

HONG KONG / JUDGMENT

HKSAR v. CHOY WING SING

[2022] HKCA 381

COURT

Court of Appeal

DECIDED

4 March 2022

CASE / FILE NUMBER

CACC252/2021

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[2022] HKCA 381 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF APPEAL CRIMINAL APPEAL NO 252 OF 2021 (ON APPEAL FROM
DCCC NO 26 OF 2021)

HKSAR Respondent v CHOY WING SING Applicant

Before: Hon Zervos JA in Court Date of Hearing: 4 March 2022 Date of Judgment: 4 March 2022

J U D G M E N T

The applicant applies for leave to appeal against his sentence of 44 months imprisonment, following his conviction on his own plea of trafficking in a dangerous drug, namely 27.2 grammes of a solid containing 23.6 grammes of ketamine and 5.95 grammes of a solid containing 3.68 grammes of cocaine. The drugs were contained in consumable quantities in a large number of packets: 38 plastic bags of ketamine and 41 plastic bags of cocaine. The applicant had the drugs hidden in a private car, in which he was sitting in the driver s seat, at 4:45 am on 28 July 2020, in To Wah Road, Yau Ma Tei, Kowloon. He admitted he was responsible for distributing the drugs in areas in Kowloon for a fee of \$1,000 per day. At the time of the offence, the applicant was 32 years of age, with a clear record. He lived with his parents, while his wife and young daughter lived in mainland China. He worked as a casual construction worker and part-time driver in order to support his family. It was submitted on his behalf that he got involved in this offence because he responded to an advertisement for a courier on the internet as he was unable to secure work in the construction industry because of the current economic climate. In determining an

appropriate starting point, the judge applied the combined approach because of the involvement of two types of drugs. He arrived at a starting point of 66 months imprisonment, having assessed that it was within an appropriate range of penalty against the check tests. He reduced the notional starting point by one third for the applicant's guilty plea to 44 months imprisonment. The applicant complains that the starting point was too high. The judge's calculation of the starting point followed sentencing practice and procedure, which was within the appropriate range of penalty. As pointed out by the respondent the judge did not take into account the following aggravating factors that may have resulted in an enhancement of his sentence: the trafficking involved two drugs, which would have catered for a wider market; ketamine is commonly used with another drug to prolong its effect; and the drugs were contained in packets for ready distribution to a large number of users. The applicant has no cause for complaint of the sentence he received and leave to appeal his sentence is refused. The applicant is reminded of his right to renew his application for leave to the Court of Appeal, but he is also informed of the consequences of doing so, which may include a direction for any loss of time spent in custody pending his appeal, if the Court were to come to the view that there was no justification for the renewal of his application. (Kevin Zervos) Justice of Appeal Mr Lucas Lai, PP, of the Department of Justice, for the respondent The applicant appears in person PAGE

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