



APPEAL COURT, HIGH COURT OF JUSTICIARY

[2026] HCJAC 6
HCA/2025/000370/XC

Lord Justice Clerk
Lord Ericht
Lady Carmichael

OPINION OF THE COURT

delivered by LORD BECKETT, the LORD JUSTICE CLERK

in

Appeal following a reference from the Scottish Criminal Cases Review Commission

By

LY QUANG HUYNH

Appellant

against

HIS MAJESTY'S ADVOCATE

Respondent

Appellant: Ogg (Sol Adv); Paterson Bell

Respondent: Dickson KC (Sol Adv); the Crown Agent

6 February 2026

Introduction

[1] The Scottish Criminal Cases Review Commission referred this case, in which the appellant had been refused leave to appeal against a cumulative sentence of imprisonment for 6 years and 3 months imposed for two drugs charges, on the ground that there may have been a miscarriage of justice. The appellant lodged a note of appeal. In essence, he

complains that by applying guidance from an English guideline, that was not apt to his offences, the judge misdirected himself and imposed an excessive sentence.

The offences

[2] The charges to which the appellant pled guilty at the High Court in Edinburgh, and was sentenced, after an adjournment for a justice social work report to 10 March 2023, stated:

“(001) on 2 November 2020 at the M74 motorway northbound between Junction 10, Lesmahagow, and Junction 9, Kirkmuirhill, and elsewhere you LY QUANG HUYNH and MOHAMMED SARFARAZ, whilst acting with another, were concerned in the supplying of a controlled drug, namely Cannabis a Class B drug specified in ... the Misuse of Drugs Act 1971 to another or others in contravention of Section 4(1) of the aftermentioned Act: CONTRARY to the Misuse of Drugs Act 1971, Section 4(3)(b);

(002) on 28 July 2021 at Harley Street and [a flat there], Glasgow, you THANG THANG NGUYEN AKA ‘THANG VAN NGUYEN’, XUAN NGUYEN and LY QUANG HUYNH were concerned in the supplying of a controlled drug, namely Cannabis ... Section 4(3)(b).”

The circumstances of the offences

[3] The trial judge reported in response to the unsuccessful grounds of appeal that:

“[Charge 1]... the police stopped a taxi on the M74. They had received intelligence that a quantity of drugs was being moved from Bolton to Glasgow by a Vietnamese male. On stopping the vehicle, a passenger of East Asian appearance exited the taxi and escaped across fields adjoining the motorway. The police searched the taxi and recovered a large quantity of cannabis. Ly Huynh’s fingerprints were found on a number of the vacuum sealed bags in which the cannabis was packaged. I was advised by the Crown that the identity of the escapee was not known to the Crown and the Crown did not invite me to infer that the passenger was Ly Huynh. The total weight of the cannabis seized was 29kg. An Adidas bag with £525 in cash was also found in the taxi.”

We note from the agreed narrative before the judge, that a kilogramme of cannabis had an average cost of £3,800 and the maximum potential sale value of the drugs recovered was £290,000.

“[Charge 2]... a vehicle entered Harley Street, Glasgow and pulled up outside [the flat]. Ly Huynh was standing at the window of the flat. He waved at the driver and passenger, who are the co-accused, and they acknowledged his wave. The police then intervened and detained the co-accused. Ly Huynh escaped from the flat. The police consider that he left via a rear entrance/exit. He was later arrested by police. The vehicle contained 4.125kg of cannabis and drugs paraphernalia. The flat was searched and found to contain 26.178kg of cannabis. Indications of involvement in drug dealing were found in the form of a notepad with annotations, a set of scales and two stashes of money (£125 and £17,975).”

In this synopsis, the judge omitted certain pertinent facts from the agreed narrative:

- one of the co-accused threw away a rucksack containing £29,740 in £20 notes
- the maximum potential sale value of the drugs recovered was £300,000
- the appellant’s fingerprints were found on scales and on 11 of the packages recovered from the flat and on two bags containing drugs from the car
- fingerprints of each of the two persons, who arrived in the car and were not seen to enter the flat where the appellant was seen, were found respectively on a bag and packaging containing cannabis recovered in the flat
- there was a strong smell of cannabis emanating from the flat.

