IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 98

Magistrate's Appeal No 9241 of 2018

Between

Yuen Ye Ming

… *Appellant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Law] — [Statutory offences] — [Misuse of Drugs Act]

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v
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See Kee Oon J:

1 The Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA") contains a number of provisions under which a repeat offender is subject to an enhanced sentencing regime. The interpretation of three of those provisions (s 33(1), s 33(4) and s 33(4A) read with the Second Schedule, collectively referred to as "the enhanced punishment provisions") was squarely at issue in this present appeal.

2 I heard and dismissed this appeal on 5 November 2018. In doing so, I was conscious of the fact that the judge's role in interpreting statutory provisions is to interpret and apply the law as enacted by Parliament. Insofar as the statutory language is clear, the judge must refrain from going beyond the text and the context of the relevant provisions. With this in mind, and having regard to the Criminal Motion (CM 1 of 2019) that the appellant filed on 22 February 2019, I set out my reasons for dismissing this appeal.

Facts

3 The District Judge's Grounds of Decision can be found in *Public Prosecutor v Yuen Ye Ming* [2018] SGDC 229 ("the GD"). The facts are helpfully summarised at [3]–[8] of the GD.

4 The appellant was first arrested on 5 August 2016. He could not furnish bail and was held in remand from 6 August 2016 until he was released on bail on 20 July 2017. He faced 17 charges under the MDA and initially claimed trial to those charges ("the first set of offences").

5 On 17 January 2018, the first day scheduled for trial, the appellant pleaded guilty to four charges as follows:

(a) 2nd charge (DAC-948585-2016): possession of not less than 652.66g of cannabis mixture for the purposes of trafficking on 5 August 2016, punishable under s 33(1) MDA;

(b) 3rd charge (DAC-904958-2017): possession of not less than 15.47g of methamphetamine for the purposes of trafficking on 5 August 2016, punishable under s 33(1) MDA;

(c) 8th charge (DAC-904963-2017): consumption of methamphetamine on or about 5 August 2016, punishable under s 33(1) MDA;

(d) 10th charge (DAC-904965-2017): possession of not less than 1.58g of methamphetamine on 5 August 2016, punishable under s 33(1) MDA.

6 The appellant admitted that he was selling drugs for profit in order to support his lavish lifestyle and pay his mounting gambling debts. The appellant also consented for a further 13 charges under the MDA to be taken into consideration for the purposes of sentencing. These charges were similarly for the possession, consumption and trafficking of various drugs.

7 The matter was then adjourned for submissions on sentence. On 9 February 2018, the appellant applied for an adjournment of the sentencing decision in order to spend the Chinese New Year with his family. While on court bail, the appellant reoffended and 12 additional charges under the MDA were preferred against him ("the second set of offences"). He eventually pleaded guilty on 18 July 2018 to four out of these 12 charges. The four proceeded charges were as follows:

(a) 18th charge (DAC-905974-2018): possession of 60.61g of cannabis on 20 February 2018 for the purposes of trafficking, punishable under s 33(4A)(i) MDA;

(b) 21st charge (DAC-916585-2018): possession of 1.29g of methamphetamine on 20 February 2018, punishable under s 33(1) MDA;

(c) 25th charge (DAC-916591-2018): consumption of methamphetamine on or about 20 February 2018, punishable under s 33(4) MDA; and

(d) 26th charge (DAC-916598-2018): trafficking not less than 69.74g of cannabis on 16 February 2018, punishable under s 33(4A)(i) MDA.

8 The Prosecution later applied for a discharge not amounting to an acquittal in respect of the 2nd charge. For present purposes, the appellant admitted to having committed 28 drug offences in total.

Decision below

9 For the 3rd charge, the Prosecution submitted that an appropriate term of imprisonment would be at least seven years' imprisonment on the basis of *Vasentha d/o Joseph v Public Prosecutor* [2015] 5 SLR 122 ("*Vasentha d/o Joseph*") and *Loo Pei Xiang Alan v Public Prosecutor* [2015] 5 SLR 500 ("*Alan Loo*"). The District Judge held that, considering the other 13 charges which were to be taken into consideration and the late plea of guilt, an imprisonment term of six and a half years would have been appropriate. However, a term of five years' imprisonment was imposed to account for the fact that the appellant had been remanded for approximately 11.5 months. The District Judge took into account the one-third remission typically given to prisoners and held that a reduction of 18 months would be fair.

10 A term of one year's imprisonment each was imposed for the 8th and 10th charges. These sentences were ordered to run concurrently.

