

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2024] SGCA 55

Criminal Appeal No 18 of 2023

Between

Iskandar bin Jinan

... Appellant

And

Public Prosecutor

... Respondent

In the matter of Criminal Case No 51 of 2023

Between

Public Prosecutor

And

- (1) Iskandar bin Jinan
- (2) Mohd Farid Merican bin Maiden

Criminal Appeal No 6 of 2024

Between

Mohd Farid Merican bin
Maiden

... Appellant

And

Public Prosecutor

... Respondent

In the matter of Criminal Case No 51 of 2023

Between

Public Prosecutor

And

- (1) Iskandar bin Jinan
- (2) Mohd Farid Merican bin
Maiden

GROUNDS OF DECISION

[Criminal Procedure and Sentencing — Sentencing — Appeals — Sentencing
Advisory Panel’s Guidelines on Reduction in Sentences for Guilty Pleas (“PG
Guidelines”)]

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This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Iskandar bin Jinan
v
Public Prosecutor and another appeal

[2024] SGCA 55

Court of Appeal — Criminal Appeals Nos 18 of 2023 and 6 of 2024
Sundaresh Menon CJ, Tay Yong Kwang JCA and Steven Chong JCA
8 October 2024

28 November 2024

Steven Chong JCA (delivering the grounds of decision of the court):

Introduction

1 In the criminal justice system, the decision whether to plead guilty or to claim trial for any criminal charge is ultimately one which must be made by the accused person. Save for exceptional situations, the accused person ordinarily would be aware of the material facts in relation to the charge and hence would be in a position to make an informed decision.

2 Legal principles have been developed over the years to recognise the mitigatory value of a plea of guilt. However, different judicial decisions have accorded different weight to a plea of guilt for the purposes of sentencing, depending, among others, on the nature of the offence, the stage of the proceedings at which the plea is taken, the weight of the evidence against the accused person and the degree of remorse demonstrated by the accused person.

Inevitably, such different treatments have led to some inconsistency in the courts' recognition of the mitigatory weight that a plea of guilt should carry, leading to some perceived inconsistency in the eventual sentences.

3 In 2022, the Sentencing Advisory Panel (“SAP”) was set up comprising representatives from all stakeholders of the criminal justice system, including members from the judiciary, the Law Society of Singapore, the Attorney-General’s Chambers, the Ministry of Law, the Ministry of Home Affairs and the Singapore Police Force. Its aim is to achieve greater consistency and transparency in sentencing and to provide greater clarity to the public as to possible sentencing outcomes and the relevant factors to be considered in sentencing, by proactively issuing publicly available sentencing guidelines which will not be binding on the court but will nonetheless offer some assistance in the sentencing process.

4 The first set of guidelines published by the SAP concerns the reduction in sentences for guilty pleas (the “PG Guidelines”) which came into effect on 1 October 2023. It is expressly stated in the PG Guidelines that while they are not meant to encourage accused persons to plead guilty, the guidelines recognise that an early plea of guilt can have clear benefits in terms of sparing victims and other witnesses of the need to prepare for a trial and to testify in court, as well as saving public resources on the part of the law enforcement agency, the prosecution and the judiciary (PG Guidelines at para 4).

5 Unsurprisingly, the PG Guidelines expressly provide that the earlier the accused person indicates that he will plead guilty, the greater the aforementioned benefits, and hence the larger the reduction in sentence *up to a maximum of 30%* (PG Guidelines at para 6). However, it is crucial to acknowledge that Parliament, in enacting the sentences for any given offence,

would have taken into account various considerations including the relevant public policy underpinning the offence. For this reason, it would not be appropriate to adopt a “one size fits all” approach in determining the appropriate reduction. That is precisely the reason why the PG Guidelines were never intended to be applied in a fixed and rigid manner. Instead, they were deliberately expressed to provide for a reduction of sentence *up to* a particular maximum percentage. This is to ensure that the court will take into account all relevant considerations, including the nature of the particular offence, in deciding on the appropriate reduction.

6 For this reason and given the advisory and non-binding nature of the PG Guidelines (and, for that matter, all guidelines which may be implemented by the SAP from time to time), it would be inaccurate to speak of the need to “modify” the relevant guidelines. Instead, the court’s task is to *calibrate* the appropriate reduction bearing in mind all relevant considerations, including but not limited to the guidelines.

7 The two appellants in CA/CCA 18/2023 (“CCA 18”) and CA/CCA 6/2024 (“CCA 6”) (the “Appeals”), Iskandar bin Jinan (“Iskandar”) and Mohd Farid Merican bin Maiden (“Farid”), pleaded guilty to a number of drug trafficking offences under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”) at an early stage of the proceedings and received a global sentence of 32 years’ and 31 years’ imprisonment respectively. In CCA 18, Iskandar relied on the PG Guidelines *generally* to seek a lower sentence. The sole issue before this court concerns the correct understanding of the PG Guidelines and their proper application in the specific context of drug trafficking and drug importation offences, bearing in mind the relevant sentencing precedents and benchmarks for those offences.

8 We heard the Appeals on 8 October 2024. We dismissed CCA 18 and allowed CCA 6 in part by reducing Farid’s global sentence from 31 years’ to 30 years’ imprisonment on a point of principle which we will explain below. These are our detailed grounds of decision, and we also take the opportunity to explain the utility and proper application of the PG Guidelines for drug trafficking and drug importation offences.

Background facts

The charges

9 The appellant in CCA 18, Iskandar, pleaded guilty to and was convicted of the following three charges:

- (a) Trafficking in not less than 14.99g of diamorphine, an offence under s 5(1)(a) of the MDA punishable under s 33(1) of the MDA (“Iskandar’s First Charge”);
- (b) Having in his possession for the purposes of trafficking not less than 82.4g of methamphetamine, an offence under s 5(1)(a) read with s 5(2) of the MDA punishable under s 33(4A) of the MDA (“Iskandar’s Second Charge”); and
- (c) Consuming methamphetamine, an offence under s 8(b)(ii) of the MDA punishable under s 33(4) of the MDA (“Iskandar’s Fourth Charge”).

10 Iskandar also admitted and consented to having three other drug-related charges taken into consideration for the purposes of sentencing (collectively, “Iskandar’s TIC Charges”):

- (a) Having in his possession for the purpose of trafficking not less than 1.40g of diamorphine, an offence under s 5(1)(a) read with s 5(2) of the MDA punishable under s 33(4A) of the MDA;
- (b) Having in his possession not less than 4.29g of diamorphine, an offence under s 8(a) of the MDA punishable under s 33(1) of the MDA; and
- (c) Having in his possession not less than 82.4g of methamphetamine, an offence under s 8(a) of the MDA punishable under s 33(1) of the MDA.

11 The appellant in CCA 6, Farid, pleaded guilty to and was convicted of the following three charges:

- (a) Abetting by engaging in conspiracy with Iskandar to traffic in not less than 14.99g of diamorphine, an offence under s 5(1)(a) read with s 12 of the MDA punishable under s 33(1) of the MDA (“Farid’s First Charge”);
- (b) Consuming 2-[1-(5-Fluoropentyl)-1H-indole-3-carboxamido]-3,3-dimethylbutanoic acid or its hexanoic acid isomer, an offence under s 8(b)(i) of the MDA punishable under s 33(4) of the MDA (“Farid’s Fourth Charge”); and
- (c) Having in his possession for the purposes of trafficking not less than 277.14g of vegetable matter and not less than 392.8g of colourless liquid, which were analysed and found to contain 5-fluoro-MDMB-PICA or its fluoro positional isomer in the pentyl group, an offence

under s 5(1)(a) read with s 5(2) of the MDA punishable under s 33(4A) of the MDA (“Farid’s Fifth Charge”).

12 Farid also admitted and consented to having two other drug-related charges taken into consideration for the purposes of sentencing (collectively, “Farid’s TIC Charges”):

(a) Consuming 2-[1-(4-Fluoropentyl)-1H-indazole-3-carboxamido]-3,3-dimethylbutanoic acid or its hexanoic acid isomer or any of their respective fluoro positional isomers in the pentyl group, an offence under s 8(b)(i) of the MDA punishable under s 33(4) of the MDA; and

(b) Consuming 2-[1-(5-Fluoropentyl)-1H-indazole-3-carboxamido]-3,3-dimethylbutanoic acid or its hexanoic acid isomer or any of their respective fluoro positional isomers in the pentyl group, an offence under s 8(b)(i) of the MDA punishable under s 33(4) of the MDA.

13 Iskandar was 52 years old when the offences were committed, and Farid was 51 years old. Iskandar and Farid have been in remand since their date of arrest on 22 May 2019.

The appellants’ drug trafficking antecedents

14 Iskandar had four previous drug trafficking convictions over three occasions.

| Date of conviction | Offence | Sentence |
|---------------------------|---|--|
| 11 February 1987 | Trafficking a controlled drug, an offence under s 3(A) of the Misuse of Drugs Act, 1973 | Five years’ imprisonment with five strokes of the cane |

| | | |
|-------------------|---|---|
| 26 September 1994 | Trafficking in a controlled drug (diamorphine), an offence under s 5(1)(a) of the Misuse of Drugs Act (Cap 185, 1985 Rev Ed) | Ten years' corrective training with ten strokes of the cane |
| 14 January 2008 | Trafficking in a controlled drug (morphine), an offence under s 5(1)(a) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2001 Rev Ed) | Five years' imprisonment |
| | Trafficking in a controlled drug (diamorphine), an offence under s 5(1)(a) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2001 Rev Ed) | Five years' imprisonment (concurrent) |

15 Farid had one previous drug trafficking conviction.

| Date of conviction | Offence | Sentence |
|---------------------------|--|--|
| 12 January 2007 | Trafficking in a controlled drug (buprenorphine), an offence under s 5(1)(a) of the Misuse of Drugs Act (Cap 185, 2001 Rev Ed) | Five years' imprisonment with five strokes of the cane |

Decision below

General observations relating to the PG Guidelines

16 The Judge below (the “Judge”) observed that the PG Guidelines are persuasive but not binding on the sentencing court. Therefore, where the PG Guidelines are at variance with an existing judicial precedent which is binding on the sentencing court, the sentencing court should follow the binding judicial

precedent instead of the PG Guidelines, in accordance with the doctrine of *stare decisis* (*Public Prosecutor v Iskandar bin Jinan and another* [2024] SGHC 134 (“GD”) at [30]–[31]).

17 The Judge also observed that there are several possible differences between the approach of the PG Guidelines and the approach under existing case law, but this ultimately would not be fatal to the applicability of the guidelines:

(a) First, the PG Guidelines state that the strength of the evidence against the accused person should not be taken into account when determining the level of reduction in sentence. The Judge observed that while some earlier judicial precedents have held that a plea of guilt should be given minimal mitigating weight if the strength of the evidence against the accused person is overwhelming, following the recognition of the utilitarian justifications by this court in *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 (“*Terence Ng*”), post-*Terence Ng* cases have begun according significant mitigatory weight to a plea of guilt even in “caught red-handed cases”. As a result, any alleged variance between the PG Guidelines and the judicial precedents on this issue is more perceived than real (GD at [33]).

(b) Second, in *Terence Ng*, we had declined to follow the approach of the UK Sentencing Guideline Council’s *Reduction in Sentence for a Guilty Plea: Definitive Guideline (July 2007)* (the “UK Sentencing Guideline”) in setting “fixed sentencing discounts” based on the timeliness of the plea of guilt as this “does not allow the court to take into account the many and varied reasons for which a plea of guilt is entered...” (*Terence Ng* at [70]). However, the Judge was of the view

that the PG Guidelines do not prescribe *fixed* sentencing discounts but merely provide for a maximum reduction applicable to a particular stage of the criminal proceedings where a plea of guilt is entered. Accordingly, the sentencing court still retains the discretion to give a sentencing discount less than the maximum provided for in the PG Guidelines (GD at [34]).