The inevitable inference, supported also by the sums of money and notations, is that this was ongoing drug supplying activity with 28 July 2021 providing only a snapshot of its scope.

Procedure at first instance

[4] The appellant first appeared on petition on 27 September 2021 and was remanded in custody until 5 January 2022, for 101 days, before he was granted bail. He had appeared on petition on charge 2 on 15 December 2021 and was allowed bail. He was indicted (as the third of four accused) to a preliminary hearing on 31 March 2022 when he pled not guilty. A trial was fixed for 6 February 2023 and a CPH was fixed for 13 May 2022 for resolution. It

was discharged administratively to 23 June 2022. The case did not resolve and was continued to a CPH on 10 August 2022 for the first accused to obtain representation. The case called on that date and was continued to the trial diet of 6 February 2023. On that date, the trial called and the appellant pled guilty to charges 1 and 2 and his pleas of not guilty to other charges were accepted and sentence adjourned to 9 February. On 7 February 2023, the first and second accused pled guilty to charge 2 and their pleas of not guilty to other charges were accepted. The fourth accused's plea of not guilty to charge 1 was accepted. On 9 February 2023 the appellant was remanded in custody until 10 March 2023 when sentence was passed.

[5] The minutes record that a sentence of imprisonment for 4 years and 11 months reduced for the guilty plea from 5 years and 6 months was imposed on the first accused on charge 2. A sentence of imprisonment for 4 years and 8 months reduced for his guilty plea from 5 years and 3 months was imposed on the second accused. For the appellant, a sentence of 6 years and 11 months was reduced for his guilty plea to 6 years and 3 months to date from 9 February 2023. (The headline of 6 years and 11 months was arrived at after taking account of the appellant's age and time spent on remand as we explain in detail below.) Unlike the appellant neither of his co-accused had a previous conviction according to their respective social work reports.

Circumstances of the appellant and justice social work report

[6] The appellant was 24 when sentence was passed and 21 at the time of charge 1 and 22 at the time of charge 2. He said that he intended to return to Bolton where he lived with his partner and three children, two of whom he fathered (aged 3 and 1). On a previous arrest in Scotland for motoring offences in 2021 he advised that he had been visiting a

potential shop premises in Livingston which his partner was considering using as a nail salon. He was convicted in Hastings for producing drugs and sentenced to imprisonment for 4 months and 14 days. He described a difficult childhood in Vietnam, China and Russia, working from a young age before coming to the UK. He gave an account, contradicted by findings of the Home Office National Referral Mechanism, that he was being used to engage in forced labour. He also said he did not know that he was involved with cannabis. We consider that proposition untenable given the appellant's pleas of guilty and the circumstances of the case. He showed no insight into the implications of his conduct and no remorse.

Reasons for the sentence imposed

[7] The judge explained that he considered the guideline issued by the Sentencing Council for England and Wales on "Supplying or offering to supply a controlled drug/Possession of a controlled drug with intent to supply it to another". He considered the appellant to have had a "significant" role on both charges. He noted that the two offences were about 9 months apart. The quantities of cannabis involved, in excess of 59kg, were substantial. His consideration of the English guideline led him to identify a range of 6-10 years with a starting point of 8 years. On that view, he identified a starting point for the two charges of 9 years' imprisonment. The appellant was 21 and 22 when he committed these crimes and, accordingly, a young offender within the scope of the Scottish Sentencing Council's "Sentencing young people" guideline. Allowing for his comparative youth, the starting point was reduced to 7 years and 6 months. Since the appellant had been remanded in custody for more than 3 months before being released, he reduced the notional sentence

to 6 years and 11 months. Finally, he made a reduction for the guilty plea to reach the sentence of 6 years and 3 months he imposed.

Previous appeal procedure

[8] The appellant lodged a note of appeal based on his age, his stable family situation in which he cared for four (sic) children and his financial responsibilities towards them. He maintained that the Home Office had found him to be a victim of human trafficking in 2014. The judge had overestimated the nature of his role in the crimes.

[9] This court refused leave to appeal at both first and second sift on the grounds that all factors had been taken into account and the quantity of drugs involved and the appellant's role in each crime rendered the appeal unarguable.

The Commission's reasons for referral

[10] The appellant's lawyers contended that the judge had erred in applying the guideline for a class A drug, leading to an unwarranted increase in the sentence imposed. The Commission agreed, adding that it appeared that the sift judges were unaware of the sentencing judge's misreading of the guideline.

