

HONG KONG / JUDGMENT

HKSAR v. CHUNG LAI TUNG

[2026] HKCA 210**COURT**

Court of Appeal

DECIDED

6 February 2026

CASE / FILE NUMBER

CACC62/2023

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CACC 62/2023 [2026] HKCA 210 On appeal from [2023] HKCFI 1151 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF APPEAL CRIMINAL APPEAL NO 62 OF 2023 (ON APPEAL FROM HCCC NO 85 OF 2022)

BETWEEN HKSAR Respondent and Chung Lai Tung Applicant

Before: Hon Macrae Acting CJHC and Zervos JA in Court Date of Hearing: 6 February 2026 Date of Judgment: 6 February 2026

J U D G M E N T

Hon Zervos JA (giving the Judgment of the Court): The applicant pleaded guilty before a magistrate, and later confirmed her plea in the High Court in respect of a single count of trafficking in a dangerous drug, namely 2,322 grammes of a powder containing 1,988 grammes of cocaine, contrary to section 4(1)(a) and (3) of the Dangerous Drugs Ordinance, Cap 134. On 3 March 2023, she was sentenced by Deputy Judge Keith (“the judge”) to 12 years and 3 months’ imprisonment. On 1 August 2025, the applicant filed a Form XI Notice, with an accompanying affirmation, seeking leave to appeal against her sentence out of time. The respondent does not oppose the present application, which has been listed before the full Court for determination. The procedural background It was alleged in the indictment that, on 14 March 2020, the applicant (D1) and Ho Hiu Ling (D2), together with Lam Hoi Kit (D3) and a person called “Fat Jai”, unlawfully trafficked in cocaine at the Hong Kong International Airport. The applicant and D2 were the accused in the proceedings of HCCC 85/2022 and pleaded guilty to the indictment. D3 was the sole accused in the proceedings of HCCC 84/2022; he pleaded not guilty to the indictment and was convicted after trial (in which the applicant and D2 both testified as prosecution

witnesses). When the matter came to sentence, HCCC 84/2022 and HCCC 85/2022 were heard together before the same judge. The applicant and D2 were each sentenced to 12 years and 3 months' imprisonment, and D3 was sentenced to 27 years' imprisonment. D2 previously applied for leave to appeal against sentence but subsequently abandoned her application, which was accordingly marked as dismissed on 24 October 2024. D3's application for leave to appeal against conviction and sentence was refused by a Single Judge on 23 July 2024. We now turn to address the applicant's application for leave to appeal against sentence.

The agreed facts On 14 March 2020, at 21:09 hours, the applicant was observed by the police to remain near an exchange shop inside the restricted area of the Hong Kong International Airport without proceeding to the Immigration counter. At 22:14 hours, she was seen entering a female toilet ("the female toilet") with her belongings, including a black rucksack with an "Emirates" baggage tag attached to it. At 23:34 hours, D2, who was carrying a piece of luggage, appeared and entered the female toilet, whilst the applicant left. D2 then passed through the immigration counter and proceeded to the baggage claim area. At 23:50 hours, D2 picked up one more piece of luggage from the baggage carousel and proceeded to leave. At that juncture, she was intercepted and searched by a Customs officer. Inside her hand-carry luggage or rucksack, six packets of cotton pads containing the dangerous drug in question were found concealed inside the inner compartment with stitch marks. The applicant was subsequently intercepted at the Customs area. Whilst no contraband was found on her, she admitted under caution that she had been paid a reward of \$15,000 for delivering cocaine from Brazil via Dubai to Hong Kong. In a subsequent video recorded interview, the applicant claimed that she was instructed by D3 to take a flight from Hong Kong via Dubai to Brazil on 8 March 2020 and return to Hong Kong by the same route on 13 March 2020. While at Sao Paulo Airport the day before, a Brazilian female gave her a black rucksack and D3 asked her to pass the rucksack with "jades" to D2 later, who was responsible for carrying them into Hong Kong. When she subsequently checked the rucksack in the female toilet, she found a strong odour was emitted from the "jades" and suspected that they were dangerous drugs. The applicant also accepted that she was in debt and, when pleading guilty, that she was knowingly trafficking in a dangerous drug.

Sentencing The judge had regard to the former sentencing guidelines laid down in *HKSAR v Abdallah*, and stated that the appropriate range relating to trafficking in between 1,200 and 4,000 grammes of cocaine was 23 to 26 years' imprisonment. He noted that, on a purely mathematical approach, the starting point should be "just less than 24 years' imprisonment". Having adverted to the applicant's role as a courier, and the international element involved in the drug trafficking activity, the judge enhanced the starting point to 25 years' imprisonment. In light of the applicant's plea, as well as her assistance in testifying against D3 at his trial, the judge reduced the enhanced starting point by 50 per cent to 12 years and 6 months' imprisonment. He gave a further discount of 3 months for the applicant's participation in Father Wotherspoon's anti-drug campaign. As a result, the judge passed a sentence of 12 years and 3 months' imprisonment on the applicant.

