the actual members of Laroussi's drug circle. Firstly, all of them were either hardcore addicts like Simmonds or, at the very least, casual users like Penelope. Secondly, all of those convicted appear to have *purchased* their cocaine from Laroussi, either directly or indirectly through friends. Thirdly, the consumption of cocaine by each of them does not appear to be incidental but, on the contrary, planned and/or part of *a pattern*. In my view, given the circumstances of each of these cases as they appear on record, there can be no question of excessiveness pertaining to the lengths of sentences of imprisonment imposed by the lower courts on each one of these offenders. On the contrary, it could even be cogently argued, in the light of policy considerations and factors I have earlier adverted to, that the sentences in some of these cases may even have erred in leaning towards the more lenient end of the sentencing spectrum.

53 While I do not accept Mr Shanmugam's contention that the Appellant did not know he was consuming cocaine – he has after all pleaded guilty to its intentional consumption – there are at least two pertinent differentiating features in this case when contrasted with the other cases. The consumption by the Appellant was neither planned nor purchased. Furthermore, the Prosecution accepts that the consumption was a one-off incident. The district judge failed to attach adequate relevance or weight to these distinctive features.

The appropriate sentence

54 The district judge correctly disregarded the Appellant's contention that the adverse media publicity visited upon the Appellant and his family ought to be considered as a mitigating factor. I acknowledge, as Mr Shanmugam argued, that certain press articles have indeed portrayed the Appellant inaccurately as a serial drug consumer and/or as a member of a drug ring. He is not a drug addict. Nor is he a substance abuser or a casual consumer of drugs. There is neither any evidence, nor indeed any suggestion by the Prosecution to the contrary. However, I fail to see the legal relevance of Mr Shanmugam's indignant complaint about "acres of adverse publicity". Incorrect news reporting and/or unfavourable publicity hardly qualify as legal planks that can legitimately be deployed by the Appellant in diminishing his culpability and/or in mitigating the appropriate sentence. This contention, with respect, defies logic and would inexorably lead to the rather absurd conclusion that the negative publicity accorded to all prominent persons who run foul of the law must be taken into account as a sentencing consideration. This in turn would inevitably entail that prominent individuals, by dint of their prominence and the attendant adverse publicity alone, ought to receive more favourable treatment from a sentencing court. Does this not run counter to the axiom that all individuals 'stand equal' before the law? Surely this cannot be right.

55 A single foolish act of momentary indiscretion has engendered considerable anguish and immeasurable distress to both the Appellant and his entire family. As a parent, I cannot but empathise

with the agony that the unfortunate incident has caused his parents, both of whom are notable and highly respected members of the community who have tirelessly rendered significant and praiseworthy public service. Having said that, as a judge, I have to unflinchingly and unreservedly acknowledge that the strong public policy considerations dictating a custodial sentence for offences of this nature are compelling and that they have to be respected, adhered to and applied dispassionately in this case.

56 In determining the appropriate sentence, I take into account the following considerations: that the Appellant did not seek the drugs; that the act of consumption was not planned but effected on the spur of the moment; that the amount consumed was not substantial; that there was no payment involved in this unfortunate incident and that this was, based on the evidence before the court, a one-off episode. The second charge of drug consumption to be taken into consideration relates to an act that was also simultaneously committed. I am therefore inclined, in the circumstances of this case, to treat both charges concurrently as part of a single act of consumption. I also note and acknowledge that the character referees have described the Appellant as a person possessing considerable talent, an admirable academic pedigree and an excellent character. He has no antecedents and had also entered a plea of guilty at the earliest opportunity. The Prosecution, quite rightly, has also not pressed for a particularly deterrent sentence and has only sought to uphold the district judge's decision.

57 In the light of all these factors, a sentence at the lower end of the spectrum for a first-time offender consuming Class A drugs is appropriate. I agree with Mr Shanmugam that the Appellant should not be tarred with the same brush as either the accused in *Ooi*'s case who received 12 months' imprisonment, notwithstanding the latter's montage of variegated antecedents, or the known members of Laroussi's network, all of whom appear to be either addicts or at the very least regular and/or casual consumers of cocaine. On the basis of the evidence before me, it is appropriate to conclude that the Appellant was not a member of that illicit circle. I also note that the district judge himself was minded to apply the lower end of what he had mistakenly perceived as an "immutable" tariff of 12 to 18 months' imprisonment. While the district judge indeed professed awareness that benchmarks are not conclusive, citing the decision of *Abu Syeed Chowdhury v PP* ([22] *supra*), it appears that he was unduly perturbed that a variation in sentencing "will give a wrong signal" apropos the uncompromising and relentless battle being waged on drug abuse. This is unfair to the Appellant. The district judge erred in not tailoring the sentence to fit the offender and in failing to attach adequate weight and merit to all the relevant mitigating factors. In the final analysis, a benchmark is a guide and not an end in itself. It must – indeed, can only – serve the ends of justice by retaining flexibility itself.