(c) Third, under the PG Guidelines, the court first determines the sentence that would have been imposed if the accused person had been convicted after the trial, and thereafter applies a discount to the sentence on account of the guilty plea as a separate step. However, in *Terence Ng*, we adopted a two-step sentencing framework where, in the first step, the court considers the “offence-specific” factors to arrive at an indicative starting sentence and, in the second step, adjusts the indicative starting sentence on account of “offender-specific” aggravating or mitigating factors, which would include a plea of guilt. This court demurred at the suggestion that a “third step” be introduced for the application of a discount by reason of a plea of guilt (*Terence Ng* at [38]). The Judge held that the language used in *Terence Ng* at [38] indicates that we did not intend to lay down an immutable rule and, accordingly, the mitigatory effect of the guilty plea may be considered in a separate step (GD at [35]).

Application of the PG Guidelines to first-time offenders for drug trafficking and drug importation offences

18 The Judge held that, as a general rule, the full 30% discount provided for in the PG Guidelines should not be applied to drug trafficking and drug importation offences. The Judge observed that a 30% reduction in the sentences would result in a clustering of sentences at or near the mandatory minimum

irrespective of the actual quantity of drugs involved, which would be contrary to the following principles: (a) the need for proportionality between the potential harm to society and the sentence imposed; (b) the duty of the court to consider the full spectrum of sentences in determining the appropriate sentence; and (c) the fact that it would not be consistent with the strong deterrent stance that Parliament has taken against drug offences for an accused person facing a charge involving an amount of drugs just below the death penalty threshold to receive a sentence at the lower end of the sentencing range (GD at [44]–[46]).

19 However, the Judge disagreed with the Prosecution’s submission that the maximum discount of 30% be replaced by a maximum of only 10% in the case of drug trafficking and drug importation offences, and that it would not be practical to set out separate percentage reduction ranges for guilty pleas entered at Stages 2, 3 and 4 (see [55(b)] below). The Judge held that this would be contrary to the PG Guidelines’ objective of encouraging early pleas of guilt by setting out, in a transparent manner, the sentencing discount that could be given for guilty pleas entered at different stages of the court proceedings. As such, the Judge concluded that a slightly wider range of discount for Stage 1 should be adopted, so that this range could be meaningfully subdivided into respective ranges applicable to Stages 2, 3 and 4 (GD at [47]).

20 The Judge considered that an appropriate maximum reduction would be 15%. First, this would be in line with his understanding of the precedents involving first-time offenders, where the weight of the drugs involved was close to the death penalty threshold; in those cases, generally, a sentence of around 25 years was imposed after taking into account the plea of guilt and other mitigating factors. A sentence of 25 years is in turn about 14% lower than the indicative starting sentence of 29 years (GD at [48]). Second, with the maximum

discount of 15%, there would no longer be any clustering of sentences at or near the mandatory minimum sentences (GD at [49]).

21 Accordingly, the Judge was of the view that the appropriate maximum reduction for the different stages should be as follows (GD at [50]):

- (a) where the accused pleads guilty at Stage 1 of the court proceedings: a maximum reduction of 15%;
- (b) where the accused pleads guilty at Stage 2 of the court proceedings: a maximum reduction of 10%; and
- (c) where the accused pleads guilty at Stages 3 or 4 of the court proceedings: a maximum reduction of 5%.

22 The Judge emphasised that the percentage reductions are *maximum* reductions, which means that the sentencing court retains the discretion to give a smaller discount (GD at [51]). In exercising its discretion, the sentencing court may assess the extent to which the guilty plea constitutes evidence of remorse, the extent to which the guilty plea saves victims and witnesses from having to testify, and the extent to which public resources are saved (GD at [52]). However, as the third consideration bears a direct relationship to the stage at which the guilty plea is entered, this consideration is unlikely to feature heavily in the exercise of the court's discretion. The Judge also observed that the second consideration will feature most strongly in cases like rape or other sexual offences, slightly less strongly in other crimes against persons as well as property crimes, and even less strongly in crimes without a specific identifiable victim such as drug trafficking and drug importation (GD at [53]).

23 The Judge also held that a court sentencing for an offence involving 9.99g of diamorphine may be justified in applying a smaller than usual reduction in order to avoid an overly pronounced “cliff effect” between sentences for trafficking in or importing 10g of diamorphine and those for trafficking in or importing 9.99g of diamorphine (GD at [54]).

Application of the PG Guidelines to repeat offenders for drug trafficking and drug importation offences

24 The Judge held that adopting a maximum discount of 15% for repeat offenders would similarly ameliorate the anomalies in relation to the maximum reduction of 30% (GD at [55]).

25 However, the Judge observed that in the case of repeat offenders charged with trafficking in or importing 13g to 15g of diamorphine (an amount of drugs just below the death penalty threshold), applying a 15% discount to the indicative sentence of 30 years would produce a final sentence of 25 years 6 months, which (a) represents an uplift of merely six months for repeat offenders (as compared against first-time offenders where the typical sentence for trafficking the same amount is around 25 years); and (b) is quite a distance away from the maximum determinate sentence of 30 years (GD at [57]).

26 The Judge was thus of the view that a repeat offender guilty of trafficking in or importing an amount of drugs just below the death penalty threshold, *ie*, 13g to 15g of diamorphine, should generally receive a final sentence of 28 to 30 years’ imprisonment (GD at [58]), in order to safeguard the public interest in securing adequate punishment for cases falling within the highest sentencing band. In such cases, the Judge held that the exception under para 13(b) of the PG Guidelines would apply, which provides that where it would be contrary to the public interest to apply the PG Guidelines to specific

cases, the court may apply a reduction in sentence which is just and proportionate without reference to the reductions provided for in the PG Guidelines (GD at [59]).

The sentences imposed on Iskandar and Farid

Iskandar

27 For Iskandar's First Charge (trafficking in not less than 14.99g of diamorphine), the Judge agreed with the Prosecution that the indicative sentence should be 30 years' imprisonment (GD at [73]). The Judge held that the PG Guidelines should not be applied in the case of a repeat offender pleading guilty to trafficking in an amount of drugs close to the death penalty threshold. Accordingly, he applied the traditional approach of considering the mitigatory effect of his guilty plea together with the other aggravating and mitigating factors, and arrived at a final sentence of 29 years (GD at [74]).

28 As for Iskandar's Second Charge (having in his possession for the purposes of trafficking not less than 82.4g of methamphetamine), the Judge held that the indicative starting point for a first-time offender would have been seven years, and that an uplift of seven years should be applied given Iskandar's long list of antecedents, thus arriving at the sentence of 14 years' imprisonment at the end of Step 1 of the PG Guidelines. At Step 2, it was undisputed that Iskandar had entered his guilty plea during Stage 1 of the court proceedings. The Judge therefore decided to reduce the sentence to 12 years' imprisonment, which translates to a discount of 14.3% (GD at [77]).

29 As for Iskandar's Fourth Charge (consuming methamphetamine), the Judge imposed the mandatory minimum of three years' imprisonment (GD at [78]).

30 The Judge ran the sentences for Iskandar’s First Charge and Iskandar’s Fourth Charge consecutively to arrive at a global sentence of 32 years (GD at [79]).

Farid

31 For the reasons given in relation to the sentence for Iskandar’s First Charge, the Judge imposed a sentence of 28 years’ imprisonment for Farid’s First Charge (abetting by engaging in conspiracy with Iskandar to traffic in not less than 14.99g of diamorphine). The Judge pegged Farid’s sentence slightly lower than Iskandar’s on account of the smaller number of antecedents and TIC charges in Farid’s case (GD at [82]).

32 As for Farid’s Fourth Charge (consuming 2-[1-(5-Fluoropentyl)-1H-indole-3-carboxamido]-3,3-dimethylbutanoic acid or its hexanoic acid isomer) and Farid’s Fifth Charge (having in his possession for the purposes of trafficking 5-fluoro-MDMB-PICA or its fluoro positional isomer in the pentyl group), the Judge imposed the mandatory minimum sentences of three years’ and ten years’ imprisonment respectively (GD at [84]).

33 The Judge directed that the sentences for Farid’s First Charge and Farid’s Fourth Charge be run consecutively, thus arriving at a global sentence of 31 years’ imprisonment (GD at [85]).

The parties’ submissions

34 Iskandar was unrepresented in CCA 18. He urged the court to have mercy on him and to reconsider his sentence with reference to the PG Guidelines. He highlighted the following mitigating factors: (a) his extreme remorse, decision to plead guilty, and his full cooperation with the authorities

in relation to the investigations; (b) the fact that his last conviction was in 2008 and that he had been a “responsible working husband ... and father” prior to his arrest; (c) the fact that he was 57 years old, suffering from HIV and Hepatitis C co-infection such that he felt he did not have much time left to live; and (d) his promise to be a “law abiding citizen of Singapore” after serving his sentence. At the oral hearing, Iskandar submitted that he was “truly remorseful” and asked for a lower sentence.

35 Farid was also unrepresented in CCA 6. Farid’s submissions centered around the Judge’s statement that “with the one-third remission and backdating of the sentence to the date of arrest, Farid would be released when he is 67 years old” (GD at [87]). Farid thus assumed that there must have been a further discount to the global sentence imposed of 31 years’ imprisonment, given that with one-third remission and backdating the sentence to the date of arrest on 22 May 2019 (when Farid was 51 years old), Farid will only be released at the age of 71 years old in the absence of a further discount. Farid thus sought confirmation that he will be released from prison at the age of 67 years old. At the oral hearing, Farid confirmed that he had no further arguments to raise in relation to the sentence imposed.

36 The Prosecution submitted that although the approach in the PG Guidelines ostensibly departs in some respects from the approach under case law (in particular, *Terence Ng*), it generally provides a sound and principled basis for determining the reduction in sentence when an accused person pleads guilty.

37 In the context of drug trafficking and drug importation offences, the Prosecution submitted that the application of the PG Guidelines should be modified for consistency with judicial guidelines and precedents, as well as

parliamentary intention. To that end, the Prosecution proposed the following key modifications: (a) capping the maximum reduction at 10%; and (b) invoking the public interest exception at para 13(b) of the PG Guidelines in egregious cases.

38 The Prosecution submitted that the ranges of reductions that extend up to 30% in the PG Guidelines should not be applied because this would be at variance with established Court of Appeal and High Court precedents. First, the sentences will be significantly depressed across the board, at clear variance with existing judicial guidelines and precedents. Second, applying a maximum reduction of up to 30% would lead to little or no appreciable difference between the sentences imposed across a wide range of drug quantities. Third, there will be a problematic “cliff effect”, where the sentence essentially doubles between the ranges of 9g to 9.99g and 10g to 11.5g.

39 The Prosecution also submitted that applying the ranges of reductions that extend up to 30% in the PG Guidelines would run counter to parliamentary intent. Parliament had (a) intentionally used the quantity of drugs as a proxy for the harm caused by these offences; and (b) prescribed stiff penalties for deterrence.

40 The Prosecution proposed the following framework, which would apply to first-time and repeat offenders alike:

- (a) Step 1: The court is to determine the sentence that it would have imposed had the offender been convicted after trial, without considering the offender’s plea of guilt.
- (b) Step 2: The court is to determine the applicable stage of the proceedings in which the offender has indicated his plea of guilt.