11 The 18th charge and the 26th charge were for trafficking 60.61g and 69.74g of cannabis respectively under s 33(4A)(i) MDA. These charges carry a mandatory minimum sentence of ten years' imprisonment and ten strokes of the cane. The District Judge adapted the framework in *Public Prosecutor v Lai Teck Guan* [2018] 5 SLR 852 (*"Lai Teck Guan*"), according to which the indicative uplift would be between five to eight years' imprisonment from the starting sentence for first-time offenders. It was submitted on behalf of the appellant that he was not a recalcitrant offender who had not been rehabilitated or deterred by

a previous period of imprisonment, unlike the offender in *Lai Teck Guan*. However, the District Judge held that the fact that the additional offences had been committed while the appellant was on bail was "particularly egregious". Applying an uplift of six years from the starting point of five years and six months' imprisonment for a first offender, the indicative sentence was therefore 11 years and six months' imprisonment. Taking into consideration the other charges, the District Judge sentenced the appellant to 12 years' imprisonment and 10 strokes of the cane each for the 26th and 18th charges.

12 The 21st charge was a repeat drug possession charge under s 33(1) MDA. The District Judge sentenced the appellant to two years' and six months' imprisonment, having regard to the three other repeat drug possession charges that were taken into consideration.

13 The 25th charge was a repeat drug consumption charge under s 33(4) MDA. The District Judge held that the mandatory minimum sentence of three years' imprisonment was appropriate given the absence of any relevant aggravating factors.

14 Three sentences (relating to the 3rd, 25th and 26th charges) were ordered to run consecutively and the appellant was sentenced to a total of 20 years' imprisonment and 24 strokes of the cane.

The parties' cases on appeal

The appellant's case

15 The appellant was represented by two different sets of counsel when he pleaded guilty on 17 January 2018 and 18 July 2018 respectively. He was unrepresented in this appeal. Notwithstanding this, he filed detailed written

Skeletal Arguments which ran to 23 pages. I summarise these, as well as his oral submissions, below.

16 The appellant submitted that the sentences imposed by the District Judge were wrong in principle as he should not have been sentenced under the enhanced punishment provisions. He therefore urged the Court to exercise its revisionary powers to amend the enhanced drug offences to offences under s 33(1) MDA.

The individual sentences were manifestly excessive

17 The appellant did not challenge the sentences imposed in respect of the 8th, 10th, 21st and 25th charges.[1]

18 In respect of the 3rd charge, the appellant noted that he had been sentenced to the mandatory minimum of five years' imprisonment and five strokes of the cane. However, he submitted that the sentence imposed was still contentious as it had been reduced from six and a half years' imprisonment on account of the time he had spent in remand. The appellant then argued that the District Judge had not expressly placed any weight on his cooperation with the Central Narcotics Bureau ("CNB"). This was despite the fact that the appellant had allegedly offered his full cooperation to the authorities in relation to the first set of offences, which had purportedly led to the prosecution of another trafficker.[2] While the appellant acknowledged that the sentence imposed, being the mandatory minimum, could not be further reduced by the court, he submitted that his cooperation with the authorities should warrant a discount

1 Appellant's Skeletal Arguments, at para 56.

2 Appellant's Skeletal Arguments, at paras 58 and 59.

from either a sentence which the District Judge ordered to run consecutively, or from the global sentence.[3]

19 The appellant then submitted that the sentences imposed in respect of the 18th and 26th charges were manifestly excessive for four main reasons.

20 First, the appellant argued that the District Judge did not expand upon what weight his lack of antecedents ought to be given. Second, the District Judge wrongly held that a six-year uplift would be appropriate because the second set of offences was committed while the appellant was on bail. According to the appellant, the fact that these additional offences were committed after he had been convicted of the first set of offences had already rendered him liable under the enhanced punishment provisions. This resulted in an increase in the mandatory minimum imprisonment term from five to ten years. The appellant argued that this was already a far larger increase than would otherwise have been ordered for reoffending while on bail, which would ordinarily result in "a fraction of such an increase". He therefore suggested that ordering a sentence above the enhanced mandatory minimum would be tantamount to double-counting.[4]

21 Third, the appellant argued that the District Judged erred in placing little mitigating weight on his plea of guilt on the basis that the appellant was caught red-handed. The appellant contended that he had spared the court time and resources by pleading guilty "at the earliest opportunity".[5]

22 Fourth, the appellant submitted that he did not have profit in mind when

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3 Appellant's Skeletal Arguments, at para 60.

