

Public Prosecutor

AND

Lim Yen Sheng
(Now known as Muhammad Benny Ar-Rayyan bin Abdullah)

(High Court of Brunei Darussalam)
(Criminal Trial No. 6 of 2019)

Muhammed Faisal bin PDJLD DSP Kol(B) Hj Kefli, J.C. & Judge Radin Safiee bin Radin Mas Basiuni.

Date of Ruling: 27th June, 2026.

Headnote: Criminal Law – Sentencing – 2 charges under section 3A Misuse of Drugs Act – Possession for the purpose of trafficking to 200 grammes & 84.17 grammes of cannabis, respectively – plea of guilty – delay – whether probation appropriate

PO Shamshuddin and DPP Syafina Hadzid for Public Prosecutor.

Mr. Pg Khairul Nizam of Messrs Yusof Halim and Partners for the Defendant.

Cases cited:

Maimun bte Omar AND Public Prosecutor (Criminal Appeal No. 1 of 2013)(CA)

Ivan Tan Eng Chin v Public Prosecutor (Criminal Appeal No. 14 of 2014)(HCT)

Yong Nai Yung v Public Prosecutor [2011] BLR 134

Noorul Syakirin Bin Norhaslan Zacky AND Public Prosecutor (Criminal Appeal No. 20 of 2014)(CA)

Sofian Bin Hj Mohammad Suot AND Public Prosecutor (Criminal Appeal No. 14 of 2020) (CA)

SENTENCING

Introduction

The Defendant appears before this Court for sentencing following his plea of guilty to two drug-related offences under the Misuse of Drugs Act (Cap. 27) (“MDA”). The Defendant pleaded guilty to a charge of possession for the purpose of trafficking involving approximately 200 grammes of cannabis, as well as to a second charge of possession for the purpose of trafficking involving approximately 84.17 grammes of cannabis mixture.

Pursuant to his plea of guilty to the alternative 1st charge, the original capital charge of trafficking a Class A controlled drug, namely cannabis in excess of 600 grammes, was withdrawn.

Charges

For completeness, his charges are as follows:

1st Charge: (withdrawn)

That you, on the 25th day of January 2016 at about 2355 hours, at house No. 523, Kampong Belimbing Subok in Brunei Darussalam, not being a person authorised by the Misuse of Drugs Act, Chapter 27 or the Regulations made thereunder, did have in your possession for the purpose of trafficking, a class A controlled drug, to wit, 756.33 grammes of CANNABIS, in contravention of section 3A of the Misuse of Drugs Act, Chapter 27, and you have thereby committed an offence punishable under section 29 read with the Second Schedule of the said Act.

Alternative to the 1st Charge:

That you, on the 25th day of January 2016 at about 2355 hours, at house No. 523, Kampong Belimbing Subok in Brunei Darussalam, not being a person authorised by the Misuse of Drugs Act, Chapter 27 or the Regulations made thereunder, did have in your possession for the purpose of trafficking, a class A controlled drug, to wit, 200 grammes of CANNABIS, in contravention of section 3A of the Misuse of Drugs Act, Chapter 27, and you have thereby committed an offence punishable under section 29 read with the Second Schedule of the said Act.

2nd Charge:

That you, on the 25th day of January 2016 at about 2355 hours, at house No. 523, Kampong Belimbing Subok in Brunei Darussalam, not being a person authorised by the Misuse of Drugs Act, Chapter 27 or the Regulations made thereunder, did have in your possession for the purpose of trafficking, a class A controlled drug, to wit, 84.17 grammes of CANNABIS MIXTURE, in contravention of section 3A of the Misuse of Drugs Act, Chapter 27, and you have thereby committed an offence punishable under section 29 read with the Second Schedule of the said Act.v

Background

On 22 January 2016, the Defendant was arrested by officers of the Narcotics Control Bureau in the course of a drug enforcement operation. During the course of that operation, a quantity of dried plant material, later analysed and confirmed to be cannabis was recovered from the Defendant's control.

A search conducted in relation to the Defendant resulted in the discovery of two distinct quantities of cannabis:

- approximately 200 grammes of cannabis, recovered in circumstances connected to the Defendant's immediate possession and control in a vehicle; and
- approximately 84.17 grammes of cannabis mixture, subsequently recovered from a separate location associated with the Defendant, namely premises linked to his residence.

Both quantities were analysed by the relevant forensic authority and confirmed to be controlled drugs within the meaning of the MDA. The Defendant admitted that the substances belonged to him and that he was in possession of them at the material time.