(c) Step 3: The court applies an appropriate reduction to the sentence determined in Step 1 to arrive at the sentence for each charge. The maximum reduction should be capped at 10%, with a correspondingly lower reduction applied in each subsequent stage.

(i) Given the relatively narrow range, it is unnecessary to set out specific percentages for the maximum reduction in each of the four stages in the PG Guidelines, since that may lead to overly granular figures and an excessively mathematical approach (*eg*, 1% to 2% for Stage 4).

(ii) Alternatively, if the court takes the view that specific sentencing reductions should be assigned to the subsequent stages for greater transparency, the Prosecution proposed that a maximum of 5% could apply to all subsequent stages.

41 In deciding the appropriate reduction at Step 3, the Prosecution submitted that the court should generally consider applying a reduction near the maximum allowed within the particular stage, for greater transparency and certainty for accused persons. However, this was subject to the following two caveats: (a) first, the courts should distinguish between two otherwise like cases in which one accused person pleads guilty at an earlier phase of the proceedings than the other (albeit within the same stage of the PG Guidelines); (b) second, the courts should apply a reduction lower than the maximum that applies to any given stage where the unreasonable conduct of an accused person results in protracted or delayed plead-guilty proceedings. Further, the Prosecution submitted that the strength of the evidence against the accused person should not be taken into account when determining the level of reduction.

42 In egregious cases, such as where a repeat offender traffics in or imports a quantity of drugs just below the capital threshold, the Prosecution submitted that the court should invoke the public interest exception at para 13(b) of the PG Guidelines and apply a smaller (or no) reduction.

43 Turning to the sentences appealed against, the Prosecution pointed out that the mandatory minimum sentence was imposed in respect of Iskandar's Fourth Charge, and Farid's Fourth and Fifth Charges. Further, the facts relating to Iskandar's First Charge and Farid's First Charge fell squarely in the category of egregious cases where minimal, if any, reduction should be accorded to a plea of guilt. Given that the Judge ran the sentences for Iskandar's First Charge and Iskandar's Fourth Charge consecutively to arrive at a global sentence of 32 years (see [30] above), and ran the sentences for Farid's First Charge and Farid's Fourth Charge consecutively to arrive at a global sentence of 31 years (see [33] above), the Prosecution submitted that the Appeals should be dismissed.

The YIC's submissions

44 Ms Chua Xyn Yee was appointed as Young Independent Counsel (the "YIC") to assist the court. The YIC submitted that the PG Guidelines can provide an appropriate analytical framework for determining the appropriate reduction to a sentence where an accused person pleads guilty to an offence, even in the light of our decision in *Terence Ng*. It would, however, depend on the specific existing judicial guidelines and precedents for the offence to determine whether the framework in the PG Guidelines can be applied without modification. The YIC also submitted that it is appropriate to apply different percentage reductions in sentences based on the stage of the proceedings at which an offender pleads guilty.

45 In the context of drug trafficking and drug importation offences under ss 5 and 7 of the MDA, the YIC submitted that the PG Guidelines can provide an analytical framework to determine the extent to which a sentence might be reduced on account of an offender's guilty plea. However, the framework should be modified before being applied on top of the existing sentencing frameworks for first-time offenders and repeat offenders of drug trafficking and drug importation offences.

46 The YIC's proposed modified PG Guidelines framework to be applied for first-time offenders was as follows:

- (a) Step 1: From the relevant indicative starting band, determine the indicative starting point based on the quantity of the drug.
- (b) Step 2: Consider the necessary adjustments to the indicative starting point upwards or downwards based on:
 - (i) the offender's culpability; and
 - (ii) relevant aggravating and mitigating factors, apart from the guilty plea.
- (c) Step 3: Consider applying an appropriate reduction for any guilty plea, which should generally not exceed the maximum reduction for the applicable stage as follows:
 - (i) Stage 1: 30% of the interval for the relevant indicative starting band (illustrated in the table below);
 - (ii) Stage 2: 20% of the interval for the relevant indicative starting band;

(iii) Stage 3: 10% of the interval for the relevant indicative starting band; and

(iv) Stage 4: 5% of the interval for the relevant indicative starting band.

| Weight of diamorphine | Starting sentence (first-time offender) | Interval for indicative starting band | 30% reduction off the interval (rounded off) |
|---|--|--|---|
| Prescribed sentencing range: 5 to 20 years' imprisonment | | | |
| Up to 3g | 5 to 6 years | 1 year | 4 months |
| 3g to 5g | 6 to 7 years | 1 year | 4 months |
| 5g to 7g | 7 to 8 years | 1 year | 4 months |
| 7g to 8g | 8 to 9 years | 1 year | 4 months |
| 8g to 9g | 10 to 13 years | 3 years | 11 months |
| 9g to 9.99g | 13 to 15 years | 2 years | 7 months |
| Prescribed sentencing range: 20 to 30 years' or life imprisonment | | | |
| 10g to 11.5g | 20 to 22 years | 2 years | 7 months |
| 11.5g to 13g | 23 to 25 years | 2 years | 7 months |
| 13g to 15g | 26 to 29 years | 3 years | 11 months |

47 The YIC's proposed modified PG Guidelines framework to be applied for repeat offenders was as follows:

(a) Step 1: Derive the starting point based on the quantity of the drug for a first-time offender.

(b) Step 2: Apply an indicative uplift based on the circumstances of re-offending, and derive an indicative starting point.

(c) Step 3: Adjust that indicative starting point based on the offender’s culpability and the aggravating and mitigating factors, apart from the guilty plea, which have not been taken into account in the analysis up to this point.

(d) Step 4: Consider applying an appropriate reduction for any guilty plea, which should generally not exceed the maximum reduction for the applicable stage as follows:

(i) Stage 1: 30% of the interval for the relevant indicative aggregate band (illustrated in the table below);

(ii) Stage 2: 20% of the interval for the relevant indicative aggregate band;

(iii) Stage 3: 10% of the interval for the relevant indicative aggregate band; and

(iv) Stage 4: 5% of the interval for the relevant indicative aggregate band.

| Weight of diamorphine | Starting sentence (first-time offender) | Indicative uplift (repeat offender) | Indicative aggregate | Interval for indicative aggregate band | 30% reduction of the interval |
|--|--|--|-----------------------------|---|--------------------------------------|
| Prescribed sentencing range: 5 to 20 years’ imprisonment | | | | | |
| Up to 3g | 5 to 6 years | 5 to 8 years | 10 to 14 years | 4 years | 1 year 2 months |

| | | | | | |
|---|----------------|--------------|----------------|---------|------------------|
| 3g to 5g | 6 to 7 years | 5 to 8 years | 11 to 15 years | 4 years | 1 year 2 months |
| 5g to 7g | 7 to 8 years | 5 to 8 years | 12 to 16 years | 4 years | 1 year 2 months |
| 7g to 8g | 8 to 9 years | 4 to 7 years | 12 to 16 years | 4 years | 1 year 2 months |
| 8g to 9g | 10 to 13 years | 4 to 7 years | 14 to 20 years | 6 years | 1 year 10 months |
| 9g to 9.99g | 13 to 15 years | 3 to 6 years | 16 to 20 years | 4 years | 1 year 2 months |
| Prescribed sentencing range: 20 to 30 years' or life imprisonment | | | | | |
| 10g to 11.5g | 20 to 22 years | 3 to 6 years | 23 to 28 years | 5 years | 1 year 6 months |
| 11.5g to 13g | 23 to 25 years | 2 to 4 years | 25 to 29 years | 4 years | 1 year 2 months |
| 13g to 15g | 26 to 29 years | 1 to 2 years | 27 to 30 years | 3 years | 11 months |

The issues to be determined

48 The issues that arose in the Appeals could be distilled as follows:

- (a) Do the PG Guidelines provide an appropriate analytical framework to determine the extent to which a sentence might be reduced on account of an offender’s guilty plea in the context of drug trafficking and drug importation offences under ss 5 and 7 of the MDA?
- (b) If so, how should the PG Guidelines be *calibrated* to apply to drug trafficking and drug importation offences under ss 5 and 7 of the MDA?

Do the PG Guidelines provide an appropriate framework to determine the extent to which a sentence might be reduced on account of a plea of guilt in the context of drug trafficking and drug importation offences?

49 In our view, the PG Guidelines do indeed provide such an appropriate analytical framework. The PG Guidelines expressly recognise the utilitarian benefits that an early plea of guilt generally brings, namely sparing victims and other witnesses of the need to prepare for a trial and to testify in court, as well as saving public resources on the part of the law enforcement agency, the prosecution and the judiciary, which in turn justify a reduction in sentence. We note, parenthetically, that in the context of drug trafficking and drug importation offences, the former utilitarian justification is usually irrelevant as these are offences committed against society at large and do not involve a specific identifiable victim.

50 The PG Guidelines thus rightly give effect to the utilitarian value of a plea of guilt as a mitigating factor in two ways in the context of drug trafficking and drug importation offences. First, by recognising the utilitarian benefits of an early plea of guilt, namely that it saves public resources on the part of the law enforcement agency, the prosecution and the judiciary. Second, by quantifying the utilitarian value of a plea of guilt with reference to the timeliness of the same.

51 For the reasons elaborated upon below, we were of the view that the PG Guidelines offer a welcome approach and an appropriate framework for determining the mitigatory weight of a plea of guilt based on utilitarian principles.

The PG Guidelines

52 We begin by examining the PG Guidelines in detail, including its genesis, objectives, and the guidelines themselves.

53 The PG Guidelines were issued by the SAP on 15 August 2023 and came into effect on 1 October 2023. The SAP was established by the Government after consultation by the Ministry of Home Affairs and the Ministry of Law with various stakeholders, including the Attorney-General’s Chambers, and the Judiciary. The key function of the SAP is to issue non-binding sentencing guidelines.

54 The objective of the PG Guidelines is to encourage accused persons who are going to plead guilty to do so as early in the court process as possible, and to promote consistency in sentencing (PG Guidelines at para 3). The PG Guidelines recognise that an early plea of guilt can have clear benefits in terms of: (a) the impact on victims and witnesses – an early plea of guilt allows victims to find closure early, and spares victims and other witnesses of the need to prepare for a trial and to testify in court; and (b) public resources – an early plea of guilt saves public resources on the part of the law enforcement agency, prosecution and judiciary (PG Guidelines at para 4).

55 The PG Guidelines prescribe a three-step approach for determining a sentence where an accused person pleads guilty (PG Guidelines at para 8):

- (a) Step 1: The court first determines the sentence that it would have imposed if the accused person had been convicted after trial. If the accused person has demonstrated remorse in other ways, apart from pleading guilty, the court may consider this as a mitigating factor in Step 1, if appropriate. Factors which relate to the accused’s plea of guilt

(such as the victim having been spared from having to testify) should *not* be considered at Step 1.

(b) Step 2: The court determines the applicable stage of the proceedings (PG Guidelines at para 9).

| Stage | Description | Reduction in sentence to be considered |
|-------|---|--|
| 1 | From the first mention until 12 weeks after the hearing when the prosecution informs the court and the accused person that the case is ready for the plea to be taken. | Up to a maximum of 30% |
| 2 | After Stage 1, until either of the following: For cases subject to Criminal Case Disclosure (“CCD”) procedures, when the court first gives directions for the filing of the Case for the Prosecution (“CPF”) in relation to the charge. For cases not subject to CCD procedures, when the court first fixes trial dates for the charge. | Up to a maximum of 20% |
| 3 | After Stage 2, until before the first day of the trial. | Up to a maximum of 10% |
| 4 | On or after the first day of the trial. | Up to a maximum of 5% |

(c) Step 3: The court applies an appropriate reduction to the sentence that was determined in Step 1, for each charge. The reduction should generally not exceed the maximum reduction for the applicable stage as set out in the table above.