[11] The Commission acknowledged that sentencing involves judgement and discretion and that this court will only interfere in a sentence on appeal if it is excessive. They noted how the court resolves that question as explained in *Barnes v HM Advocate* [2024] HCJAC 23, 2024 JC 364 and the cases referred to in the opinion. The Commission noted observations made by Scottish courts on the use of sentencing guidelines, including those from England and Wales and the importance of Scottish precedent. It examined the English guideline and noted the tables for class A and class B drugs. Both tables provide a grid with three

categories of involvement on one axis and four categories of harm (measured by the quantity of drugs involved) on the other. The categories for involvement refer to the role played by the person and are described as leading, significant and lesser. For cannabis, harm category 1 begins at 200kg, category 2 at 40kg, category 3 at 6kg and category 4 at 100 grammes.

[12] The Commission proposed that for a class B drug, using the total weight of the cannabis, and labelling the appellant's role as significant, would produce a starting point of 4 years in a range of 30 months to 5 years' imprisonment rather than the judge's 9 years. The Commission analysed the question of whether the sentence was excessive through the lens normally applied where the Crown maintains a sentence was unduly lenient, *HM Advocate v Bell* 1995 SCCR 244, namely, if it: "fall[s] outside the range of sentences which the judge at first instance, applying his mind to all the relevant factors, could reasonably have considered appropriate." The Commission proposed that the judge's starting point of 9 years: "was more than double the (correct) Guideline starting point (four years) and far exceeded the correct category range (two-and-a-half and five years)."

[13] The Commission then sought to identify any relevant Scottish precedent, noting: *HM Advocate v McFadyen* [2012] HCJAC 73, *Lin v HM Advocate* [2007] HCJAC 62, 2008 JC 142 and *Ketuka v HM Advocate* [2025] HCJAC 25, 2025 JC 354. In seeking to compare the appellant's circumstances, the Commission noted that he has a drugs conviction in England met with a sentence of imprisonment for four and a half months. The Commission concluded that there may have been a miscarriage of justice and, given the prospect that sentence may be reduced, it was in the interests of justice to refer the case to this court.

Note of appeal

[14] The appellant essentially adopts the Commission's view that the sentencing judge used the wrong guideline, doubling the proper starting point. This consideration, and his age at the time of the offending, that he had been the victim of human trafficking and his plea of guilty demonstrated that the sentence imposed was excessive and a miscarriage of justice.

The judge's response

[15] In a supplementary report, the judge explains that he sought but could not find any Scottish case law of sufficient relevance to guide him on the appropriate sentence. He had considered the guidelines and confirms that he erred by considering the English guideline for class A drugs. Nevertheless, on passing sentence, he had considered the sentence selected appropriate given a very late plea of guilty to two different quantities of cannabis.

Submissions in the appeal***Appellant***

[16] The appellant reiterated the points made in his note of appeal but did not insist on the proposition that he was a victim of trafficking in light of information provided by the Crown. The English guidelines can generally provide relevant guidance and that is particularly so where the offence is created by a UK statute such as the Misuse of Drugs Act 1971 (MDA), providing the same maximum penalties: *HM Advocate v Graham* [2010] HCJAC 50, 2011 JC 1; *Sutherland v HM Advocate* [2015] HCJAC 115, 2016 SCCR 41. The court should note that the judge considered the appellant to be at the lower end of "significant" involvement under the English guideline. The question for the court was whether the

sentence imposed was excessive and a miscarriage of justice. If so, the appeal must succeed:

Beveridge v HM Advocate [2025] HCJAC 23. Both the starting point and the final disposal were excessive and a miscarriage of justice.

Crown

[17] The Crown had nothing to say on the merits of the appeal but wished to advise the court on two factual matters. The proposition in the note of appeal that the appellant was a victim of human trafficking was wrong (as the appellant accepted in the hearing). On 29 March 2018 he was referred to the National Referral Mechanism and, in 2019, it was determined that there were no reasonable grounds to believe that he was trafficked for the purposes of forced labour or forced criminality and no reasonable grounds to believe that he was a potential victim of slavery, servitude or forced/compulsory labour. The previous conviction in England for MDA s 4(2)(b) was dated 15 January 2018.

