

HONG KONG / JUDGMENT

THE QUEEN v. SO WAI

COURT

Court of Appeal

DECIDED

5 December 1990

CASE / FILE NUMBER

CACC336/1990

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bjbj CACC000336/1990 IN THE COURT OF APPEAL Criminal Appeal No. 336 of 1990 BETWEEN
THE QUEEN and SO WAI

Coram : Hon. Silke V. -P., Power & Macdougall, JJ. A. Date of hearing : 5 December 1990 Date of
judgment : 5 December 1990

JUDGMENT

Macdougall, J.A. : The applicant was convicted on his plea of guilty before Deputy District Judge To of an offence of possession of 72.54 grammes of a mixture containing 45.34 grammes of salts of esters of morphine for the purpose of unlawful trafficking, and of a further offence of possession of 30 tablets containing 279 milligrammes of dipipanone hydrochloride, also for the purpose of unlawful trafficking. He was sentenced to 7 years of imprisonment on the first charge and to 3 months concurrently on the 2nd. It is against those sentences that he now applies for leave to appeal. The facts of the case were that the police intercepted the applicant in Mongkok Road at 2:30 a.m. on 8 March 1990. He refused to give his address. However he was subsequently identified by his neighbour and the police proceeded to his flat where they found the drugs referred to in the charges and \$134,000 in cash. The applicant has an appalling record dating back to 1972. He has seven previous convictions for simple possession of a dangerous drug, two for possession of a dangerous drug for the purpose of unlawful trafficking and two for trafficking. He was sentenced to two years imprisonment on the 19 August 1988, so his present offences were committed shortly after his discharge from prison. On conversion of the amount of No. 4 heroin in the first charge to No. 3 heroin the relevant quantity would be 1.4 kg. The applicant contends on appeal that the overall sentence of 7 years is excessive bearing in mind his plea of guilty. The deputy district judge formed the view that the proper starting point for sentence was 9 years and that a discount of 1 year should be given for the plea of guilty. However since the maximum sentence he was empowered to impose was one of 7 years imprisonment he passed that

sentence. In *The Queen v. Kwok Chi - kwan* (1990)1 HKLR 293 at 296 this court said that some recognition should normally be given to pleas of guilty even where, as in that case, the trial judge arrives at an appropriate sentence outside the limits of his jurisdiction. The discount which the deputy district judge properly decided to grant should therefore have been made from the ceiling of 7 years, not from the starting point of 9 years that he considered to be the appropriate sentence before taking into consideration mitigating circumstances. Apparently he was unaware of the decision of this court to which we have just referred. We therefore grant the application, allow the appeal, quash the sentence and substitute for it one of six and a half years imprisonment. (William Silke) (N.P. Power) (Neil Macdougall) Vice President Justice of Appeal Justice of Appeal Representation: Mr. D.G. Saw for Crown Prosecutor Applicant - So Wai - in person PAGE PAGE

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