56 The PG Guidelines also stipulate the following:

(a) Where there are multiple charges, the total sentence is then determined based on prevailing sentencing principles (PG Guidelines at para 8).

(b) Where there are co-accused persons, the final sentence may be calibrated based on considerations of parity, taking into account whether the other co-accused persons have also elected to plead guilty, and if so, the relative stage of proceedings at which they did so (PG Guidelines at para 8).

(c) If the law provides for a mandatory minimum sentence, the sentence cannot be reduced below the mandatory minimum sentence (PG Guidelines at para 8).

(d) The strength of the evidence against the accused person should not be taken into account when determining the level of reduction in sentence, subject to the public interest exception set out in para 13(b) (PG Guidelines at para 8).

57 The PG Guidelines are not binding on any court. The court may decide whether to adopt the guidelines in a given case, and if so, how the guidelines should be applied (PG Guidelines at para 2).

58 Where the final sentence after the reduction is applied is at variance with existing judicial guidelines or precedents for the offence in question, the court should apply its mind as to whether to adopt the existing judicial guidelines or precedents or to give full effect to the relevant reductions in sentence. The reductions in sentence resulting from the application of the PG Guidelines

cannot supersede binding judicial guidelines or precedents by a higher court (PG Guidelines at para 10).

59 One exception to the application of the PG Guidelines, known as the “public interest exception”, is where the court is of the view that it would be contrary to the public interest for these guidelines to be applied, given the circumstances of the specific case. In such a situation, the court may apply a reduction in sentence which is just and proportionate without reference to what the guidelines prescribe (PG Guidelines at para 13(b)).

The utilitarian approach vs the remorse-based approach

60 In *Terence Ng*, we recognised that there are three justifications for reducing a sentence on account of a plea of guilt: (a) the plea of guilt can be a subjective expression of genuine remorse and contrition (a “remorse-based” justification); (b) it spares the victim the ordeal of having to testify, thereby saving the victim the horror of having to re-live the incident (a “utilitarian” justification); and (c) it saves the resources of the state which would otherwise have been expended if there were a trial (a “utilitarian” justification): *Terence Ng* at [66]. As alluded to earlier at [54], the PG Guidelines recognise these utilitarian benefits that a plea of guilt generally brings (PG Guidelines at para 4).

61 This represents a shift from the view taken by the High Court in *Angliss Singapore Pte Ltd v Public Prosecutor* [2006] 4 SLR(R) 653 (“*Angliss*”), where the court held that “only a remorse-based approach ... has any currency in the context of our current jurisprudence”: *Angliss* at [56]. A plea of guilt can be mitigating when it is “motivated by genuine remorse, contriteness or regret and/or a desire to facilitate the administration of justice”: *Angliss* at [77]. Where the offender was caught red-handed or where the evidence against the offender

is truly overwhelming, it would not be wrong to surmise that a plea of guilt in these circumstances is merely tactical and not genuine, and accordingly should be given minimal or no mitigatory weight: *Angliss* at [69].

62 However, despite the endorsement of both the utilitarian and remorse-based justifications in *Terence Ng*, the reasoning in the case law for reducing a sentence on account of a plea of guilt tends to be remorse-centric. This has led the courts to hold that a plea of guilt should be given little mitigating weight if the evidence against the offender is overwhelming or if the offender is caught red-handed. If the Prosecution’s evidence against the accused person is very strong such that a conviction is virtually certain had the accused person’s case proceeded to trial, then a fair inference to be made is that the accused person had pleaded guilty only because he had no other better choice, and not because he was genuinely remorseful for committing the offence.

63 In the context of drug trafficking and drug importation offences, the following cases have applied a remorse-centric approach to determining the mitigatory value of a plea of guilt, often finding that the plea of guilt should be given minimal weight where the accused person was caught red-handed: *Public Prosecutor v Muhammad Nur Azam Bin Mohamad Indra and another* [2020] 4 SLR 1255 at [31]; *Public Prosecutor v Steven John a/l Gobalkrishnan* [2021] SGHC 111 (“*Steven John*”) at [24(c)(ii)] and [28]; *Public Prosecutor v Poopathi Chinaiyah s/o Paliandi* [2020] 5 SLR 734 (“*Poopathi Chinaiyah*”) at [22(d)]; *Public Prosecutor v Sherryl Versoza Dela Cruz* [2020] SGDC 179 at [31]; *Public Prosecutor v Spencer Kelly Vincent* [2021] SGDC 40 at [46]; *Public Prosecutor v Wong Jun Rong* [2018] SGDC 319 at [27]; *Public Prosecutor v Murugarajan A/L Munian* [2021] SGDC 273 at [49]–[51]; *Public Prosecutor v Abdul Qayyum Bin Abdul Malik* [2021] SGDC 89 at [37]; and *Public Prosecutor v K G Pushpanatan* [2017] SGDC 247 at [10].

64 Far fewer decisions have accorded significant mitigatory weight to a plea of guilt even though the offender was caught red-handed or the evidence was overwhelmingly in the Prosecution’s favour. In the context of drug trafficking and drug importation offences, see, for instance: *Public Prosecutor v Vashan a/l K Raman* [2019] SGHC 151 (“*Vashan*”) at [20]; and *Public Prosecutor v Murugesan a/l Arumugam* [2020] SGHC 203 at [24]. In *Public Prosecutor v Randy Rosigit* [2024] 4 SLR 1586 (“*Randy Rosigit*”), which was a case involving the possession of child abuse material, the High Court accorded due mitigating weight to the offender’s plea of guilt on account of the saving of time and resource, although the court noted that he was apprehended in the course of a police raid and so was caught red-handed (*Randy Rosigit* at [68]–[69]). The High Court in *Public Prosecutor v Muhamad Akashah Aizad bin Hasni* [2024] SGHC 223 (“*Muhamad Akashah*”), which applied the PG Guidelines, noted that the observation in *Randy Rosigit* “may be especially pertinent in the context of drug trafficking and importation cases, a good number of which feature accused persons caught red-handed with the drugs” (*Muhamad Akashah* at [85]).

65 In our view, it is generally difficult for the court to discern whether an offender is genuinely remorseful *merely* from a plea of guilt. Accused persons choose to enter a guilty plea for a multitude of reasons. That is precisely why the PG Guidelines specifically provide that only manifestations of remorse in other ways, apart from entering a plea of guilt, may be taken into account as a mitigating factor at Step 1 (PG Guidelines at para 8):

If the accused person has demonstrated remorse in other ways, apart from pleading guilty, the court may consider this as a mitigating factor in Step 1, if appropriate.

Factors which relate to the accused person’s plea of guilt ... **should not** be considered as Step 1.

[emphasis in original]

Such evidence of remorse may include voluntary restitution or compensation to the victim, voluntary surrender of the accused person's gains from his criminal conduct, and voluntary surrender to the authorities (PG Guidelines at para 8 footnote 2).

66 Given the inherent difficulty in discerning remorse merely from a plea of guilt, the utilitarian justifications for giving mitigatory weight to a plea of guilt ought to come to the forefront. In this regard, the PG Guidelines are expressly driven by the utilitarian justifications in giving mitigatory weight to a plea of guilt as reflected in paras 3–4 of the guidelines, and they explicitly exclude the consideration of the remorse-based factor as to whether the evidence against the offender is overwhelming in para 8 of the same:

3. The objective of these guidelines is to encourage accused persons who are going to plead guilty to do so as early in the court process as possible, and to promote consistency in sentencing ...

4. An early plea of guilt can have clear benefits in terms of:

(a) **The impact on victims and witnesses.** An early plea of guilt allows victims to find closure early, and spares victims and other witnesses the need to prepare for a trial, and to testify in court.

(b) **Public resources.** An early plea of guilt saves public resources on the part of the law enforcement agency, prosecution and judiciary.

...

8. ... The strength of the evidence against the accused person **should not** be taken into account when determining the level of reduction in sentence ...

[emphasis in original]

67 In the context of drug trafficking and drug importation offences, accused persons are often caught red-handed with the drugs (*Muhamad Akashah* at [85],

see [64] above). Other demonstrations of remorse such as an apology or voluntary restitution or compensation to the victim would not be relevant in the context of such offences where there is no identifiable victim. Evidently, remorse typically does not feature in the equation for drug trafficking and drug importation offences, save for exceptional circumstances, such as if the accused person attempts to resile from the deal prior to being caught by the authorities. Neither does the utilitarian justification of sparing the victim the ordeal of having to prepare for a trial and to testify in court feature, given that these drug offences do not involve a specific identifiable victim and are typically committed against society at large.

68 Therefore, the primary justification for according mitigatory weight to a plea of guilt in the context of drug trafficking and drug importation offences is that an early plea of guilt saves public resources on the part of the law enforcement agency, the prosecution and the judiciary.

69 The PG Guidelines recognise that the utilitarian value of a plea of guilt is most easily quantified with reference to the timeliness of the same, which is directly associated with the second utilitarian justification, *ie*, saving of time and resources. The earlier the accused person indicates that he will plead guilty, the greater the utilitarian benefits, and hence the larger the reduction in sentence ought to be (PG Guidelines at para 6). Accordingly, the best proxy for giving mitigatory weight to the utilitarian value that a plea of guilt brings is the timeliness of the guilty plea, which in turn looks to the stage at which the guilty plea is given.

Accounting for the guilty plea in a separate step of the sentencing framework

70 The PG Guidelines provide that the guilty plea is accounted for in the final step of the sentencing framework, after the court first determines the sentence that it would have imposed if the accused person had been convicted after trial (see [55] above).

71 This differs from our holding in *Terence Ng*, where the court demurred at New Zealand’s approach in *Hessell v R* [2011] 1 NZLR 607 of applying a discount to account for the value of any guilty plea in a separate step, and held that the offender’s guilty plea should instead be considered in conjunction with other offender-specific mitigating factors (*Terence Ng* at [36]–[38] and [71]):

36 ... There are two steps to the so-called “*Taueki* methodology” [referring to the New Zealand Court of Appeal case *R v Taueki* [2005] 3 NZLR 372] The first step involves the identification of a “starting point sentence” which reflects the intrinsic seriousness of the *offending act*. This is done by identifying the sentencing band appropriate to the offence in question (having regard only to the seriousness of the *offence*) and then the precise position along the prescribed sentencing band within which the offence falls ... At the second step, this starting point sentence is then adjusted either up or down to reflect circumstances which are *personal to the offender* such as his offending history or the expression of remorse. ... Following the decision of the New Zealand Supreme Court in *Hessell v R* [2011] 1 NZLR 607 (“*Hessell*”), it is now seen as desirable that a “third step” be added wherein the court applies a discount to the presumptive sentence derived after the first two steps have been executed to account for the value of any guilty plea (at [73]).

37 ... In our opinion, the *Taueki* methodology has clarity, transparency, coherence and consistency to commend it and should be adopted. ...

38 ***The only point on which we demur concerns the introduction of a “third step” for the application of a discount by reason of a plea of guilt or for the rendering of assistance to the police. In our opinion, these are offender-specific mitigating factors and can and should be***

taken into account at the second stage of the analysis instead of being considered separately.

...

71 In the premises, we are of the view that ***the plea of guilt should be assessed as one of the many offender-specific mitigating factors that should be taken into account at the second step of the sentencing analysis.*** In assessing the proper mitigatory weight to be given to a plea of guilt, the sentencing court should have regard to the three *Millberry* justifications ... and consider the matter together with *all* the other offender-specific factors in calibrating the sentence to fit the facts of the case.