4 Appellant's Skeletal Arguments, at para 61.

5 GD, at [29]; Appellant's Skeletal Arguments, at para 62.

committing the second set of offences, and had instead committed them in a state of despair, denial and hopelessness.[6]

23 The appellant therefore submitted that, if he was indeed liable for enhanced punishment, the appropriate sentence for the 18th and 26th charges would have been between ten and ten and a half years' imprisonment per charge.[7]

The global sentence was manifestly excessive

24 The appellant relied on *Alan Loo* in suggesting that running two charges with mandatory minimum sentences consecutively double-counted the fact of his reoffending.[8]

25 He further argued that the aggregate sentence imposed was disproportionate to the totality of his criminal behaviour. He relied on the case of *Lai Teck Guan*, in which Sundaresh Menon CJ had said at [30] (in the context of calibrating individual sentences) that an offender who committed the repeat offence almost immediately after having served his prison sentence for his first offence should not be treated in the same way as an offender who lapses back into crime only after a long period of staying drug-free.[9] The appellant then compared the sentences imposed to those in *Alan Loo* and in *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 ("*Shouffee*") and submitted that the global sentence was manifestly excessive.[10]

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6 Appellant's Skeletal Arguments, at para 63.

7 Appellant's Skeletal Arguments, at para 64.

8 Appellant's Skeletal Arguments, at paras 66 and 67.

9 Appellant's Skeletal Arguments, at para 69.

10 Appellant's Skeletal Arguments, at para 69 to 77.

26 For the above reasons, the appellant sought a global sentence of eight and a half years' imprisonment and 15 strokes of the cane.[11] This was derived on the basis that all the enhanced punishment provisions were reduced to consumption, possession and trafficking *simpliciter*, respectively. The sentences proposed by the appellant were as follows:

(a) 26th charge: seven years and five strokes (consecutive);

(b) 21st charge: one year and six months (consecutive);

(c) 25th charge: one year and six months (concurrent);

(d) 18th charge: seven years and five strokes (concurrent);

(e) 3rd charge: five years and five strokes (concurrent);

(f) 8th charge: one year (concurrent); and

(g) 10th charge: one year (concurrent).

The respondent's case

27 The respondent submitted that the predominant sentencing consideration was deterrence.[12] The primary focus in the respondent's submissions was on whether the individual and aggregate sentences were appropriately calibrated. It was also highlighted that the aggregate sentence was in line with the sentencing range proposed by the appellant's then-counsel (Mr Edmond Pereira and Mr Amardeep Singh).[13]

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11 Appellant's Skeletal Arguments, at para 86.

12 Respondent's Submissions, at para 32.

13 Respondent's Submissions, at para 4.

The individual sentences were not manifestly excessive

28 With respect to the 3rd charge, the respondent submitted that the District Judge had correctly identified the indicative sentence to be six and a half years' imprisonment. The appellant had not been coerced, threatened or exploited, but rather had trafficked drugs in order to support his lavish lifestyle and pay off gambling debts. Moreover, he had a wide variety of drugs which he possessed in significant amounts for the purposes of trafficking. The appellant had also pleaded guilty only on the first day of trial, which was over 17 months after he was first charged in court. The respondent noted that the District Judge had adjusted the sentence downwards to take into account the appellant's remand period and had imposed the minimum sentence of five years' imprisonment.

29 The respondent further submitted that the sentences imposed for the two enhanced trafficking charges (the 18th and 26th charges) were not manifestly excessive.[14] The respondent tendered a table which applied the framework in *Lai Teck Guan* to cannabis. This table was materially similar to that relied upon by the District Judge, at [26] of his GD. Given that the amount of cannabis involved in the two offences was 60.61g and 69.74g, the respondent submitted that the starting point would be at least five and a half years. While the appellant had not served a prior imprisonment sentence, he had been in remand for about 12 months before being released on bail. The appellant had referred to this period as being "enough for [him] to learn [his] lesson",[15] but had nevertheless reoffended while on bail. As such, the respondent submitted that the District Judge rightly held that the indicative uplift should be six years' imprisonment. Considering that there were three similar charges taken into consideration and that the appellant's plea of guilt carried little mitigating value as he had been

14 Respondent's Submissions, at para 50.

15 ROP, p 15 line 32, p 125; Respondent's Submissions, at para 46.

caught red-handed, the sentence of 12 years' imprisonment per enhanced trafficking charge was not manifestly excessive.

30 The sentences for the 8th charge and the 10th charge were in line with the sentencing norms. Further, the appellant was an addict who consumed methamphetamine about four or six times a day, and up to one gram each day.[16] He had another consumption charge arising from the first set of offences taken into consideration, had possessed a significant quantity of methamphetamine and had four other possession charges arising from the first set of offences taken into consideration.[17]

31 The sentence of two years' and six months' imprisonment was appropriate for the 21st charge considering that three other drug possession charges arising from the second set of offences were taken into consideration.[18]

32 The mandatory minimum sentence of three years' imprisonment was imposed for the 25th charge.

The global sentence was in line with the totality principle

33 The offences of drug trafficking, possession and consumption implicate different legal interests. The seven proceeded charges pertained to offences committed on three separate days. Accordingly, at least three sentences should be ordered to run consecutively such that the sentencing consideration of deterrence that underlies the individual sentences is not compromised and the global sentence accords with the alternative scenario of the offender being

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16 Respondent's submissions, at para 51; Statement of Facts dated 15 January 2018 at [29].

