

HONG KONG / JUDGMENT

HKSAR v. UPPERLA SRI HARISH

[2026] HKCFI 1025

COURT
Court of First Instance

DECIDED
12 February 2026

CASE / FILE NUMBER
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HCMA 36/2024

[2026] HKCFI 1025

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
MAGISTRACY APPEAL NO 36 OF 2024
(On appeal from ESCC 2888/2023)

BETWEEN

HKSAR

Respondent

V

UPPERLA Sri Harish

Appellant

Before:

DHCJ Edmond Lee in Court

Date of Hearing:

20 November 2025

Date of Judgment:

12 February 2026

J U D G M E N T

The Appellant was charged with one count of possession of a dangerous drug, contrary to sections 8(1)(a) and (2) of the Dangerous Drugs Ordinance, Cap. 134, to which he pleaded guilty, was convicted accordingly and sentenced to 4 months' imprisonment.

The Appellant now appeals against the sentence.

The facts

The particulars of the charge were that the Appellant on 23 October 2023, at the junction of Lockhart Road and O'Brien Road, Wanchai, Hong Kong Island, in Hong Kong, had in his possession a dangerous drug, namely 1 plastic bag containing 0.31 grammes of a solid containing cocaine.

At round 2343 hours on 23 October 2023, two police officers spotted the Appellant acting furtively at the junction of Lockhart Road and O'Brien Road in Wanchai during an anti-crime patrol and intercepted him for inquiry. Upon search, the officers found one plastic bag containing 0.31 grammes of a solid containing cocaine being hidden between a mobile phone and a mobile phone case inside the Appellant's black sports trousers' pocket. The Appellant was subsequently arrested and taken to the Wanchai Police Station for further investigation.

The Appellant, in the presence of an interpreter, admitted under caution that the drug was cocaine which was for his own consumption. He said he bought the drug from an unknown male in Wanchai for HK\$900 about 15 minutes before his arrest.

Mitigation

The Appellant is 33 years of age with a clear record. In 2019, he came to Hong Kong from India on a student visa for study at the Hong Kong University of Science and Technology. He then obtained an MBA degree in business technology and analytics. He has no family members in Hong Kong. His parents are retired and living in India and his married sister is in USA.

The Appellant was on a graduate visa which would expire in February 2024. He now works as a part-time technology consultant earning about HK\$5,000 a month and before that, he was a full-time technology consultant earning around HK\$40,000 a month.

On the Appellant's then legal representative's suggestion, the Magistrate decided to call for a DATC report and adjourned the sentence.

It was submitted by way of mitigation that the Appellant is a very educated person who finished his master's degree in Hong Kong and was working at a very good job previously before being laid off after the Covid-19 pandemic. It was the time during which he abused cocaine. It was submitted that the Appellant was deeply remorseful for having committed this offence. He also felt sorry for his family members for the shame that he had brought to them. His family members asked him to return to India and would give moral support to him so that he could get back on his feet. Given his clear record and his excellent academic record, the Magistrate was urged to give the Appellant a chance to mend his ways and be lenient on him in sentencing.

DATC Suitability Report

As recorded in the DATC report, the medical officer is of the opinion that the Appellant is a drug dependant. Yet, accordingly to the Immigration Department's records, the Appellant is only permitted to remain in Hong Kong as a non-permanent resident on dependent status with limit of stay until 8 February 2024. Whether he is able to continue staying in Hong Kong is still uncertain. Were he admitted to DATC, it might not be practical to administer to him the one-year statutory supervision after a 2 to 12 months' treatment period in DATC, which is part and parcel of the whole of the drugs abstinence programme. The Appellant is therefore not recommended to be sentenced to DATC.

Magistrate's sentencing reasons

The Magistrate noted that the drug involved in the present case was 0.31 grammes of a solid containing cocaine which was a vicious and addictive hard drug. The Magistrate had considered the Court of Appeal decision in HKSAR v. Muhammad Waqas [2019] 4 HKLRD 323 where it was said in paragraphs 72 and 73 respectively that:-

"72.

...In this situation (where the quantity of narcotic was "insufficient to be measured or used") the Court would have to look to any circumstances surrounding the commission of the offence in order to assess the culpability of the offender.

73.

The only guidance this Court can give in respect of sentencing an offender at this low end of the culpability range is to make the obvious point that the lower the level of culpability the less harsh the sentence will be. Clearly, a less harsh sentence would be a very short custodial sentence or, more likely, a non-custodial sentence. The sentence would have a much greater focus on rehabilitation than punishment. By a very short custodial sentence we have in mind one that is measured more in days to weeks than months and which exposes the offender to the effect of "the clang of the prison gates" without inhibiting his ultimate rehabilitation."

The Magistrate nevertheless found certain aggravating factors in the present case. One was the fact that the Appellant was arrested by the police officer on 23 October 2023 and granted police bail. While on bail, the Appellant resumed taking cocaine on 17 December 2023, only 3 days prior to his first appearance in Court on 20 December 2023.