[emphasis in italics in original; emphasis added in bold italics]

72 We start off by emphasising that it is unhelpful to construe the PG Guidelines as being in any way inconsistent with precedents (referring in particular to our decision in *Terence Ng*). First, the PG Guidelines are non-binding and are intended to offer assistance to the sentencing court. The court's task is to *calibrate* the appropriate reduction on account of the guilty plea bearing in mind all relevant considerations, including but not limited to the non-binding guidelines.

73 Second, and more importantly, the PG Guidelines postdate the decision in *Terence Ng* which did not clearly contemplate or consider the utilitarian approach to factoring a plea of guilt in the same way that the PG Guidelines do. In *Terence Ng*, the utilitarian justifications were not treated as an *independent* basis for according mitigatory weight to a plea of guilt, and it was held instead that the sentencing court should have regard to both the remorse-based and utilitarian justifications at once, and consider the plea of guilt together with all the other offender-specific factors in calibrating the sentence (*Terence Ng* at [71]). In our view, it would thus be unhelpful to say that sentencing courts are precluded by the decision in *Terence Ng* from considering the mitigating effect of the guilty plea separately as envisaged in the PG Guidelines.

74 Third, and finally, as the apex court, our task is to make sense of the PG Guidelines and to adapt them in a way that works for drug trafficking and drug importation offences, bearing in mind the relevant public policy underpinning these offences.

75 We were also of the view that the PG Guidelines rightly account for the guilty plea in a separate step of the sentencing framework, as opposed to considering it in conjunction with other offender-specific mitigating factors. “Offender-specific” factors are understood to refer to those aspects which relate to the “*personal circumstances of the offender* – that is to say, matters such as his character, personal attributes, expression of remorse, or any other considerations which are particular to the offender” [emphasis in original] (*Terence Ng* at [62]). While a plea of guilt is the result of the personal choice of the accused person, the utilitarian benefits that the guilty plea brings, such as the savings of time and state resources, are quite objective and independent of the personal circumstances of the accused person. We therefore held that as a matter of principle, it is correct to account for the guilty plea in a separate step of the sentencing framework.

76 Additionally, given that the mechanism in the PG Guidelines is to provide a percentage reduction, it would be practically unfeasible to apply a percentage discount in conjunction with other offender-specific mitigating factors. At that stage, the sentence against which the percentage reduction should apply would not have been formulated.

How should the PG Guidelines be calibrated to apply to drug trafficking and drug importation offences?

77 Having established that the PG Guidelines provide an appropriate analytical framework and should be applied, we now turn to consider how the

PG Guidelines should be calibrated to apply to drug trafficking and drug importation offences. In this regard, there were four main contenders and/or frameworks:

- (a) the uncalibrated PG Guidelines providing for a maximum reduction of 30%;
- (b) applying a maximum reduction of 15% (as decided by the Judge below);
- (c) applying a maximum reduction of 10% (as proposed by the Prosecution); and
- (d) applying a maximum reduction of 30% of the interval for the relevant indicative starting band (in the case of first-time offenders) or indicative aggregate band (in the case of repeat offenders) (as submitted by the YIC).

78 For the reasons below, we agreed with the Prosecution's submission to calibrate the PG Guidelines such that a maximum sentence reduction of 10% would apply.

The existing sentencing framework for drug trafficking and drug importation offences

79 We begin by setting out briefly the existing sentencing framework for drug trafficking and drug importation offences, which does not account for the PG Guidelines.

80 The indicative starting points for first-time offenders for drug trafficking and drug importation offences are well established: see *Vasentha d/o Joseph v*

Public Prosecutor [2015] 5 SLR 122 (“*Vasentha*”), *Suventher Shanmugam v Public Prosecutor* [2017] 2 SLR 115 (“*Suventher*”) and *Public Prosecutor v Tan Lye Heng* [2017] 5 SLR 564 (“*Tan Lye Heng*”).

81 However, as regards repeat offenders, the High Court in *Public Prosecutor v Lai Teck Guan* [2018] 5 SLR 852 (“*Lai Teck Guan*”) at [30] held that the framework in *Vasentha* was not suitable in such a setting because there are at least two important metrics that will feature in the sentencing analysis, namely the quantity of drugs and the circumstances in which the repeat offence came about.

82 In sentencing repeat offenders, the sentencing court would first derive the starting point for the sentence based on the quantity of drugs for first-time offenders using the *Vasentha/Suventher* framework. The court would then apply an *indicative uplift* on account of the fact that this is a repeat offence and derive an indicative starting point on this basis, having due regard to the circumstances of the repeat offence. Finally, the court would adjust that indicative starting point based on the offender’s culpability and the aggravating or mitigating factors, which have not been taken into account in the analysis up to this point.

Setting a reduction limit based on the timeliness of the plea of guilt

83 Preliminarily, we stress that the PG Guidelines do not prescribe *fixed* sentencing discounts but are deliberately expressed to refer to a maximum reduction up to a particular percentage depending on the stage at which the guilty plea is taken.

84 There is thus no conflict with our decision in *Terence Ng*, which eschewed prescribing *fixed* sentencing discounts (at [70]–[71]). This was a

possible difference between the approach of the PG Guidelines and the approach under existing case law that the Judge below addressed (see [17(b)] above).

70 However, ***we decline to follow the approach suggested by the UK Sentencing Guidelines Council in a 2007 report*** (see Sentencing Guidelines Council, *Reduction in Sentence for a Guilty Plea Definitive Guideline ...*), ***in setting prescribed sentencing discounts based on the timeliness of the plea of guilt***. We agree with the New Zealand Supreme Court that ***the setting of fixed sentencing discounts does not allow the court to take into account the many and varied reasons for which a plea of guilt is entered and the effects it might have on the victim and the criminal justice process as a whole*** (see *Hessell* at [62]). All of these form a complex web of inter-related considerations that should be assessed in the round, and no one factor should be singled out as being of particular significance. ...

71 ... whether, and if so, what discount should be accorded to an accused person who pleaded guilty was a fact-sensitive matter that depended on multiple factors ...

[emphasis in italics in original; emphasis added in bold italics]

85 The UK Sentencing Guidelines which were referred to in *Terence Ng* explicitly provide that “there is a presumption that the recommended reduction will be given unless there are good reasons for a lower amount”: (a) first reasonable opportunity – one-third; (b) after a trial date is set – one-fourth; and (c) at the door of the court or after trial has begun – one-tenth. Unlike the UK Sentencing Guidelines, our PG Guidelines do not contain an equivalent provision and do not prescribe *fixed* sentencing discounts, but merely provide for a maximum percentage reduction applicable to a particular stage of the criminal proceedings.

86 In our view, it is also principled to quantify the mitigatory weight of a plea of guilt with reference to the timeliness of the same. The earlier the accused person indicates that he will plead guilty, the greater the utilitarian benefits, and hence the larger the reduction in sentence ought to be.

Comparison of the reduction in range of sentences for each of the proposed frameworks

87 We set out a summary of the range of sentences after applying each of the proposed framework for reduction in sentences on account of guilty pleas:

- (a) the uncalibrated PG Guidelines providing for a maximum reduction of 30%;
- (b) applying a maximum reduction of 15% (as decided by the Judge below);
- (c) applying a maximum reduction of 10% (as proposed by the Prosecution); and
- (d) applying a maximum reduction of 30% of the interval for the relevant indicative starting band (in the case of first-time offenders) or indicative aggregate band (in the case of repeat offenders) (as submitted by the YIC).

88 In respect of first-time offenders:

| Weight of diamorphine | Indicative starting sentence (for first-time offender) | Sentence after applying 30% maximum reduction (per uncalibrated PG Guidelines) | Sentence after applying 15% maximum reduction (per GD) | Sentence after applying 10% maximum reduction (per Prosecution’s submissions) | Sentence after applying 30% maximum reduction of the interval (per YIC’s submissions) |
|--|---|---|---|--|--|
| Prescribed sentencing range: 5 to 20 years’ imprisonment | | | | | |

| (s 33(1) of the MDA, read with row 1 of the Second Schedule of the MDA dealing with s 5 of the MDA) | | | | | |
|---|----------------|--------------------------------------|---------------------------------------|--|--|
| Up to 3g | 5 to 6 years | 5 years | 5 years to 5 years 1 month | 5 years to 5 years 5 months | 5 years to 5 years 8 months |
| 3g to 5g | 6 to 7 years | 5 years | 5 years 1 month to 6 years | 5 years 5 months to 6 years 4 months | 5 years 8 months to 6 years 8 months |
| 5g to 7g | 7 to 8 years | 5 years to 5 years 7 months | 6 years to 6 years 10 months | 6 years 4 months to 7 years 2 months | 6 years 8 months to 7 years 8 months |
| 7g to 8g | 8 to 9 years | 5 years 7 months to 6 years 3 months | 6 years 10 months to 7 years 8 months | 7 years 2 months to 8 years 1 month | 7 years 8 months to 8 years 8 months |
| 8g to 9g | 10 to 13 years | 7 years to 9 years 1 month | 7 years 8 months to 11 years | 9 years to 11 years 8 months | 9 years 1 month to 12 years 1 month |
| 9g to 9.99g | 13 to 15 years | 9 years 1 month to 10 years 6 months | 11 years to 12 years 9 months | 11 years 8 months to 13 years 6 months | 12 years 5 months to 14 years 5 months |

| Prescribed sentencing range: 20 to 30 years' or life imprisonment (s 33(1) of the MDA, read with row 4 of the Second Schedule of the MDA dealing with s 5 of the MDA) | | | | | |
|--|----------------|-------------------------------|---------------------------------------|--|--|
| 10g to 11.5g | 20 to 22 years | 20 years | 20 years | 20 years | 20 years to 21 years 5 months |
| 11.5g to 13g | 23 to 25 years | 20 years | 20 years to 21 years 3 months | 20 years 8 months to 22 years 6 months | 22 years 5 months to 24 years 5 months |
| 13g to 15g | 26 to 29 years | 20 years to 20 years 3 months | 22 years 1 month to 24 years 8 months | 23 years 5 months to 26 years 1 month | 25 years 1 month to 28 years 1 month |

89 In respect of repeat offenders:

| Weight of diamorphine | Indicative aggregate (after accounting for uplift for repeat offender) | Sentence after applying 30% maximum reduction (per uncalibrated PG Guidelines) | Sentence after applying 15% maximum reduction (per GD) | Sentence after applying 10% maximum reduction (per Prosecution's submissions) | Sentence after applying 30% maximum reduction of the interval (per YIC's submissions) |
|--|---|---|---|--|--|
| Prescribed sentencing range: 10 to 30 years' imprisonment (s 33(4A) of the MDA) | | | | | |

| | | | | | |
|---|----------------|-------------------------------|--|---|--|
| Up to 3g | 10 to 14 years | 10 years | 10 years to 11 years 11 months | 10 years to 12 years 7 months | 10 years to 12 years 10 months |
| 3g to 5g | 11 to 15 years | 10 years to 10 years 6 months | 10 years to 12 years 9 months | 10 years to 13 years 6 months | 10 years to 13 years 10 months |
| 5g to 7g | 12 to 16 years | 10 years to 11 years 2 months | 10 years 2 months to 13 years 7 months | 10 years 10 months to 14 years 5 months | 10 years 10 months to 14 years 10 months |
| 7g to 8g | 12 to 16 years | 10 years to 11 years 2 months | 10 years 2 months to 13 years 7 months | 10 years 10 months to 14 years 5 months | 10 years 10 months to 14 years 10 months |
| 8g to 9g | 14 to 20 years | 10 years to 14 years | 11 years 11 months to 17 years | 12 years 7 months to 18 years | 12 years 2 months to 18 years 2 months |
| 9g to 9.99g | 16 to 20 years | 11 years 2 months to 14 years | 13 years 7 months to 17 years | 14 years 5 months to 18 years | 14 years 10 months to 18 years 10 months |
| Prescribed sentencing range: 20 to 30 years' or life imprisonment | | | | | |

| (s 33(4A) read with s 33(4D) of the MDA, read with s 33(1) of the MDA, read with row 4 of the Second Schedule of the MDA dealing with s 5 of the MDA) | | | | | |
|---|----------------|-------------------------------|---|--|--|
| 10g to 11.5g | 23 to 28 years | 20 years | 20 years to 23 years 10 months | 20 years 8 months to 25 years 2 months | 21 years 6 months to 26 years 6 months |
| 11.5g to 13g | 25 to 29 years | 20 years to 20 years 4 months | 21 years 3 months to 24 years 8 months | 22 years 6 months to 26 years 1 month | 23 years 10 months to 27 years 10 months |
| 13g to 15g | 27 to 30 years | 20 years to 21 years | 22 years 11 months to 25 years 6 months | 24 years 4 months to 27 years | 26 years 1 month to 29 years 1 month |

Problems with applying a maximum reduction of up to 30%

90 The first point that ought to be emphasised is the glaring fact that even the appellants’ counsel in the proceedings below did not suggest that the reduction in sentence should be the maximum 30%. This was obviously in recognition of the undeniable fact that such a reduction would do violence to the existing precedents and sentencing benchmarks. In our view, this demonstrated that even the members of the Criminal Bar accepted that the PG Guidelines were never intended to be applied in a fixed and rigid manner.

