

1 **MALAYSIA**  
2 **IN THE COURTS OF SABAH AND SARAWAK**  
3 **IN MAGISTRATES COURT OF KOTA KINABALU**  
4 **CASE NO: BKI-83D-3506/12-2019**

5  
6 **BETWEEN**  
7 **PUBLIC PROSECUTOR** **... PROSECUTOR**  
8 **AND**  
9 **DENIS P. MODILI** **... ACCUSED**  
10  
11  
12

13 **FOUNDATIONS OF JUDGMENT**  
14

15 **Introduction**  
16

17 This is an appeal against my decision on sentence that was passed on  
18 19.2.2020. The notice of appeal was filed on 20.2.2020.

19  
20 **Background of Case**  
21

22 The Accused, Denis P. Modili was charged under section 12(2) of Dangerous  
23 Drugs Act 1952 (DDA).

24  
25 The charge is reproduced as follows:-  
26

27 " Bahawa kamu, pada 16.12.2019 jam lebih kurang 1600 hrs, bertempat di  
28 sebuah rumah tanpa nombor dikawasan Kobusak, di dalam Daerah  
29 Penampang, di dalam Negeri Sabah, telah ada dalam milikan kamu dadah  
30 berbahaya iaitu Methamphetamine seberat 0.01 gram dan dengan itu, kamu  
31 telah melakukan suatu kesalahan di bawah Seksyen 12(2) Akta Dadah  
32 Berbahaya 1952 yang boleh dihukum di bawah Seksyen 12(3) Akta yang  
33 sama".

34

35 *The sentences are to run concurrently with effect from the date of conviction, in*  
36 *accord with section 102 of the Subordinate Courts Act 1948 (Act 92). For ease*  
37 *of reference, section 12(2) renders the following:*

38

39 "12(1)...

40

41 (2) *No person shall have in his possession, custody or control any dangerous*  
42 *drug to which this Part applies unless he is authorized to be in possession,*  
43 *custody or control of such drug or is deemed to be so authorized under this Act*  
44 *or the regulations made thereunder. [emphasis is mine].*

45

46 (3) *Any person who contravenes the provisions of sub-section (2) of this section*  
47 *shall be guilty of an offence against this Act and shall be liable on conviction to*  
48 *a fine not exceeding one hundred thousand ringgit or to imprisonment for a*  
49 *term not exceeding five years or to both.*

50

51 (4)..."

52

53 On 19.2.2020, the case was called and the Accused was represented by a  
54 counsel on a pro bono basis. The charge was read to the Accused pursuant to  
55 section 173(a) of Criminal Procedure Code and he had pleaded guilty in  
56 accordance to section 173(b) of the same Code. The plea of guilt was recorded  
57 and I have convicted the Accused's in his own accord.

58

59 I have sentenced the Accused using Artificial Intelligence (AI) system to a 12  
60 months imprisonment with effect from the date of arrest and the sentence is  
61 to run concurrently with the Accused's other charge under section 15(1)(a) of  
62 the same Act.

63

64 Being dissatisfied with my decision, the Accused filed a notice of appeal on  
65 20.2.2020.

66

#### 67 The Appeal

68

69 Pursuant to section 305 of the Code, it states that when an accused person has  
70 pleaded guilty and been convicted by a Magistrate on that plea, there shall be  
71 no appeal except as to the extent or legality of the sentence. As such, this is an  
72 appeal against the sentence passed against the Accused.

73

74 Before I proceed further in elaborating on the sentencing principles, a brief  
75 explanation on the implementation of Artificial Intelligence (AI) system. The AI  
76 is the first of its kind by the Malaysian judiciary initiative in implementing AI in  
77 passing sentence against an Accused person. This in turn, makes it  
78 unprecedented for the Malaysian law history.

79

80 AI main objective is to aid the Court in passing sentence for criminal cases. The  
81 data collected were based from the Court's own database ranging from year  
82 2014-2019.

83

84 In order to analyse and provide the recommendations to pass sentence, the AI  
85 require important information called parameters. Section 12(2) DDA 1952 for  
86 instance, the weight of the drugs, the age and employment record of the  
87 Accused are required. Once entered these crucial information, the AI system  
88 will generate its own recommendations (either the sentence of fine or  
89 imprisonment) and this will reflect in a percentage form.

90

91 Whichever percentage is higher, the recommendations provided are only  
92 guidelines in order to assist the presiding judge to decide in applying the  
93 correct sentencing principles as what was decided by past precedents.

94

95 This in turn, will avoid disparity of sentences among judicial officers. And by  
96 meting the sentences accordingly, this will likely to reduce any possible  
97 upcoming appeal to the higher courts since a uniform standard of sentencing  
98 principles are applied. The issue of sentencing principle being manifestly  
99 inadequate or excessive by the presiding officer will be lesser and/or avoided  
100 in the future.

101

102 During mitigation, the counsel of the Accused submitted on the Accused's  
103 background stating that the Accused is 47 years old man and has 7 children.  
104 The Accused is remorseful over his conduct and prays for a minimal sentence  
105 on jail terms. This is due to the weight of the drugs which are relatively low  
106 that is 0.01 gram based on the amended charge.

