Poh Yong Chuan *v* Public Prosecutor

[2021] SGCA 108

Case Number	: Criminal Appeal No 20 of 2021
Decision Date	: 22 November 2021
Tribunal/Court	: Court of Appeal
Coram	: Judith Prakash JCA; Steven Chong JCA; Chao Hick Tin SJ
Counsel Name(s)	: The appellant in person; Dwayne Lum Wen Yi and Rimplejit Kaur (Attorney-General's Chambers) for the respondent.
Parties	: Poh Yong Chuan — Public Prosecutor

Criminal Procedure and Sentencing – Sentencing – Appeals

22 November 2021

Judith Prakash JCA (delivering the judgment of the court *ex tempore*):

1 The appellant pleaded guilty to three proceeded charges under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA") before the Judge and was accordingly convicted on them. They comprised:

(a) A charge for possession of not less than 249.99g of methamphetamine ("meth") for the purpose of trafficking under s 5(1)(*a*) read with s 5(2) of the MDA, punishable under s 33(1) of the MDA.

(b) A charge for consumption of meth under s 8(*b*)(ii) of the MDA, punishable under s 33A(1) of the MDA.

(c) A charge for possession of not less than 24.03g of ketamine for the purpose of trafficking under s 5(1)(*a*) read with s 5(2) of the MDA, punishable under s 33(4A)(i) of the MDA.

We refer to these three charges, in order, as "the meth trafficking charge", "the LT-1 charge" and "the ketamine trafficking charge".

2 The Judge imposed the mandatory minimum imprisonment and caning sentence for both the LT-1 charge and the ketamine trafficking charge (respectively, 5 years' imprisonment and 3 strokes of the cane, and 10 years' imprisonment and 10 strokes of the cane). As for the meth trafficking charge, the Judge imposed an imprisonment sentence of 27 years and the mandatory minimum sentence of caning, *ie*, 15 strokes of the cane. The Judge then ordered the sentences for the LT-1 charge and the meth trafficking charge to run consecutively, with the sentence for the ketamine charge running concurrently with the other two. The global sentence was therefore 32 years' imprisonment and the maximum of 24 strokes of the cane.

3 When he pleaded guilty, the appellant also consented for 13 other drug-related charges to be taken into consideration for the purpose of sentencing. They can be broadly grouped as follows:

(a) one offence of possessing 80.17g of MDMA for the purpose of trafficking under s 5(1)(*a*) read with s 5(2) and punishable under s 33(4A)(i) of the MDA;

(b) eight offences of possessing controlled drugs under s 8(*a*) and punishable under s 33(1) of the MDA;

(c) one offence of possessing utensils intended for the consumption of a controlled drug under s 9 and punishable under s 33(1) of the MDA; and

(d) three offences of failing to report for urine testing under reg 15(3)(*f*) and punishable under reg 15(6)(*a*) of the Misuse of Drugs (Approved Institutions and Treatment and Rehabilitation) Regulations (Cap 185, Rg 3, 1999 Rev Ed).

4 The appellant mounts his appeal on the basis that the Judge's sentence is manifestly excessive in that it is unduly harsh. In the course of his oral submissions, the appellant sought to lay blame for the result of the case on the way in which his former counsel, Mr Lam Wai Seng, had conducted it. This was not permissible because at the Case Management Conference on 28 September 2021, the appellant confirmed he was withdrawing his allegations against Mr Lam and that he was not willing to waive solicitor-client privilege. As a result, Mr Lam did not have a chance to reply to the appellant's allegations. The appellant could not then repeat them for the purpose of the appeal.

5 Further, some of the appellant's oral submissions appeared to challenge the facts of the case. However, when we asked him if he was withdrawing his guilty plea, the appellant confirmed he was not. Therefore, the appeal proceeded on that plea and the statement of facts as admitted.

