

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2023] SGHC 261

Magistrate's Appeal No 9064 of 2023/01

Between

Muhammad Isa bin Ahmad

... Appellant

And

Public Prosecutor

... Respondent

FOUNDATIONS OF DECISION

[Criminal Law — Statutory offences — Customs Act 1960]

[Criminal Procedure and Sentencing — Sentencing — Enhanced sentence —
Prisons Act]

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Muhammad Isa bin Ahmad

v

Public Prosecutor

[2023] SGHC 261

General Division of the High Court — Magistrate's Appeal No 9064 of 2023/01

Tay Yong Kwang JCA

21 July 2023; 13 September 2023

14 September 2023

Tay Yong Kwang JCA:

Introduction

1 This is an appeal by Mr Muhammad Isa bin Ahmad (the “Appellant”) against the decision of a district judge (the “DJ”) in *Public Prosecutor v Muhammad Isa bin Ahmad* [2023] SGDC 56 (the “GD”). The Appellant pleaded guilty to a charge of dealing with duty unpaid cigarettes weighing 1,501.656kg on which excise duty of \$794,185.84 was not paid, an offence under s 128I(1)(b) of the Customs Act 1960 (the “Customs Act”) punishable under s 128L(4) of the same Act. The DJ sentenced the Appellant to 34 months' imprisonment. The DJ also imposed an enhanced sentence of 81 days' imprisonment because the Appellant committed the offence while he was subject to a remission order. The Appellant appeals against the sentence imposed by the DJ.

Facts

2 In late November 2022, the Appellant responded to a job advertisement and was contacted by an unidentified person known to him as “Ann”. Ann informed the Appellant that there was a job which involved unpacking of goods for which \$1,000 would be paid for every job completed. The Appellant agreed to the job offer.

3 On 8 December 2022, at around 11.00pm, Ann informed the Appellant that there was an unpacking job at Ecotech@Sunview, 1 Sunview Road. Ann told the Appellant to meet at that location.

4 On 9 December 2022, at about 3.00am, the Appellant arrived at Ecotech@Sunview as instructed. There, he met one Muhammad Nur bin Mohd Yunos (“Nur”), one Muhammad Syafiiy Salim (“Syafiiy”) and two other unknown men for the first time. Ann then created a WhatsApp chat group. Using that chat group, Ann informed that a Malaysian lorry would be delivering four different brands of duty unpaid cigarettes to Ecotech@Sunview and provided the breakdown of the quantity and the brands of cigarettes. The Appellant then became aware that the job involved duty unpaid cigarettes but he continued to wait for the arrival of the Malaysian lorry.

5 Shortly thereafter, a Malaysian lorry driven by Loo Siew Mun (“Loo”) arrived. The Appellant and the four men proceeded to unload the duty unpaid cigarettes from the lorry. They transferred the boxes of duty unpaid cigarettes from the lorry to two vans parked nearby at the loading/unloading bay of Ecotech@Sunview. The two vans were then driven up to 1 Sunview Road, Ecotech@Sunview, #08-29 (the “Unit”) and the boxes of cigarettes were unloaded into the Unit.

6 After all the boxes of cigarettes were moved into the Unit at about 8am, Loo left in the lorry. The Appellant and the four men then proceeded to unpack and to arrange the boxes of cigarettes according to brands as instructed by Ann.

7 At around 9.00am, customs officers arrived at the Unit and saw the duty unpaid cigarettes. The Appellant attempted to flee but was detained by the officers. The officers searched the Unit and found a total of 2996 cartons x 160 sticks and 6100 cartons x 200 sticks of assorted brands of duty unpaid cigarettes. Of all the duty unpaid cigarettes seized from the Unit, investigations revealed that Ann had instructed the Appellant and the other men to repack and arrange only 2996 cartons x 160 sticks and 4506 cartons x 200 sticks of assorted brands of duty unpaid cigarettes (the “Cigarettes”) in the Unit. The excise duty leviable on the Cigarettes, weighing a total of 1,501.656kg, was \$794,185.84.

8 The Appellant was previously convicted for consumption of controlled drugs under s 8(b)(ii) of the Misuse of Drugs Act 1973, for voluntarily causing hurt by dangerous weapon or means under s 324 of the Penal Code 1871 and for the illegal use of a motor vehicle. On 11 May 2018, he was sentenced to a global sentence of five years ten months’ imprisonment.