Decision

[18] It does not follow from the judge's use of the wrong part of the English sentencing guideline that a miscarriage of justice has occurred. It is not straightforward to find directly relevant, or potentially relevant, Scottish sentencing precedent for this case. Careful assessment is required of the whole sentencing process and, so far as they can be ascertained, the circumstances of potentially relevant precedents.

[19] Where a judge is seeking to identify sentencing ranges for a particular category of offence, and there is no offence range guideline from the Scottish Sentencing Council, the first resort is relevant Scottish appellate precedent: *HM Advocate v Collins* [2016] HCJAC 102, 2017 JC 99 at [30]. If there is Scottish precedent, the extent to which it may be appropriate to

have regard to the English Guidelines, is as a cross-check. A cross-check against English guidelines is not mandatory. It may or may not prove useful. If the English guidelines are to be considered, and they can be useful and apt particularly for offences for which there is little appellate guidance in Scotland, considerable care should be taken. Whilst MDA is a UK statute with identical maximum sentences in England and Scotland, as is plain from the content of the English guidelines, it is not common in England for drug trafficking offences to be charged as concern in supplying under section 4(3)(b) as is commonly the case in Scotland, and in this case. The English guideline is for offences under s 4(3)(a), actual supply, and s 5(3), possession with intent to supply. The scope of those offences may often be narrower than offences under s 4(3)(b) and there is some risk that a judge may not be comparing like with like in considering the English guideline. We also note that whilst the English guideline evaluates harm according to the quantity of drug involved, in Scotland judges have regard to both quantity and value in evaluating the seriousness of an offence. Quite commonly it is value that is more prominent in Scottish sentencing remarks and appeal decisions. Generally, English guidelines are more prescriptive. In Scotland, a judge must have regard to Scottish Sentencing Council guidelines approved by the court but is entitled to depart from a sentencing range guideline. If so, the judge must give reasons: Criminal Justice and Licensing (Scotland) Act 2010 s 6(1) and (2).

[20] The English guideline explains that one or more of certain characteristics may demonstrate an offender's role:

“Leading role:

- Directing or organising buying and selling on a commercial scale
- Substantial links to, and influence on, others in a chain
- Close links to original source
- Expectation of substantial financial or other advantage
- Uses business as cover
- Abuses a position of trust or responsibility

Significant role:

- Operational or management function within a chain
- Involves others in the operation whether by pressure, influence, intimidation or reward
- Expectation of significant financial or other advantage (save where this advantage is limited to meeting the offender's own habit), whether or not operating alone
- Some awareness and understanding of scale of operation."

[21] Looking at the two incidents together, and particularly the second, the view that this was no more than "significant" involvement appears generous to the appellant and we disagree with the suggestion that he was at the lower end of that category. The circumstances narrated suggest that the appellant may well have had substantial links to, and influence on, others in the chain. He was likely to have expectation of substantial financial advantage (after all he was supporting his partner's plans to set up a business with no legitimate source of income of his own), and he did not have a drug habit. Even if his conduct properly belongs in the "significant" category it is at the upper end of it. Despite the judge's erroneous consideration of the class A part of the guideline, we are not persuaded that the English guidelines can be applied literally as if there was one offence when there were two, distinct, albeit probably related, offences.

[22] It was a relevant consideration that the appellant already had a conviction in England for being concerned in producing drugs as disclosed in the JSWR. This would be taken account of under the English guideline as it is in Scotland generally.

[23] In its consideration, the Commission identified three Scottish cases. It is fair comment that there appears to be limited recent and/or accessible appellate consideration of sentencing in a case of this kind but there are some older, but potentially relevant, examples to be found in Morrison, Sentencing Practice. There is not enough detail in the case summaries to provide any more than a very broad indication.

