

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 257

Magistrate's Appeal No 9253 of 2016

Between

LIEW ZHENG YANG

... Appellant

And

PUBLIC PROSECUTOR

... Respondent

EX TEMPORE JUDGMENT

[Criminal Procedure and Sentencing] — [Sentencing] — [Principles]

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Liew Zheng Yang
v
Public Prosecutor

[2017] SGHC 257

High Court — Magistrate's Appeal No 9253 of 2016
Steven Chong JA
13 October 2017

Steven Chong JA (delivering the judgment of the court *ex tempore*):

1 In *Liew Zheng Yang v Public Prosecutor* [2017] SGHC 157 (“the Judgment”), I allowed the appeal by the appellant, Liew Zheng Yang (“Liew”), against his conviction of two charges of abetting in a conspiracy to traffic controlled drugs under s 5(2) and s 12 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“the MDA”), read with s 107(b) of the Penal Code (Cap 224, 2008 Rev Ed) (collectively, “the Conspiracy Charges”). I set aside his conviction for the Conspiracy Charges, and convicted him on two reduced charges of attempted possession of the same drugs under ss 8(a) and 12 of the MDA (“the Attempted Possession Charges”). The drugs in question were 34.53 grams of cannabis and 68.21 grams of cannabis mixture, for the first and second charges respectively.

2 The present matter concerns the sentences to be imposed in respect of the Attempted Possession Charges. In the course of this judgment, I will also

address a new sentencing framework proposed by the Prosecution for the offence of drug possession.

3 Liew had also pleaded guilty to one charge of consumption of a cannabinol derivative under s 8(b)(ii) of the MDA (“the Consumption Charge”). The district judge sentenced Liew to six months’ imprisonment for the Consumption Charge, and Liew did not appeal against this sentence. Subsequently, after the Judgment was delivered, Liew brought Criminal Motion No 32 of 2017 (“CM 32/2017”) to seek an extension of time to file a notice of appeal against the sentence imposed for the Consumption Charge. I heard and dismissed CM 32/2017 on 19 September 2017, and stayed the execution of the sentence pending the determination of the sentences for the Attempted Possession Charges. Given that Liew has been convicted of three charges, the sentences for at least two of these charges must run consecutively: s 307(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed).

Parties’ submissions

4 Parties are in agreement that the sentences for the Attempted Possession Charges should run consecutively with the sentence for the Consumption Charge. They differ, however, on the appropriate sentence for the Attempted Possession Charges.

5 Liew’s counsel, Mr Eugene Thuraisingam (“Mr Thuraisingam”), submits that a sentence of no more than 12 months’ imprisonment should be imposed for each of the Attempted Possession Charges. This will result in a global sentence of no more than 18 months’ imprisonment.¹

¹ Liew’s sentencing submissions at [39].

6 The Prosecution, on the other hand, proposes the following indicative starting points for sentencing first-time offenders of drug possession involving cannabis and cannabis mixture (“the Indicative Table”):²

Cannabis	Cannabis Mixture	Imprisonment
Up to 15g	Up to 30g	6–18 months
15–165g	30–330g	18 months–3 years
165–330g	330–660g	3–5 years
330–500g	660–1000g	5–7 years
More than 500g	More than 1000g	7–10 years

7 The indicative starting points in the Indicative Table are based on the quantity of drugs involved. The Prosecution submits that the Indicative Table is in line with the sentencing approach for drug trafficking offences, which also begins with indicative starting points based on the quantity of drugs involved, before adjusting the sentence based on the offender’s culpability and the presence of relevant aggravating or mitigating factors: *Vasentha d/o Joseph v Public Prosecutor* [2015] 5 SLR 122 (“*Vasentha*”) at [44].³ The Prosecution also relies on *Public Prosecutor v Jumahat Bin Japar* [2016] SGDC 278 (“*Jumahat*”) as a precedent where the district judge had agreed with similar indicative starting points in relation to the possession of diamorphine and methamphetamine.⁴

² Prosecution’s sentencing submissions at [18].

³ Prosecution’s sentencing submissions at [15]–[19].

⁴ Prosecution’s sentencing submissions at [24].