9 In June 2021, he was released on a remission order valid from 11 June 2021 to 20 May 2023. The remission order was subject to the basic condition under s 50S(1) of the Prisons Act 1933 (“Prisons Act”) which required him not to commit any offence during the period of the remission order. However, on 9 December 2022, he committed the above Customs Act offence while the remission order was still in effect.

10 As mentioned earlier, the Appellant pleaded guilty to one charge under s 128I(1)(b) of the Customs Act, punishable under section 128L(4) of the same

Act. One charge under the Goods and Services Tax Act 1993 was taken into consideration for sentencing. The Appellant was also liable to be punished under s 50T(1)(a) of the Prisons Act with an enhanced sentence of imprisonment for a term not exceeding the remaining duration of the remission order of 163 days (from 9 December 2022 to 20 May 2023) for breaching the basic condition in the remission order.

The DJ's decision

11 The DJ sentenced the Appellant to 34 months' imprisonment for the Customs Act charge. The DJ reasoned that the quantity of tobacco was 1,501.656 kg, almost four times more than the base quantity of more than 400kg for the highest sentencing band in *Yap Ah Lai v Public Prosecutor* [2014] 3 SLR 180 ("*Yap Ah Lai*"), where the starting indicative sentencing range would be between 30 to 36 months' imprisonment. The DJ found that the indicative starting sentence was the maximum sentence, *ie*, 36 months' imprisonment. After accounting for the mitigating factors raised by the Appellant, namely, that he was the sole breadwinner, that he admitted his wrongdoing at the outset and cooperated fully with the police, the DJ applied a two-month discount, thereby bringing the sentence down to 34 months' imprisonment.

12 The DJ also imposed an enhanced sentence of 81 days' imprisonment under s 50T(1)(a) of the Prisons Act, which was almost 50% of the Appellant's remaining remission period of 163 days. The DJ applied the sentencing framework on enhanced sentences set out in *Abdul Mutalib bin Aziman v Public Prosecutor* [2021] 4 SLR 1220 ("*Abdul Mutalib*"). He took the view that (a) the gravity of the Appellant's fresh offence was moderate; and (b) the rehabilitative prospects of the Appellant were moderate considering that the Appellant committed the present offence about 18 months after he was released from

prison in June 2021. The DJ decided that the appropriate sentencing band was in the moderate range, under which the enhanced sentence would be between one-third to two-thirds of the remaining duration of the remission period. He also considered the enhanced sentence imposed in a similar case, *Public Prosecutor v Mohamad Faizal bin Mohamad Haffir* [2021] SGDC 121 (“*Mohamad Faizal*”) and decided that an enhanced sentence of 81 days’ imprisonment was appropriate in the present case.

The parties’ arguments on appeal

13 In this appeal, the Appellant initially appealed only against the DJ’s decision on the enhanced sentence of 81 days, which he submitted was manifestly excessive. He argued that (a) his culpability was low because he performed a limited role in the transaction to unload and to repack the Cigarettes; (b) he did not have any control or share of the profit of the operation; (c) the sentence will have severe hardship on him and his family; and (d) he committed the present offence one year five months and 28 days after his release on remission. He argued that the enhanced sentence should be 60 days (or about 37% of the remaining duration of the remission period of 163 days) instead of 81 days (or about 50% of 163 days) as ordered by the DJ.

14 The Prosecution submitted that these mitigating factors have already been considered by the DJ in arriving at the 34 months’ imprisonment for the Customs Act charge and that they should not be considered again in determining the enhanced sentence under s 50T of the Prisons Act. The Prosecution argued that the enhanced sentence imposed by the Judge was in line with the sentencing framework in *Abdul Mutalib* and was consistent with the sentencing precedent in *Mohamad Faizal*.

The Court's Question

15 On 20 July 2023, one day before the first hearing of this appeal, I asked the Registry to inform the parties that I would like them to address the following question (the “Question”) at the appeal:

The maximum punishment for the Customs Act charge is 3 years imprisonment.

The DJ sentenced the appellant to 34 months imprisonment plus an enhanced sentence of 81 days.

The total sentence exceeds 3 years.

Can the sentence for the fresh offence together with any enhancement imposed exceed the maximum sentence provided for the fresh offence?

16 At the first hearing on 21 July 2023, the Prosecution applied for an adjournment to consider the Question more carefully. The Appellant did not object to the Prosecution's application. The appeal was therefore adjourned and both parties were directed to file further submissions on the Question by 18 August 2023.