91 From the comparative tables above, it is apparent that applying a maximum reduction of 30% would lead to the absurd result of a clustering of

sentences at or near the mandatory minimum irrespective of the actual quantity of drugs involved:

(a) In respect of first-time trafficking and importation offences involving up to 7g of diamorphine, the sentences arrived at after applying the full 30% discount will be at or near the mandatory minimum of five years.

(b) In respect of first-time trafficking and importation offences involving 10g to 15g of diamorphine, all of the sentences (including sentences for offences involving 14.99g of diamorphine) will be at or near the mandatory minimum of 20 years if the full 30% discount is applied.

(c) In respect of repeat trafficking and importation offences involving up to 8g of diamorphine, the sentences arrived at after applying the full 30% discount will be at or near the mandatory minimum of ten years.

(d) In respect of repeat trafficking and importation offences involving 10g to 15g of diamorphine, all of the sentences (including sentences for offences involving 14.99g of diamorphine) will be at or near the mandatory minimum of 20 years if the full 30% discount is applied.

92 This would be contrary to the principles articulated in *Vasentha* and *Suventher*, particularly that:

- (a) there is a need for proportionality between the potential harm to society and the sentence imposed (*Vasentha* at [18]–[19] and [23]; *Suventher* at [21]);
- (b) it is the duty of the court to consider the full spectrum of sentences in determining the appropriate sentence (*Vasentha* at [46]; *Suventher* at [26]); and
- (c) it is not consistent with the strong deterrent stance that Parliament has taken against drug offences for an accused person facing a charge involving 14.99g of diamorphine to receive a sentence that is at the lower range of the sentencing range (*Suventher* at [26]).

93 Therefore, it cannot be seriously disputed that the full 30% discount provided for in the PG Guidelines should not be applied to drug trafficking and drug importation offences.

Problems with applying a maximum reduction of up to 15% (as decided by the Judge in the proceedings below)

94 First, one of the Judge’s key reasons for arriving at the maximum reduction of 15% was his assessment that “in respect of first-time offenders, where the weight of the drugs involved was close to the death penalty threshold, the general trend was for a sentence of around 25 years to be imposed after taking into account the plea of guilt and other mitigating factors”. The Judge concluded that because a sentence of 25 years is about 14% lower than the indicative starting sentence of 29 years under the *Vasentha/Suventher* framework, an appropriate maximum reduction for drug trafficking and drug importation offences would be 15% (GD at [48]).

95 With respect, the error in the Judge’s reasoning lay in the assumption that the approximate 14% reduction from the applicable indicative starting sentence of 29 years’ imprisonment was based *solely* on the plea of guilt, which was not the case. In most of the cases cited by the Judge, the offenders’ culpability was low, which would have resulted in a downwards adjustment from the indicative starting sentence, thus explaining the relatively low sentence of 25 years’ imprisonment.

(a) In *Vashan*, the High Court held that the offender had played a limited role as he was operating under the directions of another (*Vashan* at [19]). The court also reasoned that 25 years’ imprisonment was warranted, primarily on account of the limited role the offender played and his substantial cooperation with the Central Narcotics Bureau (*Vashan* at [24]).

(b) In *Murugesan a/l Arumugam v Public Prosecutor* [2021] SGCA 32 (“*Murugesan*”), this court found that the offender had played a minor role in the drug-trafficking operations as a mere courier and sentenced him to 25 years’ imprisonment (*Murugesan* at [9]).

(c) In *Public Prosecutor v Muhammad Rais bin Abdul Rashid* [2022] SGHC 99 (“*Muhammad Rais*”), the High Court found that the offender performed a limited role as a courier under the direction of another and was not an orchestrating hand in the illicit activities, and sentenced him to 25 years’ imprisonment (*Muhammad Rais* at [30]).

(d) In *Public Prosecutor v Muhammad Hakam bin Suliman* [2022] SGHC 160 (“*Muhammad Hakam*”), the High Court held that the offender’s role was “quite limited” and that his culpability was on the

lower end of the scale, and sentenced him to 24 years' imprisonment (*Muhammad Hakam* at [32]).

(e) In *Adri Anton Kalangie v Public Prosecutor* [2018] 2 SLR 557 ("*Adri*"), this court considered that it was "highly significant" that the offender had voluntarily confessed to his crime and admitted that he was in possession of drugs although he was not discovered, and upheld the 25 years' sentence (*Adri* at [12] and [83]).

(f) In *Public Prosecutor v Hari Krishnan Selvan* [2017] SGHC 168 ("*Hari*"), the offender was fairly culpable in that he recruited and paid other individuals to assist him in trafficking in diamorphine, delivered the drugs for reward, and concealed the diamorphine to avoid detection (*Hari* at [11] and [19]). However, the High Court accorded due weight to the mitigating factors of his guilty plea and cooperation with the authorities as they saved the court and law enforcement agencies considerable time and resources and indicated a measure of remorse (*Hari* at [19]). The offender was sentenced to a slightly higher imprisonment term of 26 years (*Hari* at [21]).

96 In contrast, in cases where the offenders' culpability was assessed to be high, despite the plea of guilt, the sentence imposed tended to range from 26 to 28 years (see also *Hari* at [95(f)] above). As such, we disagreed with the Judge's conclusion that the general sentencing trend is a 25 years' imprisonment term for first-time offenders trafficking in an amount of drugs close to the capital threshold who plead guilty.

(a) In *Muhammad Amirul Aliff bin Md Zainal v Public Prosecutor* [2021] 2 SLR 299 ("*Muhammad Amirul*"), we noted that the offender had instructed his co-accused in the drug venture, was a member of the

Malaysian-based drug syndicate, and received payment for his role (*Muhammad Amirul* at [24]) and upheld his sentence of 27 years' imprisonment.

(b) In *Steven John*, the High Court agreed with the Prosecution's submissions that the accused's culpability was high as: (i) he was not a mere courier with limited involvement, but instead played an active role in facilitating the drug trafficking enterprise; and (ii) he was motivated by financial gain as he was paid a commission of \$500 for every 60 packets of diamorphine delivered, and he actively sourced for his own customers and liaised with them directly (*Steven John* at [24] and [28]). The offender was sentenced to 27 years' imprisonment.

(c) In *Poopathi Chinaiyah*, the High Court found that the accused's culpability was moderate, justifying a downwards adjustment from the indicative starting sentence of 29 years to 27 years (*Poopathi Chinaiyah* at [22(b)] and [27]). Weighing the aggravating factors of the offender's prior conviction for trafficking in cannabis and a similar TIC charge for trafficking in a Class A controlled drug, against the mitigating factors of the offender's guilty plea and cooperation with the authorities, the High Court found that 28 years' imprisonment was appropriate, especially since little mitigating weight should be placed on his plea of guilt given that he was caught red-handed with the drugs (*Poopathi Chinaiyah* at [22(b)] and [27]).

(d) In *Public Prosecutor v Mohamed Affandi bin Mohamed Yuz Al-Haj* [2021] SGHC 151 ("*Mohamed Affandi*"), the High Court held that the accused's culpability was high as he had performed multiple roles, not just transferring drugs, but also repacking them, collecting payment

from drug customers, and remitting drug payment monies overseas. This had been going on for some time, with the accused being paid a “not negligible” sum of money (*Mohamed Affandi* at [15]). The High Court considered that the guilty plea did not lead to a substantial reduction of sentence (*Mohamed Affandi* at [18]) and sentenced the accused to 28 years’ imprisonment (*Mohamed Affandi* at [25]).

97 Second, we agreed with the Prosecution’s observation that the adoption of a maximum reduction of up to 15% will result and indeed has resulted in cases involving multiple aggravating factors and/or accused persons with higher culpability receiving final sentences of about 25 years’ imprisonment, and an even lower sentence for accused persons who are less culpable. The High Court in *Muhamad Akashah* similarly observed, comparing the sentences in post-PG Guidelines drugs trafficking and importation cases with those imposed in pre-PG Guidelines cases, that there is some empirical basis for the Prosecution’s submission that a maximum reduction of 15% for guilty pleas may eventually lead to imprisonment terms in cases involving multiple aggravating factors and/or offenders with higher culpability moving downwards to cluster around 25 years and below: *Muhamad Akashah* at [73].

(a) In *Public Prosecutor v Mohammad Idris s/o Zainal Abidin* (HC/CC 42/2023) (unreported), the accused pleaded guilty to a charge of trafficking in not less than 249.99g of methamphetamine. He had antecedents for drug possession and consumption offences, as well as a TIC charge for possession of drugs utensils. The Prosecution noted that the accused’s culpability was “not low” as he was “not just a courier but was a trafficker”. Nonetheless, the Prosecution submitted for a sentence of 25 years and six months, which was derived from applying a 15% reduction in sentence per the ruling in the GD. The High Court sentenced

the accused to 25 years and six months' imprisonment and 15 strokes of the cane (see *Muhamad Akashah* at [59]).

(b) In *Public Prosecutor v Muhammad Syafiq bin Azman* (HC/CC 55/2023) (unreported), the accused pleaded guilty to a charge of trafficking in not less than 249.99g of methamphetamine. The Prosecution highlighted that the accused had been selling drugs for at least ten months prior to his arrest, and that “the scale of his drug enterprise grew with time, eventually culminating in the creation of a Telegram channel and an established clientele”. The Prosecution also led evidence that the accused was actively involved in the drug enterprise of two other individuals, and took active steps to avoid detection by the authorities. Nonetheless, the Prosecution submitted for a sentence of 25 years and six months, which was derived from applying a 15% reduction in sentence per the ruling in the GD. The High Court sentenced the accused to 25 years' imprisonment and 15 strokes of the cane (see *Muhamad Akashah* at [58]).