107 The Prosecution objects to the submission of the counsel stating the Court  
108 should give a deterrent sentence against the Accused as the Accused has  
109 committed another drug offence which is section 15(1)(a) DDA and cited the  
110 case of **PP v Abdul Halim bin Ishak [2013] MJ 821** where it was held by the  
111 learned COA judge that "... the decisions of the courts with regards to the  
112 sentences imposed against the dangerous drugs offenders, the common  
113 thread which was obvious in the cases were that the sentences which has the  
114 effect of deterrence must be imposed and the public interest must be given  
115 priority. This was in line with the intention of the Government and the  
116 Parliament which had taken multiple serious steps to deter and control the  
117 threat of trafficking and usage of drugs as well as the crimes related to it.  
118 Therefore, the court must play its role by imposing a more severe and  
119 deterrent sentence as provided in the Act."

120

121 As such, the Prosecution argues that the sentence imposed against the  
122 Accused must be of a deterrent approach since this is dealt with drug related  
123 offences.

124

125 The counsel of the Accused then objects on the use of AI in determining on the  
126 sentence of the Accused. Reasons that was put forward by the counsel in  
127 short, the AI is in breach of article 5(1) of the Federal Constitution that speaks  
128 on the liberty of a person as no person shall be deprived of his life or personal  
129 liberty. Another article pointed out is article 8(1) of the Federal Constitution  
130 which states on equality that renders all persons are equal before the law and  
131 entitled to the equal protection of the law. He further argued that by referring  
132 to AI, Court will be influence on the outcome of the AI and this will prejudicial  
133 on the Accused person's sentence.

134 The Court have considered on the objections raised by the counsel. I find that  
135 the issue of in breach of the Accused's constitutional rights is of one that is not  
136 within my competent jurisdiction. As such, I leave the higher court to  
137 determine on this issue.

138

139 Despite objections by the Accused person's counsel, this Court still proceed  
140 with the usage of AI. To this Court's opinion, AI is only a mere guideline to  
141 assist the Court so as not to depart from the true spirit of a reasonable  
142 sentencing principle. The Prosecution agrees as to the usage of the AI.

143

144 The recommended percentage derived from the AI is imprisonment of 10  
145 months which is based on a higher estimated probability of 54.31%.

146

147 This recommendation of the AI is being read out to the Accused person and he  
148 is further explained on the AI system and his plea is taken for the second time  
149 to ensure that his plea his unequivocal and absolute.

150

151 The Accused is given the opportunity to change his plea after the AI  
152 recommendations being read out in order to give a fair and just hearing. The  
153 Accused maintained his plea of guilt upon given the chance to do so.

154

155 The way the AI system works is that the presiding officer may agree or depart  
156 from the sentence recommended by the AI. Ultimately, the sole discretion  
157 rests on the presiding judge in determining on the sentence of the Accused  
158 person.

159

160

161 Sentencing Principles

162

163 Before passing out my sentence, I have ultimately determined on the public  
164 interest and the seriousness of the offence (see **R v Ball [1951] 35 Cr App R**  
165 **164**). I have also taken judicial notice as drug related offences are relatively  
166 high especially in Sabah. The statistics by drug agency such as National Anti  
167 Drug Agency have increased dramatically over the years and one way to curb  
168 such rampancy is to give harsher sentence such as imprisonment. This will not  
169 only give a clear message to the offenders out -there but the-would-be  
170 offender as well.

171

172 The Court take note that the plea of guilt of the Accused acts as a mitigating  
173 factor as was held in the case of **Sau Soo Kim v Public Prosecutor [1975] 1 LNS**  
174 **158** as he has save the Court's time and expenses of many especially the  
175 witnesses. In addition to that, the Accused's counsel also submitted that the  
176 Accused is a first offender and holds no prior record. He is remorseful over his  
177 conduct and prays for a minimal imprisonment sentence.

178

179 After having determined on the principles of sentencing armed with the  
180 recommendations of AI; I have sentenced the Accused to a 12 months  
181 imprisonment with effect from the date of arrest and the sentence is to run  
182 concurrently with his section 15(1)(a) of the same Act. I have decided  
183 concurrently due to the act of offence is of the same nature and this is a drug  
184 related offence and in addition to that, it is of the same transaction.

185

186 In **R v. Faulkner [1972] 56 Cr. App. R 594**, the consecutive sentences were only  
187 imposed on two offences out of a variety of offences .....second and third

188 charges were to run concurrently, so that altogether he (the Appellant) will  
189 serve a total sentence of 14 years. The second and third charges are in fact of  
190 the same nature. It is similar to charging an opium addict for smoking opium,  
191 for possession of the pipe and for having the opium in his pipe.” As such, the  
192 sentence meted out against the Accused is concurrent as section 12(2) and  
193 section 15(1)(a) DDA are of the same nature.

194

195 Conclusion

196

197 I am on the considered opinion that the sentence passed is regular and do not  
198 give rise to miscarriage of justice as it is passed in accordance with the law.

199

200 Dated 19<sup>th</sup> February 2020.

201

202 Sigd

203 .....

204 (Jessica Ombou Kakayun)

205 Magistrate

206 Kota Kinabalu Magistrate Court

207

208 Deputy Public Prosecutor

: Tuan Kershanathan Pathmanathan  
Attorney General Chambers Office

209

210

211 Defence Counsel for the Accused

: Mr Hamid Ismail  
Messrs Hamid & Co

212

213

214 Cases referred to:

215

216 *PP v Abdul Halim bin Ishak [2013] MLJ 821*

217 *Sau Soo Kim v Public Prosecutor [1975] 1 LNS 158*

218 *R v Ball [1951] 35 Cr App R 164*

219 *R v. Faulkner [1972] 56 Cr. App. R 594*