**HCCC 84/2022**

**HCCC 85/2022**

**(Heard together)**

**IN THE HIGH COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

**COURT OF FIRST INSTANCE**

**CRIMINAL CASE NOS 84 AND 85 OF 2022**

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**Hong Kong Special Administrative Region**

**v**

 **Lam Hoi-kit (HCCC 84/2022)**

 **Chung Lai-tung (the 1st accused in HCCC 85/2022)**

 **Ho Hiu-ling (the 2nd accused in HCCC 85/2022)**

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**Before: Sir Brian Keith, Deputy Judge of the High Court**

**Date: 3 March 2023 at 3.05 pm**

**Present: Mr Michael Delaney, on fiat, for the Hong Kong Special Administrative Region**

**Ms Manyi Tsang, instructed by Ernest Tang, Solicitors, assigned by the Director of Legal Aid, for the accused in HCCC 84/2022**

**Mr Ma Tsz-on Stephen, instructed by Wong & Co, assigned by the Director of Legal Aid, for the 1st accused in HCCC 85/2022**

**Mr Paul Kwong, of Paul Kwong & Co, assigned by the Director of Legal Aid, for the 2nd accused in HCCC 85/2022**

**Offence: Trafficking in a dangerous drug (販運危險藥物) (HCCC 84/2022)**

**Trafficking in a dangerous drug (販運危險藥物) (against both accused in HCCC 85/2022)**

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#### Transcript of the audio recording

#### of the sentence in the above ase

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**COURT: I do not propose to keep the three of you in suspense. You, Lam Hoi-kit, are going to prison for 27 years. You, Ho Hiu-ling, and you, Chung Lai-tung, are both going to prison for 12 years and 3 months. When I have left court, your lawyers will explain to you when you are likely to be released, bearing in mind the rules we have for remission of sentence and the length of time you have been in custody. Ho Hiu-ling and Chung Lai-tung, you may sit down while I explain to Lam Hoi-kit how I have arrived at his sentence.**

**Lam Hoi-kit, the jury saw through your claim that you were merely collecting and delivering air tickets at the request of a friend, and that you had no idea that the tickets were for the couriers who were to bring this large quantity of cocaine into Hong Kong. You recruited the two women, you booked their flights and hotel accommodation, you told them how the cocaine was to be brought to Hong Kong and then into Hong Kong, and while they were away, you monitored their movements and answered such queries as they had. The jury were never shown those entries in your notebook which contained the details of itineraries from Hong Kong to Japan and from Hong Kong to Sao Paulo via Dubai, no doubt because the dates for those journeys meant that those journeys did not relate to the drugs to which the offence for which you have been convicted related. But had the jury seen those entries, I doubt that they would have taken longer than 10 minutes to find you guilty.**

**Those entries show that this was not a one-off occurrence. However, since those entries were not considered by the jury, I have not taken them into account in considering whether this was an isolated instance of drug trafficking. What convinces me, though, that this was not an isolated incident of drug trafficking was Ho Hiu-ling’s evidence in your trial, and therefore admissible evidence against you, that you had recruited her to smuggle things in from Japan a few months earlier. She said that you had told her that she would be bringing in gemstones. If that was what you had told her, I am sure you were lying. She was recruited to bring drugs into Hong Kong. I am, of course, sentencing you for recruiting her and Chung Lai-tung to bring to Hong Kong only the consignment of cocaine to which the indictment relates. The only impact which this evidence of Ho Hiu-ling has on your sentence is that you have forfeited any chance of leniency on the basis that this was a one-off. The fact that you have previous convictions for trafficking in dangerous drugs is another reason why the court cannot treat you more leniently than it otherwise might.**

**You will have been told that the Court of Appeal has laid down guidelines for the appropriate sentence for people who traffic in dangerous drugs. The guidelines are based on the amount of drugs involved, although the court does not look at their weight as a whole. It focuses on their narcotic content. The weight of the narcotic contents of the cocaine which you recruited the two women to smuggle into Hong Kong was 1,988 grammes, that is almost 2 kilogrammes. The guidelines say that the appropriate range for someone who is convicted of trafficking in between 1,200 to 4,000 grammes of cocaine is 23 to 26 years’ imprisonment. That is the appropriate range for someone who has been convicted after pleading not guilty. So if the approach was a purely mechanical and mathematical one, you would be looking at a starting point for sentence of just less than 24 years’ imprisonment.**