8 On the basis of the Indicative Table, the Prosecution submits that Liew should be sentenced to a term of at least 24 months’ imprisonment for each of the Attempted Possession Charges and a global sentence of at least 30 months’ imprisonment.⁵

My Decision

The Indicative Table

9 In my view, it is not appropriate to adopt the indicative starting points proposed by the Prosecution. The Court of Appeal observed in *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 at [30] that such an approach (which was referred to as the “multiple starting points” approach) “is suitable where the offence in question is clearly targeted at a *particular* mischief which is measurable according to a single (usually quantitative) metric that assumes primacy in the sentencing analysis” [emphasis in original]. The offence of drug *trafficking* was cited by the Court of Appeal as a “paradigmatic” example of such offences.

10 However, this does not mean that *all* drug-related offences are compatible with a multiple starting points approach. In *Public Prosecutor v Tan Thian Earn* [2016] 3 SLR 269, See Kee Oon JC (as he then was) expressly declined to adopt a “multiple starting points” approach for offences under s 10A(1) of the MDA. Section 10A(1) of the MDA proscribes the manufacture, supply, possession, import or export of any controlled equipment, materials, or substances which are useful for the manufacture of a controlled drug.

⁵ Prosecution’s sentencing submissions at [20] and [33].

11 See JC explained (at [35]–[36]) that a “multiple starting points” approach was unsuitable for s 10A(1) offences because such offences may be committed “in a variety of circumstances and for a variety of reasons” such that “no sensible sentencing tariffs can be promulgated” for the offence if the culpability of the individual offender is not taken into account. See JC distinguished s 10A(1) offences from the offence of drug trafficking, as follows (at [36]):

... [The s 10A(1) offence] differs somewhat from the offence of trafficking, where the range of scenarios is more restricted and therefore the use of the quantity of drugs involved (which is the primary determinant of harm) suffices to provide a useful starting point. ...

12 Similarly, the “multiple starting points” approach is unsuitable for the offence of drug possession. It cannot be denied that offenders who commit the offence might do so for a variety of reasons: (a) for trafficking; (b) for own consumption; and (c) for a purpose which is not clear on the evidence.

13 In fact, the very case which the Prosecution cited as supporting the Indicative Table, *Jumahat* (see above at [7]), stated at [20] that “if the accused had possessed the drugs for his own consumption, the figures in the [table of proposed indicative starting points] would not apply with as much persuasive force ...”.

14 This must be correct because an offender who possesses drugs to traffic should be punished more severely than an offender who possesses drugs for his own consumption since in the former case, harm is caused to others while in the latter case, harm is caused to oneself.

15 Here, because of the manner in which the Prosecution conducted its case in the court below, in particular Liew’s unchallenged testimony that the drugs

were for his own consumption, I found that the drugs were for Liew’s own consumption (the Judgment at [19]–[28]).

16 Therefore I would approach the sentencing of this case in the usual way by examining the aggravating and mitigating factors which are germane to the charge of possession for the purpose of his own consumption, keeping in mind the *existing* sentencing precedents.

The appropriate term of imprisonment

17 In the context of the offence of drug consumption, the High Court in *Dinesh Singh Bhatia s/o Amarjeet Singh v Public Prosecutor* [2005] 3 SLR(R) 1 at [38] (“*Dinesh Singh*”) established a sentencing range of between six to 18 months’ imprisonment for first-time offenders. The court (at [38]–[39]) also identified the following non-exhaustive factors as relevant in calibrating the precise sentence for each offender:

- (a) the age of the offender;
- (b) the quantity of drugs involved;
- (c) the circumstances that led to the consumption of drugs (*eg*, whether the consumption of drugs was planned, and whether payment was made for the drugs); and
- (d) whether the offender was a first-time drug consumer, a casual consumer or an addict.

18 The sentencing range and a number of the factors identified in *Dinesh Singh* were applied recently by Sundaresh Menon CJ in the context of drug possession in *Public Prosecutor v Lim Cheng Ji Alvin* [2017] SGHC 183 at [28]–[29] (“*Alvin Lim*”). In *Alvin Lim*, the offender was charged for the

possession of 0.91 grams of cannabis mixture, which were meant for his own consumption. The offender was originally sentenced by the district judge to probation. Upon the prosecution's appeal to the High Court, Menon CJ set aside the probation order, and sentenced the offender to eight months' imprisonment. In determining the appropriate sentence, Menon CJ took into account the offender's relatively young age of 26 years old at the time of the offence and the fact that the offender was not a one-off user of drugs.