17 Respondent's Submissions, at para 51.

18 Respondent's Submissions, at para 51.

separately sentenced for each offence.[19] The District Judge had regard to the totality principle in calibrating the sentence downwards, and the global sentence therefore could not be said to be manifestly excessive.

Issues to be determined

34 Three key issues arose for determination in this appeal:

(a) whether the appellant was liable for enhanced punishment for the second set of offences;

(b) whether the District Judge had correctly calibrated the individual sentences imposed; and

(c) whether the global sentence imposed was manifestly excessive.

Issue 1: whether the appellant was liable for enhanced punishment for the second set of offences

35 The appellant submitted that the sentences imposed by the District Court were wrong in principle as he should not have been liable for enhanced punishment. At the outset, it should be noted that the appellant's contention that the enhanced punishment provisions ought not to have applied to him was in direct contradiction to his chosen course of action in the proceedings below. There was no suggestion that he was unclear, confused or under any misapprehension for any reason as to the consequences of pleading guilty to the various charges and accepting the Statement of Facts without qualification. He did so upon the advice of counsel.

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19 Respondent's Submissions, at paras 58 and 59.

36 The appellant accepted, at para 37 of his Skeletal Arguments, that "as it stands, under law, the only qualification for the statutory enhancement in punishment for the drug offences in question, is a previous conviction". However, he went on to argue that this interpretation would lead to inconsistent results. According to the appellant, this is because an offender who pleads guilty at the earliest opportunity will be liable for enhanced punishment if he later reoffends, while an offender who does not plead guilty and reoffends will not be liable for enhanced punishment. He went on to flesh out his analysis with a few hypothetical examples in his Skeletal Arguments. To the appellant, the "irresistible inference" to the "criminal mind" from these examples is that "to avoid enhanced punishment, one should avoid conviction".[20]

37 The appellant further argued that the legislative purpose of the enhanced sentencing regime is to deter criminals from reoffending after resources have been expended on their rehabilitation. He asserted that an offender is only liable under s 33A(2) MDA as an "LT-2" drug offender if he has 'failed to respond to previous treatment and rehabilitation". According to the appellant, it is thus inconsistent that all that is required for a repeat consumption charge under s 33(4) MDA is a prior conviction.[21]

38 Finally, the appellant argued that he was not a "repeat" offender under the "spirit of the law". He further stated that "it could be argued that [he had] been arbitrarily charged under enhanced charges without the opportunity for any [deterrent or rehabilitative] message to be 'driven home'."[22] The appellant therefore urged the court to exercise its revisionary powers to reduce the enhanced drug charges to charges under s 33(1) MDA by "post-dating the first

[20] Appellant's Skeletal Arguments, at para 48.

[21] Appellant's Skeletal Arguments, at paras 49 and 50.

[22] Appellant's Skeletal Arguments, at paras 50 to 52.

plea of guilt on the 17th January 2018 to the date of the second plea of guilt on 18 July 2018 prior to sentencing".[23]

39 The respondent did not make any specific submissions on the appellant's liability under the enhanced punishment provisions.

40 Insofar as the appellant's arguments touched on the appropriateness of the exercise of prosecutorial discretion to charge him under these provisions, these considerations were irrelevant for the purposes of the appeal. The relevant question was whether the appellant was liable, and therefore was properly charged, under these provisions.

41 Before the District Judge, the appellant had accepted that he was liable for enhanced punishment. At the hearing of the appeal, I had also noted that the appellant was represented below and had pleaded guilty with the benefit of legal advice. Nevertheless, given that the appellant had on appeal raised points regarding the legislative purpose of the provisions and suggested that the interpretation adopted would lead to inconsistent and unworkable results, I also considered what the correct interpretation of the enhanced punishment provisions ought to be. Having done so, I concluded that the appellant was liable under these provisions, and therefore that there was no scope for appellate intervention, much less any basis for the exercise of my revisionary jurisdiction.

The law on statutory interpretation

42 The first issue to be determined was the proper interpretation of the relevant provisions, and whether there are multiple possible interpretations.

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[23] Appellant's Skeletal Arguments, at para 54.

Where there is more than one possible interpretation of a provision, purposive interpretation is of particular relevance and assistance (*Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 at [36] ("*Tan Cheng Bock*")). In such a case, the interpretation that would promote the purpose or object underlying the written law is to be preferred to an interpretation which does not (s 9A(1) Interpretation Act (Cap 1, 2002 Rev Ed). In some cases, the literal interpretation of a statutory provision may be the only possible interpretation, or may be coincident with the purposive interpretation. As observed by Menon CJ in his minority judgment in *Attorney-General v Ting Choon Meng and another appeal* [2017] 1 SLR 373 ("*Ting Choon Meng*") at [58], the application of the purposive approach does not allow the court to construe the provision in a manner which does violence to the express wording. Instead, courts should generally adopt a construction that is harmonious with the express wording.