**But the correct approach is not purely mathematical. The guideline to which I have referred was set for defendants who were involved in trafficking at the lowest level of culpability, namely as a courier or a storekeeper. The Court of Appeal has recently identified the hierarchy of roles for those who traffic in dangerous drugs. I place you, as does your counsel, in the category of manager or organiser. I agree with her that the evidence suggests that you were not the person in charge of this operation. Not only did you refer to your “boss” in one of your conversations with Ho Hiu-ling. You also told the police that it was, to use your words, your “working partner” who introduced you to Ho Hiu-ling and who made the arrangements for the cocaine to be brought to Chung Lai-tung in the restricted area in Sao Paulo Airport. Moreover, there is no evidence that you were leading a lavish lifestyle. At any rate, I have not been informed of any such evidence.**

**Having said that, your role as a manager or organiser of this scheme to bring hard drugs into Hong Kong, together with the fact that you were recruiting these women to bring the cocaine across international borders - what is sometimes called the “international element” - justifies an enhancement of the notional starting point to which I have referred. I shall have something more to say about the “international element” when I come to sentence Ho Hiu-ling and Chung Lai‑tung, but I propose to increase the starting point in your case to reflect these factors to 27 years’ imprisonment. You do not, of course, have the mitigation of a plea of guilty. A sentence of this length is a crushing sentence. But for your proposed divorce, it would have been a tragedy for your wife and son, who would not have had your support for many years to come. However, I have not discerned any legitimate basis for reducing it. For these reasons, the sentence which I pass on you for this offence of trafficking in dangerous drugs is one of 27 years’ imprisonment. You may be taken away.**

**Ho Hiu-ling and Chung Lai-tung, you may continue to remain seated as it will take some time for me to explain how I have arrived at the sentences in your case. Much of what I have said to Lam Hoi-kit applies to you, but there are a number of differences between his case and yours. The role which the two of you had in this enterprise was that of courier, you both pleaded guilty, you both implicated Lam Hoi-kit early on and gave witness statements implicating him, and you both gave evidence against him at his trial.**

**Having said that, there are two factual issues for me for resolve in your cases - whether this was an isolated incident on your part, and if it was, when did you discover that it was dangerous drugs rather than gemstones which you were smuggling into Hong Kong.**

**You, Ho Hiu-ling, admitted in your evidence that you had made three overseas trips in the few months before you flew to Kuala Lumpur: once to Japan and twice to France. You claimed that neither of the trips to France were at the request of the man known to you as Hung Chai, though you accept that your trip to Japan was. You claimed that none of these trips involved drugs: on the trip to Japan you thought you were smuggling gemstones into Hong Kong, and the trips to France involved two bottles of rare wine and diamonds respectively. I rather doubt that you were naïve enough to have believed what you say you were told. but what I am sure about is that by the time you accepted the assignment to help Chung Lai-tung bring goods into Hong Kong from Brazil, you knew that the consignment was dangerous drugs. Chung Lai-tung’s evidence was that before she boarded her flight in Brazil, you confirmed her suspicions that she was indeed bringing in dangerous drugs. I believed her evidence on that topic. Indeed, although not admissible evidence against you at all, one of the things which Lam Hoi-kit told the police when he was interviewed was that you and Chung Lai-tung had brought cocaine into Hong Kong on the occasion that you and she had gone to France together. I do not, of course, sentence you for any trip other than the one to which the current charge relates, but you do not have the mitigation that this was an isolated occasion or one in which you began to suspect that the assignment involved dangerous drugs only after you had arrived in Kuala Lumpur. You had known from the beginning that they were dangerous drugs.**

**Chung Lai-tung, I have borne in mind that you became involved in all of this through your friendship with Ho Hiu‑ling, but I regarded you as the more mature and more intelligent of the two of you. You were older than her, and in your last year at college. You admitted in your evidence that you had previously gone to France with Ho Hiu-ling on a job. You were never asked what that job was or who it was for, but you are not naïve. Moreover, in your evidence, you were anxious to play down that you knew what your trip to Brazil was really for. Although you said that Ho Hiu-ling had told you before you boarded your flight in the airport in Sao Paulo that you had been given drugs to bring into Hong Kong, you claimed you were still in two minds about what they really were. It is difficult to understand that in the light of what you yourself admitted Ho Hiu-ling had told you. As with Ho Hiu-ling, I sentence you on the basis that you had done this before, and that you had known from when you were told by Ho Hiu-ling about this assignment in Brazil that it involved bringing drugs into Hong Kong. Those are not aggravating factors, but they mean that you forfeit some of the mitigation which might otherwise had been available to you.**