The applicant's submission The sole complaint of the applicant is that she should benefit from a reduction in sentence in accordance with the revised sentencing guidelines propounded in *HKSAR v Huang Ruifang* (No 3), which, as this Court recently stated in *HKSAR v Lam Man Tak*, should derive benefit to applicants/appellants who were sentenced on or after 18 September 2018. The respondent's submission Ms Rosa Lo, for the

respondent, does not oppose the application for an extension of time for leave to appeal as well as the leave application itself. She submits that, in accordance with the revised sentencing guidelines in Huang Ruifang (No 3), the applicant's starting point should now be reduced to 20 years and 6 months' imprisonment (as opposed to 23 years and 10 months' imprisonment under the former guidelines). Ms Lo accepts that the applicant should be given the same enhancement and discount on sentence as provided by the judge, and therefore a net reduction of 1 year and 8 months' imprisonment in her ultimate sentence.

Discussion This applicant has never appealed against her sentence, and she has a right to do so, even if it is out of time, subject to the Court granting her an extension of time to apply for leave to appeal against her sentence. In such circumstances, the court will usually consider whether refusing the application for an extension of time would shut out a substantial and plainly arguable ground of appeal. We are satisfied that she does have such a ground of appeal, since she was sentenced after 18 September 2018 and at a time when the "state of affairs" leading to the revision of the guidelines, as explained in *Seabrook v HKSAR*, was already in existence. However, at the time, no one knew that revised guidelines were to be issued by the Court on 5 March 2025 in Huang Ruifang (No 3), less than two years after her sentence was imposed by the judge. Since the difference between the sentence passed under the previous guidelines and the sentence that would be imposed under the revised guidelines is significant enough to warrant our interference, we grant the application for an extension of time to allow the applicant to apply for leave to appeal against sentence.

The judge's reasons for sentence examined in detail the facts and circumstances of the case against each defendant, and analysed how they were applicable to the relevant sentencing principles. The reasons for sentence were a model of their kind. Applying the sentencing guidelines, the judge, in determining the sentence, conducted a step-by-step analysis by first examining the role and culpability of each defendant and then considering any aggravating and mitigating factors. He correctly noted, a matter that we have repeatedly emphasised, that the correct approach in the application of the sentencing guidelines was not purely mathematical. He discussed the personal circumstances of each defendant and the approach he was taking in sentencing each of them. In the process, he explained the reasons for the approach he was taking in sentencing an offender for trafficking in dangerous drugs and its relevance to the particular defendant under consideration. The judge adopted a starting point of 25 years' imprisonment, which incorporated an enhancement for the international element in the applicant's offence. He discounted her sentence by one third to reflect her timely guilty plea, which he increased to a discount of 50 per cent for the assistance that she had rendered to the authorities. As the judge explained: "You are also entitled to an additional discount for the assistance you gave the police and the prosecuting authorities from early on, first by agreeing to assist the police, secondly by making non-prejudicial statements whose effect was to implicate Lam Hoi-kit [D3] as the man who recruited you, thirdly by agreeing to be a prosecution witness, and fourthly because actions speak louder than words, by actually giving evidence for the prosecution at Lam Hoi-kit's trial. That evidence made a very substantial contribution to his conviction. For these reasons, I propose to increase the discount to 50 per cent." The judge categorised the role and culpability of D3 as that of a "manager or organiser". In these circumstances, the judge was right to grant the applicant a 50 per cent discount on her sentence. The judge gave the applicant a further discount of three

months for her contribution to Father Wotherspoon's anti-drug campaign. This resulted in a sentence of 12 years and 3 months' imprisonment. In sentencing the applicant afresh according to the revised guidelines, we will apply the same discounts granted by the judge. We adopt a notional starting point of 21 years and 8 months' imprisonment, which incorporates the international element in this offence. After a 50 per cent reduction for the applicant's guilty plea and the assistance that she has rendered to the authorities, the notional starting point is reduced to 10 years and 10 months' imprisonment. With a further reduction of three months for the applicant's participation in Father Wotherspoon's anti-drug campaign, the resultant sentence is 10 years and 7 months' imprisonment. Accordingly, we grant the applicant leave to appeal her sentence out of time, and we reduce the sentence from 12 years and 3 months' imprisonment to 10 years and 7 months' imprisonment. (Andrew Macrae) (Kevin Zervos) Acting Chief Judge Justice of Appeal of the High Court Ms Rosa Lo, SPP, of the Department of Justice, for the respondent

The applicant appeared in person

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