43 A three-step approach to purposive statutory interpretation was set out by Menon CJ in *Ting Choon Meng* at [59]. The first step involves ascertaining the possible interpretations of the text as enacted, having due regard to the context within the written law as a whole. The second step is then to ascertain the legislative purpose of the scheme. Here, while primacy should be given to the language used in the provision and the statute as a whole, extraneous material can also be considered in certain circumstances: *Tan Cheng Bock* at [43]. The third step is then to compare the possible interpretations of the text against the legislative purpose. Where the purpose of the provision clearly supports one interpretation, reference to extraneous materials may confirm the ordinary meaning of the provision as purposively ascertained.

44 Where there is genuine ambiguity in the meaning of the provision even after the court has attempted to interpret the provision purposively, recourse may be had to the strict construction rule as a last resort: *Nam Hong*

Construction & Engineering Pte Ltd v Kori Construction (S) Pte Ltd [2016] 4 SLR 604 at [28(b)]. This rule has also been referred to as the principle against doubtful penalisation by the Court of Appeal in *Kong Hoo (Pte) Ltd and another v Public Prosecutor* [2019] SGCA 21 at [140] and [141] and typically results in a construction that favours leniency to the accused.

Interpretation of the enhanced punishment provisions

45 I begin by setting out the relevant provisions which applied to the appellant.

> **Punishment for offences**
>
> 33.—(1) Except as provided in subsection (4), (4A), (4B) or (4C) or under section 33A, the Second Schedule shall have effect, in accordance with subsections (2) and (3), with respect to the way in which offences under this Act are punishable on conviction.
>
> …
>
> (4) If any person convicted of an offence under section 8(*b*) or 31(2) is again convicted of an offence under section 8(*b*) or 31(2), he shall on conviction be punished with imprisonment for a term of not less than 3 years unless he is punished under section 33A for that same offence.
>
> ….
>
> (4A) Where —
>
> > (*a*) any person is convicted of an offence under section 5(1) or 7; and
> >
> > (*b*) that person is again convicted of an offence under section 5(1) or 7,
>
> that person so convicted shall be punished with —
>
> > (i) in relation to a Class A drug —
> >
> > > (A) imprisonment for a term of not less than 10 years and not more than 30 years; and
> > >
> > > (B) not less than 10 strokes and not more than 15 strokes of the cane; …

46 Under the Second Schedule of the MDA, the prescribed minimum sentence for a second or subsequent offence under s 8(a) MDA is two years' imprisonment.

47 The literal meaning of the enhanced punishment provisions above is immediately clear, and free from any ambiguity. Sections 33(4) and 33(4A) both refer solely to *conviction* and not sentence as the relevant criterion: "any person convicted… is again convicted". The meaning apparent from the text of these provisions is that a person who has previously been convicted under s 8(b) or s 5(1) MDA will be liable under s 33(4) and s 33(4A) of the same Act respectively if he is again convicted of the same offence. The Second Schedule, which applies to repeat possession charges by virtue of s 33(1) MDA, refers to a second or subsequent *offence*. Here, the natural reading of the text would suggest that the relevant test for enhanced punishment is whether an offender has committed a prior offence under s 8(*a*) MDA. None of these three provisions contains any suggestion that the offender must have been sentenced for a previous offence.

48 The appellant argued before me that the legislative purpose of the enhanced punishment provisions is to deter recalcitrant criminals from reoffending after public resources have been expended on their rehabilitation.[24] I saw no basis for this suggestion. As above, primacy should be given to the text of the provision and its statutory context when determining legislative intent. In the present case, it was clear to me that the enhanced punishment provisions for second-time consumers, possessors and traffickers of drugs were intended to apply irrespective of whether an offender has already been sentenced or served his sentence, insofar as he has a prior conviction (for repeat drug consumers and

[24] Appellant's Skeletal Arguments, at para 49.

traffickers) or has committed a prior offence (for repeat drug possessors). I could not agree with the appellant's contention that the mere fact of a previous conviction is a "rather questionable prerequisite".[25]

49 It is useful at this point to contrast the provisions above with s 33A(2) MDA since the appellant had made reference to this provision. The offence under s 33A(2) MDA is commonly known as an "LT-2" offence, as it seeks to deal with repeat offenders who consume specified drugs after having been convicted under the "LT-1" enhanced punishment regime set out in s 33(1) MDA. At the time of the appellant's offences, s 33A(2) MDA read:

> (2) Where a person who has been ***punished*** under subsection (1) is again convicted of an offence for consumption of a specified drug under section 8(*b*) or an offence of failure to provide a urine specimen under section 31(2), he shall on conviction be punished with …
>
> [emphasis added in bold italics]