(c) In *Public Prosecutor v Imran bin Mohd Arip* (HC/CC 15/2024) (unreported), the accused pleaded guilty to a charge of abetting by conspiracy to traffic in not less than 14.99g of diamorphine. The Prosecution described the accused as an offender of higher culpability because of his “active involvement in the drug trade on a commercial scale”. The accused also had a TIC charge of trafficking in not less than 12.97g of diamorphine. Nonetheless, the Prosecution submitted for a sentence of at least 25 years' imprisonment, which was derived from applying a 15% reduction in sentence per the ruling in the GD. The High Court imposed a sentence of 25 years' imprisonment (see *Muhamad Akashah* at [57]).

(d) In *Public Prosecutor v Chua Jun Hao* (HC/CC 53/2023) (unreported), the accused pleaded guilty to a charge of trafficking in not less than 249.99g of methamphetamine. The Prosecution acknowledged that his culpability was “lowered on account of his limited role as a courier and acting on the direction of a third party”. Applying the maximum 15% reduction in sentence per the GD, the Prosecution submitted for an imprisonment term of 23 to 24 years. The eventual sentence imposed by the High Court was 23 years’ imprisonment with 15 strokes of the cane (see *Muhamad Akashah* at [60]).

98 In our view, this presented a serious cause of concern given that the PG Guidelines are not meant to result in reductions in sentences over and above the existing judicial guidelines or precedents where accused persons have pleaded guilty. As the precedents canvassed at [96] above demonstrate, where the offender’s culpability is high or where significant aggravating factors are present, the sentences imposed tend to range from 26 to 28 years despite the plea of guilt, and certainly do not cluster around 25 years and below.

99 Third, capping the maximum reduction at 15% would still cause a drastic “cliff effect” between sentences for a first-time offender who traffics in or imports 9.99g and one who traffics in or imports 10g of diamorphine. After a 15% reduction (as the fourth column of the comparative table above illustrates), the former offender would receive a sentence of 11 years to 12 years nine months’ imprisonment, whereas the latter offender would receive the mandatory minimum sentence of 20 years’ imprisonment.

100 The Judge’s workaround was for the court to apply a “smaller than usual” reduction to a drug trafficking or importation offence involving 9.99g of diamorphine (GD at [54]). We agreed with the Prosecution’s submission that

this raises two issues: (a) it may be arbitrary to apply a smaller reduction for drug trafficking or drug importation offences involving 9.99g of diamorphine when the usual maximum reduction is applied for drugs directly above and below that weight; and (b) the “cliff effect” would only be deferred to the disparity between the sentence for trafficking in 10g of diamorphine and the sentence for trafficking in 9.98g of diamorphine. Accordingly, a more principled solution to the “cliff effect” problem would be to apply a smaller maximum reduction across the board.

101 For the foregoing reasons, we were of the view that calibrating the PG Guidelines to prescribe a maximum reduction of up to 15% in the case of drug trafficking and drug importation offences should *not* be adopted.

Problems with applying a maximum reduction of up to 30% of the interval for the relevant indicative starting band or indicative aggregate band (as proposed by the YIC)

102 We thank the YIC for her detailed and somewhat innovative submissions. However, the YIC was unable to satisfactorily explain the rationale behind the proposed approach of applying a maximum reduction of up to 30% of the *interval* for the relevant indicative starting band (in the case of first-time offenders) and the indicative aggregate band (in the case of repeat offenders).

103 It appeared to us that the YIC’s recommendation was influenced by a recognition that a maximum reduction of 30% of the whole sentence cannot be justified, and the “interval” approach was thus employed in order to dilute the otherwise extravagant 30% reduction. It was clear that the overall and intended result was that the YIC’s final sentence ranges would be closest to the indicative starting and aggregate bands, for the simple mathematical reason that 30% of

the interval will almost always be smaller than 30% of the sentence imposed and even 15% or 10% of the longer sentences imposed. Based on the YIC's submissions at the oral hearing, the YIC's approach appeared to have been driven by the consideration that it was necessary for the maximum tiered reductions in the PG Guidelines of 30%, 20%, 10% and 5% to continue to feature in the sentencing framework.

104 Respectfully, we disagreed with the suggested approach because it incorrectly assumed that the court has to utilise the maximum tiered reductions in the PG Guidelines. We reiterate that the PG Guidelines were never intended to be applied in a fixed and rigid manner. Instead, they were deliberately expressed to provide for a reduction of sentence *up to* a particular maximum percentage. The maximum percentages can be calibrated having regard to the particular criminal offence in question and its relevant sentencing precedents and benchmarks.

105 Further, there is no principled explanation for why the percentage reduction should be attached to the range of the sentence assigned to a certain quantity of drugs, *ie*, the interval. If the court were to adopt the YIC's formula, as can be seen in the YIC's own table at [46(c)] above, the maximum reduction in sentence for offenders who traffic any amount of diamorphine up to 8g would be four months, which increases for offenders who traffic 8–9g of diamorphine to 11 months, which then decreases for offenders who traffic 9–9.99g of diamorphine to seven months. That cannot be sound in principle. It appeared to us that the YIC's proposal was the result of reverse engineering in order to derive a smaller reduction by finding a smaller base to apply the percentage reduction to. The danger of such an approach lay in the arbitrary and unprincipled outcomes that it would produce.

The correct calibration of the PG Guidelines for drug trafficking and drug importation offences – a maximum reduction of up to 10%

106 In our view, a simpler and more principled approach would be to apply a smaller reduction of up to a maximum of 10%, as proposed by the Prosecution.

Applying a maximum reduction of 10% avoids the problems that plague a maximum reduction of 30% or 15%

107 Applying a maximum reduction of up to 10% obviates the problem of a clustering of sentences at or near the mandatory minimum irrespective of the actual quantity of drugs involved, as can be seen from the sentencing ranges in the comparative tables at [88]–[89] above. At the same time, it will still confer a fairly significant reduction in sentence, which is in line with the purpose and spirit of the PG Guidelines, and the sentences will be sufficiently differentiated based on the quantity of drugs trafficked or imported.

108 Significantly, the sentences imposed will also be more consistent with the pre-PG Guidelines precedents, thereby avoiding the problem that a maximum reduction of 15% brings (and has brought) as highlighted at [97]–[98] above. In the case of first-time offenders trafficking or importing an amount of drugs just below the capital threshold, the indicative starting sentence will usually be 29 years because of the quantity of drugs involved. Applying a maximum reduction of 10%, offenders of greater culpability would end up facing an imprisonment term of around 26 to 27 years, while offenders of lower culpability would likely have their indicative starting sentence adjusted downwards to 27 or 28 years, resulting in an eventual sentence of around 24 to 25 years after a maximum reduction of 10%. This must be contrasted with the result that a maximum reduction of 15% would bring, which is a sentence of

approximately 25 years for offenders demonstrating a high degree of culpability, and an even lower sentence for offenders of lower culpability.

109 The “cliff effect” between the ranges of 9g to 9.99g and 10g to 11.5g for first-time offenders will also be less pronounced compared to applying a maximum reduction of 15%. As can be seen from the fifth column of the table at [88] above, the difference in sentence between these two ranges would be six years and six months, which is closer to the present five-year difference under the *Vasentha* framework, *ie*, from 15 years’ imprisonment to 20 years’ imprisonment.

Percentage reductions for the subsequent stages under the PG Guidelines

110 As for the percentage reductions for the subsequent stages, we favoured the Prosecution’s alternative submission to apply a maximum of 5% reduction to all the subsequent stages, as opposed to the Prosecution’s primary submission not to set out specific percentage reduction ranges for the other stages at all. In our view, this encourages offenders who intend to plead guilty to do so at the earliest opportunity, in keeping with the object of the PG Guidelines, and also provides for greater clarity and transparency. At the same time, we recognised that further dividing the percentage reductions across Stages 2 to 4 would lead to overly and unduly granular figures and an excessively mathematical approach, which should be eschewed.

Applying a reduction nearer to the maximum within each stage

111 Given that a maximum reduction of up to 10% of the sentence imposed applies in the context of drug trafficking and drug importation offences, the range of the percentage reduction is not high. We were thus inclined to accept the Prosecution’s submission that the court should generally apply a reduction

nearer to the maximum within each stage of the PG Guidelines, at least for Stages 1 and 2, in the absence of any serious aggravating factors or any other reasons not to do so. We also note that para 11 of the PG Guidelines expressly provides that the court should apply a reduction lower than the maximum that applies to any given stage where the unreasonable conduct of an offender results in protracted or delayed plead-guilty proceedings.

112 In our view, applying a reduction nearer to the maximum allows for greater transparency and certainty, and thus encourages accused persons who are going to plead guilty to do so as early in the court process as possible. We emphasise, however, that this does not mean that there is a presumption that the maximum reduction will be given. There is still room for the court's discretion within the range, and every case will turn on its facts.

113 We make a final point. The Prosecution submitted that between two otherwise like cases, an offender who pleads guilty at an earlier phase of the proceedings than the other (albeit within the *same stage* of the PG Guidelines) should receive a larger reduction compared to one who pleads guilty at a later phase. We did not think it would be meaningful to draw a distinction between two co-accused persons charged for the same offence who plead guilty at different times but within the same stage. In the normal course of events, one accused person would plead guilty first. If the other accused person subsequently pleads guilty but still at the same stage, the utilitarian benefits brought about by the latter's plea of guilt would not differ much from that of the former accused person's. The PG Guidelines should not be so finely calibrated that it would translate into a race as to which accused person pleads guilty first.

The public interest exception under para 13(b) of the PG Guidelines

114 Paragraph 13(b) of the PG Guidelines contains what is known as the “public interest exception”. It provides:

13. There are some situations where the maximum reductions in sentence in Table 2 do not apply. These include the following:

...

(b) Where the court is of the view that it would be **contrary to the public interest** for these guidelines to be applied, given the circumstances of the specific case. In such a situation, the court may apply a reduction in sentence which is just and proportionate without reference to Table 2.

[emphasis in original]

115 In our view, the public interest exception may be invoked in a case involving egregious facts, for instance, a repeat offender trafficking in a quantity of drugs just below the capital threshold with a significant number of drug-trafficking antecedents. We emphasise that the threshold for invoking the public interest exception is high, and it would generally take an exceptional case for the exception to be invoked.

116 In this regard, we disagreed with the Judge below and the Prosecution that the public interest exception applies categorically in every case involving a repeat offender trafficking a quantity of drugs just below the capital threshold. That is, in our view, wrong in principle. The public interest exception is not meant to be wielded as a blunt tool to exclude the application of the PG Guidelines in every case involving a repeat offender and a quantity of drugs just below the capital threshold, with no distinction to be drawn between an accused person with one dated minor drug-trafficking antecedent and an accused person with a list of antecedents. Such a binary approach would also be unsound as a

matter of policy, given that one of the primary objectives of the PG Guidelines is to encourage accused persons who are going to plead guilty to do so as early in the court process as possible. To exclude the application of the PG Guidelines on such a categorical basis could disincentivise accused persons falling within this category from entering a plea of guilt.

117 In our view, it would remain necessary to examine the number, gravity and age of the drug-trafficking antecedents in deciding whether the public interest exception ought to apply to the exclusion of the application of the PG Guidelines. If the public interest exception applies, the plea of guilt will be factored as a mitigating factor under the traditional sentencing framework that does not incorporate the PG Guidelines, and the weight to be given to the plea of guilt will depend on all the circumstances of the case.

118 Further, we note that the learned Judge in *Muhamad Akashah* was of the view that, quite apart from egregious cases, after deriving the appropriate sentence from an application of the PG Guidelines, the court should consider if the sentence arrived at is proportionate to the overall criminality of the case. This would involve taking a “broad-brush ‘last look’ at all the facts and circumstances of the case to ensure that the final sentence is one that fits both the crime and the offender”: *Muhamad Akashah* at [90]. If applying the recommended 10% maximum reduction results in a disproportionately lenient sentence, the court can then invoke the public interest exception to apply a smaller reduction (or even no reduction at all) (*Muhamad Akashah* at [91]).