Concerning his addiction history, the DATC report revealed that, after mingling with some drug-addicted peers in social gatherings, the Appellant was tempted to take cocaine for the first time in 2021. His second dosage of cocaine was taken in 2022. Owing to his weak willpower, he took cocaine for the third time on 23 October 2023 and was arrested by the police officer for the present offence on the same day. During his bail period, he claimed that he had stayed away from any dangerous drugs most of the time except taking cocaine once on 17 December 2023 as he was drunk on that night. This might go to explain why his urine specimen collected on 21 December 2023 was found to be positive for cocaine upon his admission to Lai Chi Kok Reception Centre.

The second aggravating factor which the Magistrate found was that the Appellant failed to treasure the chance afforded to him by the Immigration Department for permitting him to stay in Hong Kong on the strength of a graduate visa. Even after his arrest, he resumed taking drugs and exhibited a total lack of remorse. In view of his weak willpower and his lack of insight into his problems, the Magistrate opined that a period of compulsory drug addiction treatment period coupled with intensive counselling and one-year statutory supervision would be beneficial to him. The Magistrate expressed that she would have sentenced the Appellant to DATC for the present offence but for his immigration status.

The Magistrate also expressed that rehabilitation should always be the priority when dealing with a drug addict but found her hands tied in this case because DATC order was not recommended. She considered that a fine should not be an appropriate option. The only option left would be either a suspended sentence or an immediate custodial sentence. Having considered the fact that the Appellant is a drug addict and that he continued to take drugs whilst on police bail, the Magistrate found that the imposition of a suspended sentence would serve no purpose as the Appellant obviously could not resist the temptation of drugs.

Given his addiction problem, his weak willpower and probably the influence of bad peers, the Magistrate concluded that the only viable sentencing option would be an immediate custodial sentence to keep him free from drugs. The Magistrate then adopted a starting point of 6 months' imprisonment, reduced it by one-third to reflect his guilty plea and sentenced the Appellant to 4 months' imprisonment.

Grounds of appeal

The Appellant relies on two grounds of appeal:-

Ground 1 – The Magistrate erred in failing to adequately consider the imposition of a non-custodial sentence, e.g. a suspended sentence, and/or failing to call for a probation report.

Ground 2 – The Magistrate erred in adopting a starting point that was manifestly excessive in all the circumstances of the case.

My Decision

I have considered all the written submissions by the parties. Without repeating all the arguments here, I shall instead deal with them separately in the subsequently analysis.

I shall first deal with Ground 1 which complains about the Magistrate's failure in adequately considering a non-custodial sentence like a suspended sentence and calling a probation report for the Appellant.

As I have summarised above, the Magistrate had duly considered the principles under Muhammad Waqas but took the view that there were aggravating factors in the present case, namely (1) the Appellant when granted police bail after arrest had resumed taking cocaine just 3 days prior to his first court appearance; and (2) the Appellant failed to treasure the chance afforded to him by the Immigration Department for permitting him to stay in Hong Kong on the strength of a graduate visa by repeating taking drugs. Then the Magistrate expressed that she would have sentenced the Appellant to DATC where the custodial treatment and the subsequent supervision would be beneficial to him but for his immigration status. The Magistrate then decided, and in my view rightly, that a fine is not a viable option. She also considered but eventually decided that a suspended sentence would serve no purpose as the Appellant obviously could not resist the temptation of drugs.

For the relevant principles in consideration of suspended sentence, it was observed by Lunn VP in an Application for Review in Secretary for Justice v Wade Ian Francis [2016] 3 HKC 274, at paragraph 46, that when dealing with offences other than those which had been stipulated by the Court that sentences of imprisonment should not be suspended unless exceptional circumstances exist, "the courts must have regard to all the circumstances of the commission of that offence and that of the defendant in determining whether or not it is appropriate to exercise its power to suspend the operation of the sentence of imprisonment".

I have considered all the circumstances of the commission of the subject offence and that of the Appellant, including those aggravating factors as identified by the Magistrate, and agree with the Magistrate's conclusion that suspended sentence is not appropriate in the present case.

Also, I am not convinced that a probation report of the Appellant should have been called as I do not see how that would be useful for the sentencing of the Appellant in view of his immigration status. In any event, all the relevant information had been provided by way of mitigation by the Appellant's legal representative both at the times of the sentence and this appeal.

For the above reasons, Ground 1 fails.

I shall now deal with Ground 2 which complains that the Magistrate was erred in adopting a starting point which was manifestly excessive in the circumstances of this case.

I have considered all those cases provided by the Appellant (mainly sentencing cases in the Court of First Instance or the District Court) but do not find it a meaningful exercise to compare different sentencing cases where the facts and the individual circumstances of the defendants vary.

Having considered all the relevant circumstances afresh, including the Appellant's background which is in his favour on the one hand, and those aggravating factors as described above on the other hand, I am of the view that the sentence of 4 months' imprisonment imposed by the Magistrate though not lenient is not manifestly excessive.

Ground 2 also fails.

I now dismiss this appeal against the sentence. The Appellant who is on bail should serve his sentence forthwith.

(Edmond Lee)

Deputy High Court Judge

Ms Ranee Khubchandani SPP of the Department of Justice for the Respondent

Ms Elizabeth Herbert instructed by Chaudhry Solicitors for the Appellant

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