50 The text of s 33A(2) MDA refers instead to an offender who has been "punished". The notion of punishment, as commonly understood and as employed in the MDA, refers to the sentence imposed on an offender. It therefore appears that, for the purposes of s 33A(2) MDA, the offender must have previously been sentenced as well before he is liable under the provision. This is plainly unlike the three enhanced punishment provisions that applied in the present case, which refer to an "offence" and "conviction". The language in these provisions is clear, and an attempt to contrast them with s 33A(2) MDA would not advance the appellant's case. In this regard, I note that s 33A(2) MDA has since been amended (with effect from 1 April 2019) to refer to a person "who has been convicted" and "is again convicted" of a relevant offence as punishable under the "LT-2" regime. With this amendment, the language in the

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[25] Appellant's Skeletal Arguments, at para 50.

MDA has been harmonised (with the exception of the Second Schedule), and *all* enhanced punishments do not require the offender to have been sentenced for a previous offence. These recent amendments to the MDA therefore make it clear beyond doubt that the literal interpretation I have set out at [47] above is entirely consonant with Parliamentary intent.

51 The next question that arises is whether there is a "real point" to considering extraneous material (*Tan Cheng Bock* at [48]). I concluded that there was not for two reasons. First, given that the ordinary meaning of the provision is clear and not manifestly absurd or unreasonable, extraneous material can, at best, be used to confirm the ordinary meaning deduced (*Ting Choon Meng* at [65]; *Tan Cheng Bock* at [47]; s 9A(2) Interpretation Act).

52 The appellant postulated a number of examples which, according to him, would lead to the "irresistible inference" that to avoid enhanced punishment, one should not plead guilty so as to avoid having a prior conviction on record. This contention may be understood as a suggestion that the ordinary meanings referred to above lead to manifestly absurd or unreasonable results. According to the appellant, this is because an offender who pleads guilty at the earliest opportunity before going on to reoffend while on bail would then be liable under the enhanced punishment provisions, while an offender who pleads guilty at a later stage (perhaps even absconding in the intervening period), only after committing a second set of offences, would not be similarly liable.

53 I did not think that this is a manifestly absurd or unreasonable result. A timely plea of guilty may, in some circumstances, indicate remorse, or save the time and costs that would have been expended on trial. An offender who pleads guilty at an early stage but goes on to reoffend by committing the very same offences would neither appear to be remorseful, nor save any public resources.

Reoffending could only lead to additional public resources being expended in detecting his offence(s), apprehending him and conducting investigations before commencing prosecution and subjecting him to the judicial process. Further, while an offender who has been convicted would know or ought reasonably be expected to know that reoffending would entail enhanced punishment, this cannot be said about an offender who has not been convicted.

54 The ordinary meaning of the provision leads to serious penal consequences, as offenders may be liable for enhanced punishment irrespective of whether they have fully experienced the deterrent and/or rehabilitative effects of incarceration. However, this falls far short of what can appropriately be termed a manifestly absurd or unreasonable outcome, particularly given that it is the plain and unambiguous meaning that arises from the text as enacted by Parliament. In this connection, it was also pertinent to consider the appellant's initial claim that he had already learnt his lesson after experiencing loss of liberty while he was in remand for almost a year. Despite allegedly having learnt his lesson, he went on to reoffend after being released on bail, while awaiting sentence for the first set of offences.

55 In any event, extraneous material such as Parliamentary statements did not appear to be helpful in the present case, much less to support the legislative intent asserted by the appellant. As Menon CJ observed in *Ting Choon Meng* at [70], there is a line of English authority to the effect that statements made in Parliament must be clear and unequivocal to be of any real use, and should disclose the mischief targeted by the enactment or the legislative intention lying behind any ambiguous or obscure words. Having reviewed the Parliamentary statements on the MDA, I did not think that there is anything directed to the very point in question (*Ting Choon Meng* at [70]), or which is of assistance here.

56 I therefore did not think that there was any basis to suggest that a literal interpretation would be inconsistent with Parliamentary intent. To the extent that the recent amendments to the MDA which came into force on 1 April 2019 may have signalled greater emphasis on rehabilitation of drug offenders in certain circumstances, this was not the case at the time of the present hearing, and would in any event not have extended to offenders who are convicted of drug trafficking charges.

57 I was satisfied that there was no genuine ambiguity in the meaning of the enhanced punishment provisions. There was therefore no room for the principle against doubtful penalisation to apply. There were also no grounds for the appellant's contention that he was arbitrarily charged with the enhanced punishment provisions. I therefore concluded that the appellant had been properly and lawfully charged and I turn next to consider the sentences imposed.