17 In its further submissions, the Prosecution argued that the aggregate sentence can exceed the maximum punishment provided for the fresh offence because the wording of s 50T of the Prisons Act suggests that the enhanced sentence is only limited by the remaining duration of the remission order, not by the maximum punishment of the fresh offence. The Prosecution further argued that such a reading would be consistent with Parliament's intention in legislating s 50T to address the issue of recidivism under the previous unconditional remission system and to deter ex-inmates from reoffending.

18 The Appellant did not tender submissions on the Question. Instead, he filed additional submissions which raised the mitigating factor of his guilty plea.

He argued that his sentence of 34 months' imprisonment was six months longer than the sentence of 28 months imposed on Loo although Loo was the person who imported the 7502 cartons (the total number of cartons specified in the Appellant's charge) to Singapore from Malaysia. Before me, he explained that he was not asking for the same imprisonment term imposed on Loo but was asking for his imprisonment term to be reduced by two to three months. He also submitted that his present offence was committed 18 months after his release on remission unlike in *Mohamad Faizal* where the offender committed a fresh offence 20 days after release on remission.

My decision

Whether the aggregate sentence can exceed the maximum sentence for the fresh offence?

19 On the Question that I posed to the parties, I agree with the Prosecution that the enhanced sentence, together with the sentence for the fresh offence, can exceed the maximum sentence provided for the fresh offence. This legal position can be justified on three grounds.

20 First, on a plain reading of s 50T of the Prisons Act, there is no express provision limiting the maximum duration of the enhanced sentence to the maximum sentence for the fresh offence. Section 50T reads:

Breach of basic condition and enhanced sentence

50T.—(1) When a person commits an offence in breach of the basic condition of the person's remission order made under Division 2 or 3, the court may, in addition to imposing any sentence on the person for that offence, impose an enhanced sentence for that offence as follows:

- (a) imprisonment for a term not exceeding the remaining duration of the remission order, as determined based on the date of the commission of the offence; or

- (b) imprisonment for any term or for life, if the duration of the remission order is for the person's natural life.

(2) If a person commits 2 or more offences in breach of the basic condition of the person's remission order made under Division 2 or 3 —

- (a) the court may, in addition to imposing any sentence on the person for those offences, impose an enhanced sentence under subsection (1) for each of those offences; and
- (b) the aggregate length of all the enhanced sentences imposed under subsection (1) must not exceed the remaining duration of the remission order, as determined based on the date of the earliest offence committed.

(3) In deciding whether to impose any enhanced sentence under subsection (1) or (2) with respect to any offence, and if so the length of the enhanced sentence, the court is to consider —

- (a) the gravity of the offence;
- (b) whether the offence is of a similar nature to the offence for which the person under a remission order was originally sentenced;
- (c) the length of time for which the person did not commit any offence after being released under that remission order; and
- (d) all other relevant circumstances.

(4) For the purpose of this section, any extension of the duration of a remission order after the date of an offence committed in breach of its basic condition is to be disregarded in determining the remaining duration of a person's remission order based on the date of that offence.

(5) Despite any provision in any written law, a term of imprisonment imposed on any person as an enhanced sentence under this section must run consecutively to all other terms of imprisonment imposed on the person.

21 As can be seen above, s 50T(1) provides expressly that the enhanced sentence is to be imposed in addition to any sentence imposed for the fresh offence. This means that the enhanced sentence is imposed separately under s 50T(1) in respect of the fresh offence. The requirement in s 50T(5) that the

enhanced sentence “must run consecutively to all other terms of imprisonment imposed” also suggests that the enhanced sentence is distinct from the sentence imposed for the fresh offence. Therefore, it should not be limited by the maximum sentence for the fresh offence.

22 Further, the only statutory limit on the duration of the enhanced sentence is that it must not exceed the remaining duration of the remission order (see ss 50T(1)(a) and 50T(2)(b)). This also suggests that the enhanced sentence is not limited by the maximum sentence of the fresh offence. Instead, it is pegged to and capped by the remaining duration of the remission order, as if to withdraw part or all of whatever period remains in the remission order.