The decision

58 In my view, the sentence imposed is manifestly excessive. In the result, the sentence of 12 months' imprisonment imposed by the learned district judge is hereby set aside and a sentence of eight months' imprisonment is substituted in lieu thereof. I should add, for the sake of completeness, that I am unable to mete out the same punishment of six months' imprisonment accorded in *Yap*'s case for two reasons: firstly, because the drug concerned here is cocaine and secondly, because of the Appellant's maturity in contrast to the youthfulness of the accused in *Yap*'s case.

Concluding observations

59 The consumption of drugs is a grave menace and an anathema to the fabric and well-being of society and must be uncompromisingly stamped out. It must now be clearly and unfailingly understood that all drug offences involving the possession or consumption of Class A drugs inexorably attract

custodial sentences, save in purely exceptional cases. This is not an exceptional case. The Appellant ought to have known better. In pressing for a mere fine to be imposed on the Appellant, Mr Shanmugam emphasised that the Appellant is a "highly intelligent individual with exceptional talents". It does not stand up to scrutiny that an exceptional individual should be accorded exceptional treatment by the courts. The elite in Singapore cannot legitimately expect to, and in any event, will not, be accorded preferential treatment by the courts. The courts have to discharge their duty fairly and dispassionately regardless of an accused's station in life and/or family background. That said, it is nonetheless inappropriate for the courts to unthinkingly and mechanically impose on any individual, regardless of his background, an inflexible benchmark that makes no allowance for legitimate mitigating circumstances.

60 Parliament itself has conferred on the courts a broad discretion to deal with such offenders. Minimum sentences are legislatively imposed only on repeat offenders. The courts should not unnecessarily hamstring themselves in rigidly applying sentencing guidelines or benchmarks. While benchmarks or guidelines must always be prudently and anxiously appraised by the lower courts, the courts must in turn judiciously and unerringly bear in mind that these general precepts are not immutable. The district judge was unfortunately in error when he chose to adopt a Procrustean approach in sentencing the Appellant. Sentencing considerations mandate that the sentence should always fit the crime. Adequate consideration was not given in this case to the relevant mitigating factors. The incident in question was to all intents and purposes a one-off episode unlike the other known prosecutions in the Laroussi cluster of cases. I would also suggest, for the future, that if the Prosecution intends to press for a particularly deterrent sentence in relation to a consumption offence, it should adduce evidence either through the Statement of Facts or otherwise of the circumstances pertaining to the act of consumption. *PP v Simmonds Nigel Bruce* is a helpful illustration. The Statement of Facts in that case makes it abundantly clear that he was a confirmed drug addict. Such persons should receive more severe sentences. While such persons are in literal terms first time offenders in the sense that they are facing the music for the first time, serious consideration ought to be given to whether they should receive a sentence outside the general tariff. If there is indeed *convincing evidence* of repeated drug abuse and a history of flagrant disregard of the MDA, then it may only be appropriate that such offenders receive their just dessert in the form of enhanced sentences. In so far as such offenders are concerned, one might even say cogently, that the 'first-time offender' label is a legal misnomer. I realised that this is a distinction that the lower courts have not always properly appraised or responded to.

61 I conclude by observing that the Appellant is a highly intelligent young man who can still look forward to a bright future ahead of him. This is not a permanent setback. Once he has paid his dues there is no reason why this unhappy episode should continue to haunt him. Indeed, it is my hope that out of adversity may come renewed strength and wisdom. It is apposite to refer at this juncture and in this context to a *dictum* of Lawton LJ in the seminal decision of *R v Sargeant* (1974) 60 Cr App R 74. He observed astutely at 77:

> This young man has had a custodial sentence. Despite his good character, despite the excellent background from which he comes, very deservedly he has had the humiliation of hearing prison gates closing behind him. *We take the view that for men of good character the very fact that prison gates have closed is the main punishment. It does not necessarily follow that they should remain closed for a long time.* [emphasis added]

62 Finally, I would like to express my appreciation to counsel for their assistance in this matter. I found their arguments helpful even though in the final analysis not all of them resonated with me.

Appeal on sentence allowed. Sentence varied to eight months' imprisonment.