Issue 2: whether the individual sentences were manifestly excessive

58 I confine my analysis to the 3rd, 18th and 26th charges, given that the appellant did not challenge the sentences imposed in respect of the other four proceeded charges. I also do not address the issue of caning here. Owing to the number of charges faced by the appellant, the imposition of the mandatory minimum number of strokes would already result in 25 strokes, above the maximum allowable number of strokes that may be inflicted upon him under s 328(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed), read with s 328(6) of the same Act.

59 I begin by addressing the weight that ought to be accorded to the appellant's plea of guilt, given that this is a factor which is not confined to a specific charge.

60 I agreed with the District Judge that minimal weight should be given to the appellant's plea of guilt in relation to both the first and second set of offences. A plea of guilt may result in a discount to the aggregate sentence if it evidences the offender's remorse, saves the victim the prospect of reliving his or her trauma at trial, or saves the public costs which would have been expended by holding a trial (*Gan Chai Bee Anne v Public Prosecutor* [2019] SGHC 42 at [73], citing *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 499 at [66], [69], and [71]).

61 In the present case, as the District Judge noted, the appellant was caught red-handed. The evidence against him was overwhelming for most, even if not all, of the charges he faced. This was indicated by the fact that he had been found in possession of drugs on 5 August 2016 (the first set of offences) and 20 February 2018 (the second set of offences). In my view, his plea was weak evidence of his remorse. The appellant had also conveniently glossed over the fact that he did not plead guilty at an early stage to the first set of charges but had instead claimed trial. He finally pleaded guilty to those charges only one year, five months and 12 days after he had first been charged in court.[26] A "last gasp" plea of guilt is generally not indicative of genuine remorse.

62 The appellant further maintained that he had "attended every court hearing, thus demonstrating a certain degree of remorse and the willingness to answer for [his] crimes, yet because of an earlier plea of guilt, [he was] subject to enhanced punishment".[27] I did not see how attendance at court hearings was

[26] Respondent's Submissions, at para 41.

somehow demonstrative of his remorse. Viewed in proper context, the fact was that he was in remand for the better part of the proceedings which spanned almost two years from August 2016 to August 2018. He was bailed out for only about seven months. He then reoffended while on bail pending sentence for the first set of offences. Thereafter, he simply had no choice but to attend every court hearing since bail was revoked.

63 In my assessment, the appellant indubitably was not genuinely contrite as he went on to reoffend. In the circumstances, I agreed with the District Judge that little weight (if any) ought to be given to the appellant's plea of guilt.

The 3rd Charge

64 The appellant argued that the District Judge had not placed any weight on his full cooperation with the CNB in relation to the first set of offences. This purportedly led to the prosecution of another trafficker. I did not think his purported cooperation with the CNB would merit any significant sentencing discount. Even if this was accepted as a relevant mitigating factor, I did not think the sentences imposed by the District Judge for the other charges were manifestly excessive.

65 Instead, as the respondent notes, the appellant offered a wide variety of drugs in significant quantities, which would indicate higher culpability (*Vasentha d/o Joseph* at [51]).[28] He had also done so motivated by profit in order to support his chosen lifestyle and to pay his gambling debts.[29] Crucially, there were seven other trafficking-related charges taken into consideration, which

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27 Appellant's Skeletal Arguments, at para 83.

28 Respondent's Submissions, at para 40.

29 Statement of Facts dated 15 January 2018 at para 12 (ROP p 21).

would have warranted a very substantial uplift in sentence. I also noted that the District Judge had taken into account the one-third remission period, and allowed a deduction of 18 months' imprisonment, resulting in the imposition of the mandatory minimum imprisonment term of five years for the 3rd charge. As such, I did not agree that the indicative sentence of six and a half years' imprisonment would have been manifestly excessive in the circumstances.

The 18th and 26th Charges

66 The District Judge relied on a table which transposed the indicative starting points and uplifts from *Lai Teck Guan* to cannabis. This was materially similar to that relied on by the respondent at this appeal. I reproduce the relevant band below:

Quantity of cannabis	**Starting sentence (first-time offender)**	**Indicative uplift**
Up to 99g	5–6 years 5–6 strokes	5–8 years 5–6 strokes

67 The District Judge then held that as the 18th and 26th charges involved 60.61g and 69.74g of cannabis respectively, they would fall into the mid-range of the first band, which would be five years' and six months' imprisonment if the appellant had been a first offender. The District Judge acknowledged that the appellant was not a recalcitrant offender in the sense that he had not failed to be rehabilitated or deterred by a previous punishment of imprisonment, but nevertheless held that an uplift of 6 years' imprisonment to 11 years and 6 months per enhanced trafficking charge was warranted as the offences were committed while the appellant was on bail. A further uplift to 12 years' imprisonment was deemed appropriate given the aggravating factor of eight charges which had been taken into consideration.