Following his arrest, the Defendant was charged with trafficking 756.33 grammes of cannabis, which carried the death penalty. However, upon review of the prosecution case, on the 2nd June 2026, a fresh charge sheet was preferred containing an alternative to the 1st charge, to which the defendant pleaded guilty at the first reading.

Both the alternative charge and the 2nd charge, for the possessions for the purpose of trafficking of the amount of 200 grammes and 84.17 grammes of cannabis respectively, carries the minimum sentence of 5 years imprisonment and 5 strokes and a maximum sentence of 20 years and 15 strokes.

Mitigation

Counsel for the defendant submits that this is an appropriate case for the Court to exercise its discretion to impose a non-custodial sentence, namely a Probation Order, pursuant to the Offenders (Probation and Community Service) Order 2006.

It is contended that the Defendant is a suitable candidate for rehabilitation within the community, and that the imposition of a custodial sentence is neither necessary nor proportionate in the circumstances of the case. The Court is therefore invited to consider probation as the principal sentencing option.

The defence relies on *Maimun bte Hj Omar v Public Prosecutor*¹, where the Court of Appeal recognised that in cases involving significant delay and demonstrated rehabilitation, a non-custodial sentence, including probation, may in appropriate circumstances be imposed.

Further reliance is placed on *Ivan Tan Eng Chin v Public Prosecutor*², where the High Court considered that inordinate delay in the disposal of proceedings, coupled with evidence of rehabilitation, may justify a substantial reduction in sentence and, in exceptional circumstances, a non-custodial outcome.

In the present case there has been substantial and inordinate delay, spanning approximately ten years from the date of arrest to final disposition. It is argued that this delay has operated as a form of de facto punishment upon the Defendant, who has lived under the shadow of criminal proceedings for a prolonged period.

The Defendant is a first offender, with a previous clean record. In the intervening years he has been law-abiding since his arrest. He has settled down and now have two boys ages 7 and 2 years old, respectively.

The Defendant hails from a humble background, which may have contributed to his poor life choices leading up to this conviction. It would however, be wrong for me to stop with just that. He has the support of friends and family, who have put forward strong words in favour

¹ Maimun bte Omar AND PP (Criminal Appeal No.1 of 2013) (CA)

² Ivan Tan Eng Chin v Public Prosecutor (Criminal Appeal No.14 of 2014) (HCT)

of him in mitigation. To summarise them, he is a loving and dutiful husband, father and brother. An honest and hardworking business partner and a faithful friend. He has also been involved in several social and community activities.

There is no reason for this Court to doubt the sincerity of those who have provided these references, nor the accuracy of the picture they paint of the defendant's character. The Court has taken them fully into account in determining the appropriate sentence.

In the alternative, if the Court does not consider probation, the Defence applies for the minimum sentence having regard to the Defendant's plea of guilty, absence of antecedents, and the significant delay in proceeding.

Court's Consideration and Reasons on Probation

The Court has carefully considered the invitation advanced on behalf of the Defendant that a Probation Order be imposed pursuant, in substitution for a custodial sentence.

While the Court may impose a probationary sentence in appropriate cases, such an order is reserved for cases where the overall circumstances clearly demonstrate that rehabilitation in the community is sufficient to meet the sentencing objectives of punishment, deterrence, and protection of the public.

The present case involves two separate offences of possession of controlled drugs for the purpose of trafficking, involving significant quantities of cannabis (200 grammes and 84.17 grammes respectively). Any person who has in his possession more than 15 grammes of cannabis is presumed to have it for the purpose of trafficking³. These quantities are well above the statutory threshold and therefore fall squarely within the serious end of drug trafficking.

We are mindful of the sentencing guidance set out in *Yong Nai Yung v Public Prosecutor*⁴, which establishes clear custodial sentencing bands for cannabis trafficking offences based on quantity. Those guidelines reflect the legislative policy that trafficking in controlled drugs is to be met with firm custodial sentences, save in truly exceptional circumstances.

In that context, the Court does not accept that the present offences are of such a minor or exceptional character as to justify departure from the established custodial sentencing framework. The quantities involved, taken individually and cumulatively, reflect serious trafficking conduct which attracts a significant custodial response.

The Court has also considered the issue of delay and disposal of the proceedings. It is accepted that there has been a substantial lapse of time between arrest and final disposition. However, delay, while a relevant mitigating factor, does not of itself displace the fundamental principles of sentencing applicable to serious drug trafficking offences, nor does it ordinarily justify a non-custodial outcome in cases of this gravity.