[24] We note that in the English guideline, listed amongst the factors reducing seriousness or constituting personal mitigation is age and or lack of maturity. It may apply to people aged 18-25. This appears similar to the Scottish Sentencing Council's "Sentencing young people" guideline. It was not appropriate for the judge to proceed by identifying a headline sentence for an adult and then reducing it by a proportion: *Hibbard v HM Advocate* [2010] HCJAC 111, 2011 JC 149 at [15], *Dunn v HM Advocate* [2023] HCJAC 34, 2024 JC 51 where, in delivering the opinion of the court, Lord Boyd explained, at [5]:

"... There is no warrant for assessing a headline sentence and then discounting the sentence as a result of his age. Nor has the sheriff explained why he selected ten per cent as an appropriate discount for age. While we see no difficulty, in appropriate cases, in indicating what sentence might have been imposed had the young person been an adult, the assessment of culpability for a young person does not involve a mere discounting exercise of an arithmetical nature. The correct approach, in our opinion, is to assess the seriousness of the offence having regard to the level of culpability and the harm. Culpability is assessed according to the young person's maturity and having regard to the factors outlined in paras 10 to 12 of the guideline."

That said, it may be difficult to avoid the appearance of an arithmetical reduction if using a point on a sentencing range guideline as the judge did. When considering culpability, and in the case of young offenders the implications of their age on culpability, the court should evaluate all relevant circumstances.

[25] The obvious inference on charge 1, committed on or before 2 November 2020, is that the appellant's fingerprints came to be where they were; either in packaging drugs, most probably in England where he lived and where they originated, or transporting them from Bolton to Glasgow.

[26] On charge 2, the appellant appears to have been the only occupant and in control of a house being used for the storage, division, packaging and no doubt onward distribution of a very large amount of cannabis, more than 26kg. The presence of scales, notations and £18,100 in cash is very significant. He was plainly expecting the further, smaller,

consignment that arrived by car and communicated with those in the vehicle. These factors, and the distribution of fingerprints, confirms that the events of charge 2 provide only a snapshot into a much wider scheme.

[27] By the time he was sentenced, the appellant was 24, having been younger when he committed these crimes. The judge correctly recognised that the appellant was a young person for the purposes of the Scottish Sentencing Council's "Sentencing young people" guideline. A young person may on account of immaturity be less culpable than an older person, have better prospects of rehabilitation and be more easily led.

[28] We note that the appellant was almost 22 when his offending in charge 1 came to light and was 22 and 7 months on charge 2. He was already in an adult relationship with caring responsibilities for children and he was supporting his partner in her plans to set up a business in Scotland according to what the reporting social worker learned. These are indications of at least a degree of maturity. At the very least, he was entrusted with large sums of money, very large consignments of valuable drugs and control of the premises in charge 2.

[29] The "Sentencing young people" guideline does not suggest an abstract approach to an offender's culpability on account of age; it proposes that the court considers the individual involved and should not just focus on age. The court endorsed this approach in *Dunn*. It is also illustrated in *Owens v HM Advocate* [2022] HCJAC 29, 2022 SCCR 246 at [17] of the opinion of the court delivered by Lord Matthews alongside the Lord Justice General (Carloway) and Lord Pentland (as he then was).

[30] The case of *Lin* is important as the court gave guidance under s 118(7) of the Criminal Procedure (Scotland) Act 1995. The court was concerned about the increasing prevalence of industrial scale cannabis cultivations in Scotland at a time, between 2004 and 2009, when

cannabis was categorised as a class C drug under MDA. It is now once again categorised under class B. We note that it is well-established that cannabis is now generally substantially more potent than was the case when MDA was passed. There is now much greater knowledge of the harm cannabis causes, particularly to mental health. As the Lord Justice General (Hamilton) stated in *Lin*, at para 11, the dangers associated with this drug are well known.

[31] Mr Lin had been tending a sophisticated cannabis cultivation over a three-week period in 2007 and was charged with producing cannabis under MDA s 4(2)(a). There were 849 cannabis plants with a total value of £84,900 (worth about £137,230 in 2023 and £145,215 in December 2025.)

[32] His Lordship noted, at para 12, that:

“The higher ranges of sentence within the statutory maximum must be reserved for the more serious cases — involvement at a sophisticated level, multiple offences and repeat offences.

[Emphasis added]

[33] His Lordship continued:

“First offenders with minor involvement, such as ‘gardeners’, may appropriately be dealt with less severely. Nonetheless, where cultivation is, as in cases of which the present is typical, on a commercial and substantial scale, a sentence of imprisonment will, almost inevitably, be appropriate. The courts must seek to deter individuals from lending their services to such activity — even where offenders are in circumstances where the pressure on them to participate may be heavy.