68 I agreed with the appellant that the fact of his reoffending while on bail had already been accounted for by the increase in mandatory minimum punishment from five to ten years. This is particularly since the only way for the appellant to have committed the second set of offences after having been convicted was to reoffend while on bail. I agreed, therefore, that insofar as the uplift may have been calibrated on the basis that the offences had been committed while on bail, this was erroneous in principle as it would amount to double-counting.

69 Nevertheless, balancing all the relevant mitigating and aggravating factors, I agreed that a six-year uplift was appropriate in the present case. The appellant sought to distinguish himself from the "quintessential" repeat drug offender on the basis that he had not served a previous term of imprisonment. I agreed that this is, broadly speaking, relevant, as it would seem to indicate that a shorter period of imprisonment might be sufficient to meet the needs of specific deterrence and rehabilitation than might otherwise be the case. However, in the present case, this argument carried little force. The appellant had already experienced incarceration, having initially spent an extensive period of almost a year in remand. After being bailed out, he claimed trial, only to plead guilty on the first day of trial. As noted above (at [54]), he claimed that he had learnt his lesson after spending a year in remand, but had nevertheless gone on to reoffend very quickly after being released on bail. Therefore, while I did not agree that a further uplift (beyond the mandatory minimum) was warranted in principle on the basis that the enhanced trafficking charges had been committed while he was on bail, the *circumstances surrounding his reoffending* nevertheless indicated that an uplift would be appropriate.

70 I accepted that there was no evidence that the appellant had sought to profit from the second set of offences, but this was a neutral factor at best.

Balancing this against the factors above, I did not agree that the District Judge had failed to adequately consider the relevant mitigating factors, or that the sentence imposed was manifestly excessive.

Issue 3: whether the global sentence was manifestly excessive

71 I turn first to the contention that running two charges with mandatory minimum sentences consecutively would double-count the fact of the appellant's reoffending. The appellant cited *Alan Loo* in support of this contention. Chao Hick Tin JA held at [39] that it would not be right to run the sentences for enhanced consumption and enhanced trafficking consecutively, as both charges attracted mandatory minimum sentences due to that appellant's antecedents. I did not think that Chao JA intended to set out a general rule in that case. In any event, I did not think any such rule should be applied here, particularly given the number of charges faced by the appellant.

72 The respondent argued that at least three sentences should be ordered to run consecutively such that the sentencing consideration of deterrence that underlies the individual sentences is not compromised, and the global sentence accords with the alternative scenario of the offender being separately sentenced for each offence. In reaching this conclusion, the respondent appeared to have relied on the fact that the seven proceeded charges were committed on three separate occasions, as well as the fact that the offence of drug trafficking protects different legal interests from that of drug consumption and possession.

73 I did not think the District Judge erred in ordering the three sentences to run consecutively. The District Judge ordered the 3rd, 25th and 26th charges to run consecutively. All three offences were committed on different dates in

August 2016 and February 2018. The sentences therefore pertained to discrete offences committed on separate occasions.

74 Further, in the proceedings below, the Defence accepted that the possession for the purposes of trafficking charges, trafficking by selling charges, drug consumption and drug possession charges triggered different legally-protected interests.[30] The Defence further accepted that the sentences which ought to run consecutively should reflect these distinct interests. The District Judge therefore sentenced the appellant in accordance with these principles: the offences were separate and distinct, and the 3rd charge pertained to possession for the purpose of trafficking, the 25th charge consumption, and the 26th charge trafficking by selling. The result was that the sentence fell squarely within the range proposed by the Defence.

75 I was also satisfied that the aggregate sentence imposed did not infringe the totality principle. The comparisons made by the appellant to the aggregate sentence imposed in *Shouffee* were unhelpful: it is trite that each case must be decided on its own facts. In the present case, I did not think the sentence of 20 years' imprisonment was crushing or substantially above the normal level of sentences imposed for the most serious of the offences committed. The sentence had been appropriately calibrated having regard to the appellant's relative youth, lack of prior criminal record, and future prospects. In coming to this conclusion, I bore in mind Menon CJ's reminder at [80] of *Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 that there is an element of judgment inherent in the application of the aggregation principle, and to that extent, the decision of the sentencing judge should not be interfered with lightly.

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30 Defence's Further Submissions on Sentence at [30] (ROP p 1303).

Conclusion

76 I conclude by reiterating what I had observed at the close of the hearing on 5 November 2018. The sentence imposed in the present case was long but it was not disproportionate or crushing, bearing in mind the gravity of the 28 offences the appellant had committed. I was satisfied the District Judge had correctly applied the law and imposed sentences that were in line with the relevant precedents.

77 I saw no reason for appellate intervention in the present case. I therefore dismissed the appeal.

See Kee Oon
Judge

The appellant in person;
Mark Tay and Charleston Teo (Attorney-General's Chambers)
for the respondent.