23 Second, this reading is consistent with the parliamentary intention behind s 50T. Section 50T was added to the Prisons Act together with the Conditional Remission System (“CRS”) in 2014. Under the CRS, inmates can be released on remission after serving two-thirds of their sentences. For this purpose, they will be issued a Conditional Remission Order (“CRO”). The enhanced sentence under s 50T was added to deter ex-offenders released on remission from breaching the basic condition in the CRO by committing fresh offences during their remission period. This can be gleaned from the Second Reading of the Prison (Amendment) Bill during which Mr Masagos Zulkifli B M M, the Senior Minister of State for Home Affairs, explained (*Singapore Parliamentary Debates, Official Report* (20 January 2014) vol 91):

When the basic condition is breached, the courts will impose a sentence for the new offence committed during the remission period, and may also impose an enhanced sentence on the individual for breaching the basic condition. The maximum length of the enhanced sentence is the remaining remission period when the new offence is committed. It will run consecutively to other sentences of imprisonment. Section 50T provides that, in deciding whether to impose an enhanced sentence and, if so, the length of the enhanced sentence, the

courts shall consider the gravity of the new offence, whether the new offence is of a similar nature to the ex-inmate's previous offence, the amount of time the ex-inmate remained offence-free, and any other relevant aggravating or mitigating circumstances.

Madam, the basic condition in the CRS is meant to deter ex-inmates from re-offending. Individual responsibility is important. The longer the ex-inmate remains crime-free after his release, the shorter his potential enhanced sentence will be, should he re-offend.

24 As seen from the above, the parliamentary intention behind s 50T of the Prisons Act is to deter ex-inmates from reoffending during remission. The sooner the offender reoffends after his release, the longer the enhanced sentence is likely to be, with the maximum enhanced sentence being the remaining period of the remission order at the time the new offence is committed. This in turn suggests that the maximum sentence provided for the fresh offence should not limit the court's power to impose an enhanced sentence for the breach of the basic condition in the CRO. If it were otherwise, should an ex-inmate, immediately or soon after his release on remission, commit a very serious offence that warrants the maximum sentence for that offence, the court will not be able to impose any enhanced sentence under s 50T. Such a situation will be incongruous with the intended deterrent effect of s 50T and will defeat its very purpose of deterring ex-offenders from reoffending.

25 Third, such a reading is also consistent with case law. In *Abdul Mutalib*, the court did not impose any cap on the enhanced sentence based on the maximum sentence of the fresh offence in formulating the sentencing bands for s 50T. Further, in *Mohamad Faizal*, the offender was sentenced to 27 months' imprisonment and to an enhanced sentence of 568 days' imprisonment (65% of the remaining duration of the remission order) for the third charge, a charge under s 128H of the Customs Act. The maximum sentence for that charge is three years' imprisonment. On appeal, the General Division of the High Court

reduced the enhanced sentence to 463 days (53% of the remaining duration of the remission order). Even on the reduced sentence, the total sentence for that charge, being 27 months and 463 days' imprisonment, also exceeded the maximum sentence of 3 years' imprisonment for the fresh offence.

26 I note that the court in *Abdul Mutalib* stated that “any enhanced sentence imposed should ordinarily not exceed the underlying sentence imposed for the fresh offence” (at [55]). The court’s concern in *Abdul Mutalib* was that “it seems perverse if an offender who commits a relatively minor fresh offence after being released from prison on remission may nonetheless potentially face an enhanced sentence that exceeds the underlying sentence imposed for that offence” (at [55]). Such concern does not arise here as the enhanced sentence in the present case (81 days' imprisonment) is significantly lower than the sentence imposed for the fresh offence (34 months' imprisonment). This is certainly not a case where an offender faces an excessive enhanced sentence that is disproportionate to the sentence he received for the fresh offence.

27 For these reasons, I agree with the Prosecution that any enhanced sentence, together with the sentence imposed for the fresh offence, can exceed the maximum sentence provided for the fresh offence.

Whether the sentence is manifestly excessive

28 The DJ sentenced the Appellant to 34 months' imprisonment and imposed an enhanced sentence of 81 days' imprisonment, which was almost 50% of the Appellant's remaining duration of the remission order. The Appellant's appeal is that:

- (a) the enhanced sentence of 81 days' imprisonment is manifestly excessive; and

(b) the imprisonment term of 34 months should be reduced by two to three months, bearing in mind Loo's sentence of 28 months' imprisonment.