[13] In our view the appropriate starting point for such ‘gardeners’ involved in relatively large scale operations will ordinarily be in the range of four to five years’ imprisonment. Where within that range or, if the circumstances justify it, outwith that range, the sentence in any case should be set will depend on the particular circumstances of the offence and of the offender. Although this range appears to be higher than that currently set in England (where the cases cited to us seem to suggest a starting point of three years) we consider that the need to discourage a new development in this jurisdiction justifies that difference. Where a plea of guilty is tendered, the starting point should be discounted to the extent appropriate to the timing of such tender.”

[34] We note that the particular concern about the novelty of industrial scale cultivations is not directly present in this case, involving the distribution and sale of its product. The guidance in *Lin* continues to be endorsed as relevant and apt: *Ketuka*.

[35] In *McFadyen*, the Crown appealed, as unduly lenient, the sentence imposed for supplying charges involving cannabis resin and cocaine. The grounds focussed on charge 1, the cannabis charge, and the order that the two sentences should run concurrently. The cannabis charge covered 10 days in October 2008. The judge had identified 3 years and reduced it to 2 years for a guilty plea on charge 1 and imposed a concurrent sentence of 6 years reduced to 4 years on charge 2, cocaine (class A). It occurred on 26 March 2009. There was a total of about 63kg of cannabis resin involved, with a street value of £250,000 (approximately £344,066 in 2023 and £364,086 in December 2025). Mr McFadyen had a bad record including drugs offences and was recently released from prison.

[36] The court considered that given the quantity of drugs and the respondent's record, the headline on the cannabis resin charge should have been 6 years. The court, without noticing *Gemmell*, followed the judge's approach of reducing by one third for the guilty plea. Since the second charge involving a single day involvement with 1.7kg of cocaine occurred five months later, the sentence of 4 years should run consecutively.

[37] Whilst the cases are not recent, we note certain entries in Morrison's Sentencing Practice in the section on supplying cannabis and cannabis resin, in which the more recent *McFadyen* (2012) features. These cases may have some very general relevance:

- in *Todd v HM Advocate* 1999 G1.0024, the appellant pled guilty to being concerned, for 3 months, in supplying, *inter alia*, cannabis resin with a street value in excess of £500,000. The appellant was "a middleman," providing a safe house for the storage of the drugs but not directly involved with dealing. The court quashed a sentence of

8 years' imprisonment on the cannabis resin charge and imposed instead a sentence of 6 years. There is no reference to previous convictions.

- in *Froude v HM Advocate* 1999 G1.0025.1, a courier, who was paid £200, was charged with being concerned in the supplying of 19kg of cannabis resin with a value of £95,000 was sentenced to 5 years' imprisonment. The court considered it "on the high side" but within the range of available sentences. There is no reference to previous convictions.
- in *McGinty v HM Advocate* 2000 G1.0022.1, the appellant, who had a rare psychological disorder rendering him unable to work, was convicted after trial of being concerned in the supplying of cannabis resin over 15 months. Police recovered a "tick list" from his home recording the supply of 92.75kg in a two-week period together with £75,245 in banknotes. The court refused his appeal against a sentence of 7 years' imprisonment. There is no reference to previous convictions.
- in *Coe v HM Advocate* 2001 G1.0025, the appellant was sentenced to 5 years' imprisonment, having pled guilty early to a charge of being concerned in supplying 26.8kg of cannabis resin with a street value of £130,000 by providing a safe house for storage at home and at work. The appellant had no material previous convictions and there was a positive social work report.
- in *Stewart v HM Advocate*, 2002 G1.0024.1, the appellant, with no material previous convictions, pled guilty to being concerned, for one month, in the supplying of cannabis resin (by providing a safe house) with a street value of between £80,000 and £90,000. His appeal against a sentence of 5 years' imprisonment was refused.
- in *Geddes v HM Advocate* 2003 G1.0026.1, for being concerned in supplying, as a courier, of 3kg of cannabis resin worth up to £15,000 following a guilty plea, the

court reduced sentence from 6 years to 4 years' imprisonment. He had one, old and non-analogous previous conviction.

- in *Marshall v HM Advocate* 2006 G1.0026.3, for being concerned in supplying 8kg of cannabis resin, with a potential value of £40,000, found in the appellant's car, a sentence of 5 years reduced from 6 years for a guilty plea was changed to 42 months, reduced from 4 years' imprisonment. There is no reference to previous convictions.