³ See Section 15 MDA

⁴ *Yong Nai Yung v Public Prosecutor* [2011] BLR 134

The Court further notes the reliance placed on authorities such as *Maimun bte Hj Omar v Public Prosecutor*⁵ and *Ivan Tan Eng Chin v Public Prosecutor*⁶. Those cases recognise that delay and rehabilitation may, in appropriate circumstances, justify significant sentence reduction or even a non-custodial sentence. Those decisions were based on different offences or different facts. I do not believe that they do not create a general rule that a long delay in a case automatically means a drug trafficker should get probation in lieu of imprisonment.

In the present case, we are not satisfied that the circumstances reach the level of exceptionality that justify not imposing an imprisonment sentence. The Defendant's status as a first-time offender and the absence of antecedents are matters in his favour, but they are already routinely accounted for within the sentencing framework for drug offences and do not, either individually or collectively, elevate the case into the category suitable for probation.

The Court further considers that the objectives of sentencing in drug trafficking cases, particularly deterrence, retributive, and the protection of the public, would not be adequately met by a probationary order. The imposition of probation in cases involving trafficking quantities of this amount would be inconsistent with established sentencing principles and would risk undermining the structured sentencing approach endorsed in *Yong Nai Yung*⁷.

Accordingly, while the Court accepts that rehabilitation is a relevant consideration, it is outweighed in the present case by the seriousness of the offences, the quantities of drugs involved, and the need for a sentence that reflects the gravity of trafficking in controlled drugs. A probationary sentence is therefore rejected as inappropriate.

Delay

We refer to several cases authorities on this matter.

In *Noorul Syakirin Bin Norhaslan Zacky AND Public Prosecutor*⁸ for a similar offence under section 3A MDA, the Court of Appeal considered that a reduction of 1 year for delay was appropriate.

In *Sofian Bin Hj Mohammad Suot AND Public Prosecutor*⁹, another case for an offence under section 3A MDA, the Court of Appeal gave a discount for "*inordinate and inexcusable*" delay. In that case for a sentence of 11 years, the Court of Appeal increased the discount from 2 years to that of 3 years. Several other cases were also referred to by their Lordships in that case, with respect to the matter of delay:

⁵ Supra at No.1

⁶ Supra at No.2

⁷ Supra at No.3 at p.136

⁸ Noorul Syakirin Bin Norhaslan Zacky AND Public Prosecutor (Crim Appeal No.20 of 2014) (CA)

⁹ Sofian Bin Hj Mohammad Suot AND Public Prosecutor (Crim Appeal No.14 of 2020) (CA)

"A number of earlier decisions have been brought to our attention. The following are all drug related cases.

*In **Ridzwan bin Haji Mansor vs Public Prosecutor (Cr. Appeal 8/2007)**, a sentence of 8 years was reduced by 1½ years due to a 4 years delay.*

*In **Noorul Syakirin bin Norhaslan Zacky vs Public Prosecutor (Cr. Appeal 20/2014)** a sentence of 15 years was reduced by 1 year due to a 3½ year delay.*

*In **Pg Mazlan vs Public Prosecutor (Cr. Appeal 20/2014)**, this court decided that a 2½ year reduction was appropriate after a 5 years delay.*

*In **Mohd Zuraimas bin Haji Jaman vs Public Prosecutor (Cr. Appeal 20/2018)** a sentence of 4 years was reduced by one year after a 6 years delay."*

The Court of Appeal also stated this in *Sofian Bin Hj Mohammad Suot*, which we believe to be most pertinent:

"Once it is decided that the delay is inordinate and unacceptable there are two matters to consider; the length of the delay and the length of the sentence. The reduction should be proportionate."

Sentence

Given the nature and circumstances of this case, we consider as follows:

For the Alternative 1st charge, a starting point of 10 years imprisonment, reduced to 6 years and 8 months for his guilty plea and 5 strokes;

For the 2nd charge, the minimum sentence of 5 years and 5 strokes.

Taking into account the totality of sentence and the fact that both charges arises from the same incident, we order that the imprisonment sentence are to run concurrently and strokes are to be non-cumulative.

This gives a total sentence of 6 years and 8 months and 5 strokes.

Finally, we reduce 1 year for the delay in disposing of the case. The final sentence shall be 5 years and 8 months imprisonment and 5 strokes.

Sentence is backdated to the date of remand.



MUHAMMED FAISAL BIN RDJLD DSP HJ KEFLI
Judicial Commissioner
27th June 2026



RADIN SAFIEE BIN RADIN MAS BASIUNI
Intermediate Court Judge
27th June 2026