6 Having regard to the various offences and the sentences imposed by the Judge, two of which were the statutorily prescribed minimum sentences of imprisonment, it is evident that the only possible reduction in the appellant's imprisonment sentence is in relation to the sentence of 27 years imposed by the Judge for the meth trafficking charge. The charge concerned 249.99g of meth, a quantity of drugs just under the capital threshold of 250g. Based purely on the large quantity of meth alone, the sentencing starting point would be 29 years' imprisonment and 15 strokes of the cane in accordance with the sentencing framework laid out by this court in *Adri Anton Kalangie v Public Prosecutor* [2018] 2 SLR 557 at [80]. This had been correctly identified by the Judge in his oral judgment.

7 The appellant's first argument that the Judge had failed to give adequate weight to the relevant mitigating factors is unfounded. The appellant asserted that he had "provided crucial information which led to the arrest of several other individuals, including the seizure of a capital amount of drugs, which in turn disrupted the influx of prohibited substances circulating in Singapore". While the Judge did not set out the details as to the information which the appellant gave to the authorities, it is clear that the Judge had taken the appellant's efforts into account. The Judge noted that the mitigating factors were that the appellant had pleaded guilty at the earliest opportunity and that he had, to quote the Judge, rendered "undisputed cooperation in the investigations". Furthermore, it is evident that great weight had been accorded to these mitigating factors because the Judge then went on to reduce the indicative starting imprisonment sentence for the meth trafficking charge from 29 years to 27.5 years despite the presence of four serious aggravating factors, as follows:

(a) The appellant was a recalcitrant drug offender and the charges pointed to a clear escalation in the appellant's criminal offending over the years as they showed that he had progressed to dealing with ever greater quantities and varieties of drugs. On 17 October 2014, the appellant was convicted on one charge of trafficking in meth, with two further TIC charges of drug trafficking, and sent to prison for 5 years. He was released in 2017 and by 2019, when he was arrested again, had resumed drug trafficking. The arrest resulted in the three serious charges with which this appeal is concerned and the 13 other charges which were taken into consideration.

(b) The admitted facts made it clear that the appellant was not merely a one-off trafficker. Instead, he ran his own trafficking operation on a consignment basis. He essentially served as a "drug middleman" who profited financially from furthering drug activities in Singapore.

(c) The appellant attempted to dispose of evidence of his drug activities when he first realised that he might be arrested because the CNB officers were seeking to enter his flat.

(d) There were 13 charges to be taken into consideration for the purpose of sentencing.

8 In our view, the Judge was more than fair to the appellant when he arrived at the provisional sentence of 27.5 years' imprisonment for the meth trafficking charge after considering the relevant aggravating and mitigating factors. The appellant was not merely a small-time drug runner, but rather a businessman at the centre of his own trafficking operation. Further, the appellant's drug antecedents showed a clear escalation in his criminal offending that had to be taken into account. It follows from this that the appellant's second argument that the Judge "took [an] excessive interest" in his criminal records, is similarly unfounded.

9 We turn finally to the totality principle. In our view, the Judge had given full and adequate consideration to this principle. We say this for two reasons. First, the Judge was obliged to run the sentences for two charges consecutively pursuant to s 307(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) and one of those two charges had to be the meth trafficking charge as it carried the highest imprisonment term. The Judge did not run the sentence of 10 years' imprisonment for the ketamine trafficking charge consecutively with that of the meth trafficking charge. He chose instead to make the lower sentence of 5 years' imprisonment for the LT-1 charge the consecutive sentence. This demonstrated his care not to impose a global sentence which would be disproportionate to the offence and the offender. Second, the Judge further *reduced* the 27.5-year imprisonment sentence for the 1st charge down to 27 years upon consideration of the totality principle.

10 In conclusion, we hold that the Judge's sentence of 32 years' imprisonment and 24 strokes of the cane is not manifestly excessive and we dismiss the appellant's appeal in its entirety for the reasons stated above.

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