[38] We note that the Commission, and the appellant, have approached this case as if there was a single charge involving 59kg of cannabis. That is not what the court was dealing with. There were two distinct crimes, albeit both involving the same drug, committed 9 months apart in rather different circumstances. This is a significant consideration for the reasons identified in *Lin* (see para [32] above) and *McFadyen* (see para [36] above.) The appellant in the case before us had not been arrested for the first crime before November 2021, but a warrant had been issued, and he must in any event have been aware of the loss when the police seized a valuable consignment of cannabis he had been involved with at an earlier stage.

[39] On the question of a reduction for his guilty plea, certain relevant considerations were established by a full bench in *Gemmell v HM Advocate* [2011] HCJAC 129, 2013 JC 223. First, the general principle is that any reduction is justified only by the utilitarian value of the guilty plea. Secondly, the earlier the plea, the greater will be its utilitarian value. Thirdly, there is no entitlement to a reduction for a guilty plea or to any particular level of reduction. Fourthly, in cases where there is little or no prospect of witnesses being caused anxiety by testifying, eg where the witnesses are persons such as police officers and drugs analysts, there is limited utilitarian value and only a token reduction would be appropriate.

[40] This was the kind of case where there should have been only a token discount when the witnesses would have been police officers. The judge was over-generous in allowing a reduction of approximately one tenth for a plea of guilty at trial, following the procedure we have summarised above, in a case of this kind. This worked in the appellant's favour.

[41] The judge erred in reducing the sentence by 7 months to account for the appellant's period on remand when he was imposing a long-term sentence. He ought to have selected the appropriate sentence and identified a notional commencement date 101 days earlier than 9 February 2023 when the appellant was again remanded in custody for sentencing:

HM Advocate v O'Doherty [2022] HCJAC 31, 2022 JC 253. The appellant's sentence should have commenced on 1 November 2022 without being reduced by 7 months. This error worked in the appellant's favour.

[42] In conclusion, whilst the judge made several errors, the question is whether there has been a miscarriage of justice and that involves determining whether the sentence imposed was excessive. It is not sufficient to identify one or more errors in the sentencing process unless the result is a miscarriage of justice by virtue of the final sentence being excessive: *Barnes; Beveridge* at [21]. Whilst reference to the wrong part of the English guideline could work against the appellant, the judge recognised that he was not dealing with a single offence, and it explains why he imposed a substantial sentence. The errors he made: in accounting for the time spent on remand prior to release; in reducing the sentence arithmetically on account of age when a more discriminating evaluation was required given the appellant's particular circumstances; and in failing to recognise that this was a case where at most a token discount ought to have been allowed for a plea of guilty at trial, with limited utilitarian value, all worked in the appellant's favour. Viewing all relevant circumstances in the round, the sentence of imprisonment for 6 years and 3 months

imposed, cumulatively, for these two charges was not excessive. There has been no miscarriage of justice and the appeal is refused.

Observations on sifting decisions

[43] The original note of appeal made no mention of the point now raised about the sentencing judge's erroneous use of the English guideline. Where leave to appeal is refused, the reasons given must be both concise and specific and should address the grounds of appeal on which leave is refused. It was not necessary for the experienced judges who refused leave to appeal to go into the level of detail of this opinion in stating their reasons. Since their task was to determine whether it was arguable that the sentence imposed was excessive, it was not decisive that one or more erroneous steps may have been taken. As the Commission recognised, with reference to *Barnes*, it was the sentence ultimately passed that mattered. The language in which the sift decisions were expressed demonstrates that the first and second sift judges proceeded on that basis, and correctly.

[44] We also take the opportunity to remind sifting judges that, while they must give reasons for refusing leave to appeal (section 107(1)(b)(i) and (5)(b)(i) of the 1995 Act) it will usually be unnecessary to give reasons when making a straightforward grant of leave. Appeal judges have noted a developing practice amongst some temporary judges of providing detailed reasons outlining their thinking in allowing leave to appeal. Whilst it may, exceptionally, be appropriate to identify a technical consideration that is relevant but is not immediately identifiable in the note of appeal, it is generally preferable to leave it to the appeal court to evaluate, for itself, grounds of appeal granted leave.