**On the other hand, it is impossible to ignore that all of this has been a personal tragedy for the two of you. We all occasionally make bad decisions in our lives, but rarely do they have consequences as dire as these. Your decision to bring these drugs to Hong Kong may have seemed at the time a good, if risky, way to make some easy money, but I do not suppose a day passes without you regretting what you did. Some people say that our sentencing regime should be less harsh on couriers like yourselves. It is not without significance that ordinary people like you who are persuaded to run the risk of carrying drugs across international borders are called “mules”, that being a metaphor for people who are being used, exploited and manipulated. Other people think that the focus which our sentencing regime places on the weight of the drugs is too blunt an instrument when couriers like you may well not know the amount of drugs they are smuggling into Hong Kong, or what kind of drugs they are, and in such a case a standardised sentence may well not reflect the offender’s true culpability. Of course, standardised sentencing promotes consistency. Consistency is good, but justice is better. Having said all that, these are matters which have been addressed by the Court of Appeal, and I must loyally follow the guidelines which the Court of Appeal has said should apply to cases such as yours.**

**I can take into account, at least to a limited extent, your personal circumstances, though the Court of Appeal had said that they carry little weight in cases such as these. Those circumstances include the fact that neither of you have ever been in trouble before, and that you will be spending what many people describe as “the golden years” of your lives in prison.**

**In the light of these considerations, I turn to what my starting point should be. On a purely mathematical approach, the starting point would be just less than 24 years’ imprisonment. That has to be enhanced because of the “international element” involved in carrying drugs across national frontiers. Some people say that that is inappropriate. Importing drugs is just one of the ways in which someone can traffic in drugs, and to treat importing drugs differently in terms of sentence just because by its nature it involves transporting drugs from one country to another could be said to be an example of double counting - by which I mean sentencing someone twice over for the same thing. But until the Court of Appeal says otherwise, I am required to enhance the starting point for the “international element” in your offence. I therefore take 25 years’ imprisonment as my starting point in the case of each of you.**

**You are, of course, entitled to have that starting point reduced by one-third to reflect your pleas of guilty on the return date when you were committed to the High Court for sentence. 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 as the man who recruited you, thirdly by agreeing to be prosecution witnesses, 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.**

**Finally, Ho Hiu-ling, Father Wotherspoon has written to the court on your behalf. He says that you have been a considerable help to his campaign to bring about a greater awareness of the punishment which those who bring drugs into Hong Kong can expect. That help has consisted of your writing what he describes as “simple but powerful letters” describing how you got involved in drug trafficking and the effect of your detention on your family. He says that he has used those letters in his campaign and will continue to do so. As a local, the impact of letters about your detention on would-be couriers is likely to be less than such letters from people from overseas who can paint a vivid picture for those back home of the consequences of being caught at Hong Kong’s borders with hard drugs. However, having read those letters, although their focus is on your background, your religious faith and your hopes for the future, you have in my opinion managed to get across your sense of guilt and your parents’ disappointment in you. In the circumstances, I propose to reduce the sentence which I would otherwise have passed in your case by 3 months.**

**Father Wotherspoon has also written to the court about you, Chung Lai-tung. The only information he says you gave him was the name of the hotel you stayed in in Sao Paulo and what he describes as the “modus operandi of the operation” you were involved in, including information about the woman who had given you the drugs in the restricted area in Sao Paolo Airport. I doubt whether this is the sort of information which Father Wotherspoon can use to good effect in his campaign to increase awareness of the punishment in Hong Kong which couriers of drugs are likely to get, but I couple the limited information you gave him with the fact that you only became involved in all this because Ho Hiu-ling introduced you to this way of making easy money. In that respect, her culpability was marginally greater than yours, and balancing all these factors, I have concluded that it would not be right if you ended up with a sentence which was three months longer than hers. I propose to reflect all that by reducing the sentence which I would otherwise have imposed on you to make it the same as that of Ho Hiu-ling.**

**Will you stand up, please. For the reasons I have endeavoured to give, the sentence which I pass on each of you for this offence of trafficking in dangerous drugs is 12 years’ and 3 months’ imprisonment.**

**I/we certify that to the best of my/our ability and skill, the foregoing is a true transcript**

**of the audio recording of the above proceedings**



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**Bruce Jericho Fuellas Torres**

**Date: 22 March 2023**