19 Applying the factors identified in *Dinesh Singh* to the present case, it was clear, as Mr Thuraisingam accepted, that the following factors were aggravating. First, a large quantity of drugs were involved. This is a point that I will return to later (below at [21]–[22]). Second, Liew was not a casual or a one-off user of drugs.

20 On the other hand, Liew was a young offender, aged 22, at the time of the offence. In addition, he has demonstrated his commitment to take responsibility to rid himself of the drug addiction problem. He sought treatment with a psychiatrist,⁶ has been drug-free in the three years since the offences and is presently gainfully employed.

21 With these factors in mind, I turn to calibrate the precise length of imprisonment. In my view, it would not be sufficient to compare the present case with *Dinesh Singh* and *Alvin Lim* due to the large quantity of drugs involved in this case. It will be recalled that Liew had attempted to possess 34.53 grams of cannabis and 68.21 grams of cannabis mixture. This was far in excess of the amount of drugs (0.91 grams of cannabis mixture) involved in *Alvin Lim*.

⁶ Liew's sentencing submissions at [23].

22 *Dinesh Singh* was also somewhat less relevant because the quantity of drugs in Liew's possession were far more than what a person could have consumed in one session. In fact, Liew's own evidence at trial was that he had bought the drugs "in a huge amount" in order to "*stock up* and keep it at home for... [his] own consumption" [emphasis added] (the Judgment at [19]). Bearing in mind that *Dinesh Singh* was a case on drug *consumption*, the quantity of drugs in this case was arguably beyond the amounts contemplated by the High Court when the sentencing range of six to 18 months' imprisonment was laid down. Therefore, it was more relevant to consider precedents where the quantity of drugs involved were similar to the present case.

23 In *Public Prosecutor v Ang Wei Hsiung Kenneth* [2017] SGDC 70 ("*Kenneth Ang (DC)*"), the offender ("*Kenneth*") pleaded guilty to two possession charges and one consumption charge. The possessions charges related to 26.95 grams of cannabis and 72 tablets containing Nimetazepam, a Class C drug, respectively. Kenneth had intended to consume these drugs (at [3]). The offender was sentenced to 24 months' imprisonment for the cannabis possession charge and five months' imprisonment for Class C possession charge. These two sentences were ordered to run consecutively, resulting in a global sentence of 29 months' imprisonment. Kenneth appealed against the sentences imposed, and the appeal was heard and dismissed by me in *Ang Wei Hsiung Kenneth v Public Prosecutor* Magistrate's Appeal No 9064 of 2017 (30 June 2017) ("*Kenneth Ang (HC)*").

24 The present case bore some similarities with *Kenneth Ang (HC)*. Both Liew and Kenneth were drug addicts who had purchased comparable quantities of drugs for their own consumption. While the quantity of drugs that Liew had attempted to possess was somewhat larger than the quantity of drugs that Kenneth possessed, Liew was also considerably younger than the 38-year-old

Kenneth. Kenneth also appeared to have a more serious drug problem than Liew as he consumed a wide variety of drugs (*Kenneth Ang (DC)* at [1]–[2(i)]), whereas Liew’s involvement in drugs was confined to cannabis and its variants. On the whole, it was appropriate to impose a sentence on Liew that was shorter than the sentence imposed on Kenneth.

25 Taking into account the two accepted aggravating factors, that Liew was not a one-off drug user and that the quantity of the drugs involved was large, together with his relative young age and his commitment to take responsibility to rid himself of his drug addiction following his conviction, as well as the relevant sentencing benchmark, the most recent of which is *Kenneth Ang (HC)*, I sentence Liew to 20 months’ imprisonment for each of the Attempted Possession Charges which is to run consecutively with the earlier 6-month sentence for the Consumption Charge for a global sentence of 26 months’ imprisonment. The sentence is to commence today.

Steven Chong
Judge of Appeal

Eugene Singarajah Thuraisingam and Genevieve Pang (Eugene
Thuraisingam LLP) for the appellant;
John Lu and Rimplejit Kaur (Attorney-General’s Chambers) for the
respondent.