29 In *Abdul Mutalib*, the court set out the sentencing framework for enhanced sentences under s 50T of the Prisons Act as follows:

Band	Severity of offence under s 50T	Sentencing range
1	Low	1 day to 1/3
2	Moderate	1/3 to 2/3
3	High	2/3 to the full remaining remission period

30 In determining the appropriate sentencing band, the sentencing court has to consider the factors in s 50T(3) of the Prisons Act. These factors include (a) factors going towards the gravity of the offence committed by the offender while on remission; (b) factors going towards the offender's rehabilitative prospects, including the timing of the fresh offence and the similarity of the fresh offence and the original offence; and (c) all other relevant circumstances (*Abdul Mutalib* at [53]).

31 In *Mohamad Faizal*, the offender was sentenced to 27 months' imprisonment for the relevant fresh offence under s 128H of the Customs Act for the delivery of duty unpaid cigarettes weighing 401.209kg on which excise duty of \$193,687.20 was not paid. The offender committed the offence 20 days after he was released from prison. He was also sentenced on appeal to an enhanced sentence of 463 days (being 53% of the remaining duration of the remission period which was 875 days). The General Division of the High Court considered that the gravity of the underlying sentence was within the lower end

of the moderate band but uplifted it to the middle of the band because of the offender's early re-offending and the history of his offending.¹

32 In the present appeal, I am of the view that the enhanced sentence of 81 days (being almost 50% of the remaining remission period of 163 days) is not manifestly excessive. It is true that the Appellant committed the offence 18 months after his release on remission while the offender in *Mohamad Faizal* committed his offence 20 days into his remission and received an enhanced sentence of 53% of the remaining duration of the remission order. However, the gravity of the offence during remission must also be considered. As the Prosecution pointed out, the Appellant's offence is more severe than the offence in *Mohamad Faizal*. The weight of the Cigarettes in this case was 1,501.656kg, more than three times that in *Mohamad Faizal*. The unpaid excise duty was \$794,185.84, more than three times those in the first and the third charges in *Mohamad Faizal*. In these circumstances, the DJ's decision that the present offence fell within the middle of the moderate band and his imposition of an enhanced sentence of almost 50% of the remaining remission period were entirely justified.

33 The Appellant's arguments on appeal related mostly to his culpability in performing a limited role in the operation and his personal circumstances. However, these mitigating factors have already been considered by the DJ in arriving at the 34 months' imprisonment for the Customs Act charge. The court in *Abdul Mutalib* expressly disapproved considering the relevant aggravating or mitigating factors when deciding on the enhanced sentence, due to "a real risk of double-counting if aggravating or mitigating circumstances that were

¹ The General Division of the High Court's decision is not published; see editorial note of *Public Prosecutor v Mohamad Faizal Bin Mohamad Haffir* [2021] SGDC 121.

considered in calibrating the underlying sentence for the fresh offence are considered again in determining the enhanced sentence for that offence” (at [66] to [67]).

34 Where the comparison with Loo’s sentence of 28 months’ imprisonment was concerned, the Prosecution pointed out in its further submissions that Loo was not sentenced for the same weight of duty unpaid cigarettes as the Appellant. Loo was charged with only 546.298 kg while the Appellant was charged with 1,501.656 kg. According to the statement of facts in Loo’s case, although Loo delivered 7502 cartons of the cigarettes into Singapore, investigations revealed that Loo had consented to and was promised remuneration for the importation of only 100 boxes containing 3080 cartons of 200 sticks of cigarettes. Accordingly, he was charged with the reduced quantity only. I therefore agree with the Prosecution that the Appellant’s and Loo’s cases are not on the same footing and there was justification for Loo’s lower imprisonment term of 28 months.

Conclusion

35 On the legal question that I posed to the parties, I hold that the aggregate of the sentence for the fresh offence and any enhanced sentence under s 50T of the Prisons Act can exceed the maximum punishment provided for the fresh offence. On the facts, I hold that neither the sentence of 34 months’ imprisonment nor the enhanced sentence of 81 days was manifestly excessive. The aggregate sentence was appropriate on the facts of this case.

36 For these reasons, I dismissed the Appellant’s appeal against sentence and affirmed the DJ’s decision to sentence the Appellant to 34 months’

imprisonment for the Customs Act offence coupled with an enhanced sentence of 81 days' imprisonment pursuant to s 50T of the Prisons Act.

Tay Yong Kwang
Judge of the Court of Appeal

The appellant in person;
Kong Kuek Foo (Attorney-General's Chambers) for the respondent.