119 We agree with the learned Judge that proportionality is an important consideration. However, given that the maximum reductions of 10% and 5% are expressed as a maximum percentage, the sentencing court in applying the PG Guidelines is at liberty to apply the appropriate reduction anywhere between 0–

10% or 0–5% as the case may be. While we mentioned above at [111] that the court should generally apply a reduction nearer to the maximum within each stage of the PG Guidelines, this is not an inflexible or immutable rule. Where the circumstances call for a lower reduction having regard to the overall criminality of the case, then a smaller reduction can be applied at the court’s discretion without having to resort to the public interest exception under para 13(b) of the PG Guidelines.

120 In our view, the sentencing court may thus take a broad-brush “last look” at all the facts and circumstances of the case to ensure that the final sentence is one that fits both the crime and the offender at Step 3 of the framework under the PG Guidelines, which is the step where the sentencing court determines the appropriate reduction to be applied to the sentence (see [55(c)] above).

Summary of the PG Guidelines calibrated for drug trafficking and drug importation offences

121 In summary, the PG Guidelines framework as calibrated for drug trafficking and drug importation offences is as follows:

(a) Step 1: The court first determines the sentence that it would have imposed if the accused person had been convicted after trial. If the accused person has demonstrated remorse in other ways, *apart from pleading guilty*, the court may consider this as a mitigating factor in Step 1, if appropriate. Factors which relate to the accused’s plea of guilt should *not* be considered at Step 1.

(i) This would involve the application of the *Vasentha/Suventher* framework for first-time offenders, or the *Lai Teck Guan* framework for repeat offenders, modified *not* to consider factors of the offender’s plea of guilt at this step.

(A) For first-time offenders:

(1) Identify the indicative starting point based on the quantity of drugs trafficked or imported.

| Quantity | Imprisonment |
|-----------------|---------------------|
| Up to 3g | 5–6 years |
| 3–5g | 6–7 years |
| 5–7g | 7–8 years |
| 7–8g | 8–9 years |
| 8–9g | 10–13 years |
| 9–9.99g | 13–15 years |
| 10g to 11.5g | 20–22 years |
| 11.5g to 13g | 23–25 years |
| 13g to 15g | 26–29 years |

(2) Adjust the indicative starting point upwards or downwards based on (i) the offender’s culpability; and (ii) the presence of relevant aggravating or mitigating factors, except for the offender’s plea of guilt.

(B) For repeat offenders:

(1) Derive the starting point for the sentence based on the quantity of drugs for first-time offenders using the *Vasentha/Suventher* framework.

(2) Apply an indicative uplift on account of the fact that this is a repeat offence and derive an indicative starting point on this basis, having due regard to the circumstances of the repeat offence.

| Weight of diamorphine | Starting sentence (first-time offender) | Indicative uplift |
|------------------------------|--|--------------------------|
| Up to 3g | 5 – 6 years | 5 – 8 years |
| 3 – 5g | 6 – 7 years | 5 – 8 years |
| 5 – 7g | 7 – 8 years | 5 – 8 years |
| 7 – 8g | 8 – 9 years | 4 – 7 years |
| 8 – 9g | 10 – 13 years | 4 – 7 years |
| 9 – 9.99g | 13 – 15 years | 3 – 6 years |
| 10 – 11.5g | 20 – 22 years | 3 – 6 years |
| 11.5 – 13g | 23 – 25 years | 2 – 4 years |
| 13 – 15g | 26 – 29 years | 1 – 2 years |

(3) Adjust the indicative starting point upwards or downwards based on (i) the offender’s culpability; and (ii) the presence of relevant aggravating or mitigating factors, except for the offender’s plea of guilt.

(b) Step 2: The court determines the applicable stage of the proceedings.

| Stage | Description | Reduction in sentence to be considered |
|-------|---|--|
| 1 | From the first mention until 12 weeks after the hearing when the prosecution informs the court and the accused person that the case is ready for the plea to be taken. | Up to a maximum of 10% |
| 2 | After Stage 1, until either of the following: For cases subject to Criminal Case Disclosure (“CCD”) procedures, when the court first gives directions for the filing of the Case for the Prosecution (“CPF”) in relation to the charge. For cases not subject to CCD procedures, when the court first fixes trial dates for the charge. | Up to a maximum of 5% |
| 3 | After Stage 2, until before the first day of the trial. | |
| 4 | On or after the first day of the trial. | |

(c) Step 3: The court applies an appropriate reduction to the sentence that was determined in Step 1, for each charge. In deciding the appropriate reduction to be applied, the court should consider if the sentence arrived at is proportionate to the overall criminality of the case. This would involve taking a broad-brush “last-look” at all the facts and circumstances of the case to ensure that the final sentence is one that fits both the crime and the offender. The reduction should generally not exceed the maximum reduction for the applicable stage as set out in the table above.

122 In applying the framework above, the following guiding principles should be borne in mind:

(a) The court should generally apply a reduction nearer to the maximum within each stage of the PG Guidelines in the absence of any serious aggravating factors or any other reasons not to do so, at least for pleas of guilt entered at Stages 1 and 2.

(b) The strength of the evidence against the accused person should not be taken into account when determining the level of reduction in sentence.

(c) In a case involving egregious facts, such as a repeat offender who trafficked in a quantity of drugs just below the capital threshold with a significant number of drug-trafficking antecedents, the court may invoke the public interest exception at para 13(b) of the PG Guidelines and apply a smaller (or no) reduction. The threshold for invoking the public interest exception is high, and it is not the case that in every situation involving a repeat offender trafficking a quantity of drugs just below the capital threshold that the public interest exception can apply. It would remain necessary to examine the number, gravity and age of the drug-trafficking antecedents in deciding whether the public interest exception ought to apply to the exclusion of the PG Guidelines.

The application of the calibrated PG Guidelines in the present Appeals

123 In the proceedings below, the Judge imposed the mandatory minimum sentence in respect of Iskandar's Fourth Charge (three years' imprisonment), as well as Farid's Fourth and Fifth Charges (three years' and ten years' imprisonment respectively) (see [29] and [32] above). As an appellate court is

in no position to reduce a mandatory minimum sentence lawfully imposed pursuant to a voluntary and unqualified plea of guilt, it cannot be said that such a sentence so imposed is manifestly excessive: *Mohd Fauzi bin Mohamed Mydin v Public Prosecutor* [2015] SGHC 313 at [32].

124 As the Judge had run the appellants' longest sentence and shortest sentence consecutively, the Appeals effectively turned on the sentences to be imposed vis-à-vis Iskandar's First Charge (trafficking in not less than 14.99g of diamorphine) and Farid's First Charge (abetting by engaging in conspiracy with Iskandar to traffic in not less than 14.99g of diamorphine).

Iskandar

125 For the reasons below, we found that Iskandar's sentence should not be disturbed.

126 In our view, Iskandar's First Charge fell under the category of egregious cases involving repeat offenders who traffic in a quantity of drugs just below the capital threshold with a significant number of drug-trafficking antecedents (see [115] above). Iskandar had four prior drug trafficking convictions over three occasions in 1987, 1994 and 2008. The sentences imposed for these convictions were: (a) five years' imprisonment with five strokes of the cane; (b) ten years' corrective training with ten strokes of the cane; (c) five years' imprisonment; and (d) five years' imprisonment (concurrent) (see [14] above). Accordingly, the public interest exception under para 13(b) of the PG Guidelines should apply, in favour of a just and proportionate reduction that need not adhere to the guidelines.

127 The sentence imposed by the Judge below for Iskandar's First Charge was 29 years' imprisonment, which is consistent with the indicative starting

sentence of 27 to 30 years' imprisonment for a repeat offender who traffics in a quantity of drugs in the highest weight range right under the capital threshold, as set out in *Lai Teck Guan*. Given the significant number of drug-trafficking antecedents, we found that a sentence of 29 years' imprisonment at the higher end of the range was appropriate and we were of the view that there was no reason for appellate intervention.

128 The Judge ran the sentences for Iskandar's First Charge and Iskandar's Fourth Charge consecutively, arriving at a global sentence of 32 years' imprisonment, which we upheld.

Farid

129 As canvassed above, Farid's submissions centered around the Judge's observation that with one-third remission and backdating of the sentence to the date of arrest, Farid would be released when he is 67 years old (GD at [87]). However, with one-third remission and backdating the sentence from the date of arrest on 22 May 2019 (when Farid was 51 years old) (see [13] above), Farid will only be released at the age of 71 years old. As such, the Judge below appeared to have made a calculation error in respect of his *observation* as to the age at which Farid will be released. Be that as it may, the mistake in the Judge's *observation* could not be a valid or sufficient ground of appeal, given that the Judge's decision below made clear that the sentence imposed against Farid was that of 31 years' imprisonment. At the oral hearing before us, Farid confirmed that he did not contest the Judge's decision on the sentence imposed.

130 However, we disagreed with the Judge on a point of principle, in respect of his holding that the public interest exception could apply to Farid to deny him any reduction under the PG Guidelines. Unlike Iskandar, Farid had only *one*

prior drug trafficking conviction in 2007, where he was sentenced to five years' imprisonment with five strokes of the cane (see [15] above). At the oral hearing, the Prosecution fairly accepted that the sentence imposed for this prior conviction suggests that Farid had not trafficked a large amount of drugs in respect of that antecedent. In our view, this did not constitute an egregious case to justify the invocation of the public interest exception. We reiterate that the public interest exception cannot possibly apply categorically in every case involving a repeat offender trafficking a quantity of drugs just below the capital threshold, and consideration must be had for the number, gravity and age of the drug-trafficking antecedent(s) in deciding whether the public interest exception ought to apply to the exclusion of the PG Guidelines (see [115] above).

131 Accordingly, we were of the view that the PG Guidelines ought to apply vis-à-vis Farid's First Charge. Applying the calibrated PG Guidelines framework at [121] above, the starting point for the sentence based on the quantity of drugs was 29 years, given that 14.99g of diamorphine was involved. We applied an indicative uplift of one year as Farid had only one prior drug-trafficking antecedent back in 2007. We then adjusted the indicative starting point of 30 years downwards by one year, to account for the fact that Farid's culpability was on the lower end of the scale. As an abettor, Farid had purchased the drugs from Iskandar, and did not partake or appear to have any control over the supply and procurement of the drugs. We thus arrived at an indicative term of 29 years' imprisonment and applied a sentencing discount of two years to this to arrive at a sentence of 27 years' imprisonment for Farid's First Charge.

132 Running the sentences for Farid's First Charge and Farid's Fourth Charge consecutively, the aggregate sentence was reduced from 31 years' to 30 years' imprisonment. For the avoidance of doubt, we interfered with Farid's

sentence not because it was manifestly excessive – it was not – but we did so on a point of principle.

Conclusion

133 For the reasons above, we dismissed CCA 18 and allowed CCA 6 in part by reducing Farid’s global sentence from 31 years’ to 30 years’ imprisonment.

Sundaresh Menon
Chief Justice

Tay Yong Kwang
Justice of the Court of Appeal

Steven Chong
Justice of the Court of Appeal

The appellants unrepresented;
Anandan Bala, Claire Poh, Teo Siu Ming and Ng Jun Kai (Attorney-
General’s Chambers) for the respondent in CCA 18 and CCA 6;
Chua Xyn Yee (Drew & Napier LLC) as young independent counsel.
