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**Summary of Judicial Decision**

**HKSAR v Nguyen Thang Loi and Dang Hung Ngoc  
CACC 145 and 217/2019; [2023] HKCA 103**

**Decision** : **Appeals against sentence dismissed**  
**Dates of Hearing** : **13 and 14 May and 28 July 2021**  
**Date of Judgment** : **20 January 2023**

**Background**

1. Nguyen pleaded guilty to the offence of unlawfully trafficking in 7,840 grammes of cannabis in the form of bundles of plants and the offence of cultivation of cannabis plants, namely 67,154 grammes in the form of 184 plants, 1,804.10 grammes in the form of 11 lumps of soil with cannabis in the form of a plant, 263.20 grammes of cannabis in the form of bundles of plants and 2.13 grammes of cannabis in herbal form.
2. Dang pleaded guilty to the offence of cultivation of cannabis plants, namely 552 plants and 195 saplings of the genus cannabis, totaling 747 pots with a total weight of 181.65 kilogrammes, and cut plants of the genus cannabis with a total weight of 28.84 kilogrammes.
3. The two cases were separately committed to the Court of First Instance for sentence. Nguyen was sentenced to a total of 7 years and 6 months of imprisonment while Dang was sentenced to 8 years and 6 months of imprisonment.
4. Both appellants appealed against sentence. The appeals were consolidated as they involved the common issues as to the sentencing approach for unlawful trafficking in cannabis and large scale commercial cultivation of cannabis plants.

**Issues in dispute**

5. Whether the criminality of the offence of unlawful trafficking in cannabis and cultivation of cannabis plants was overlapping as the cannabis Nguyen trafficked in may have originated from the cannabis plants he cultivated and warranted concurrent sentences.
6. Whether it was an appropriate time to revise the sentencing tariff as set out in



*Attorney General v Tuen Shui Ming & Anor* [1995] 2 HKC 798 in respect of the offence of unlawful trafficking in cannabis (section 4 of the Dangerous Drugs Ordinance, Cap. 134).

7. Whether a new sentencing tariff should be laid down in respect of the offence of cultivation of cannabis plants (section 9 of the Dangerous Drugs Ordinance, Cap. 134).

### **Department of Justice's Summary of the Court's Rulings**

(Full text of the reasons for judgment of the Court of Appeal (CA) of the High Court (English version only) at

[https://legalref.judiciary.hk/lrs/common/search/search\\_result\\_detail\\_frame.jsp?DIS=150109&QS=%2B%7C%28cacc%2C217%2F2019%29&TP=JU](https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=150109&QS=%2B%7C%28cacc%2C217%2F2019%29&TP=JU))

8. The CA was of the view that whilst the cannabis Nguyen unlawfully trafficked in may have originated from his cultivation activities, the offence of unlawful trafficking addressed a different and additional crime. The counts of unlawful trafficking in cannabis and cultivation of cannabis plants involved undoubtedly distinct offences and Nguyen had the dual roles of cultivator and trafficker. The sentencing judge was perfectly in order to impose partially consecutive sentences to reflect Nguyen's different and additional culpability (paragraphs 27 – 29).
9. The CA noted it was a fact that cannabis is being treated differently elsewhere in the world. However, how another jurisdiction perceives the harmful effects of cannabis or advocates for certain usage of cannabis is clearly influenced by a myriad of factors and issues, including those specific to the jurisdiction(s) in question (paragraph 54).
10. In *Tuen Shui Ming*, the potency (THC concentration level) of herbal cannabis was considered as four times lower than that of cannabis resin. However, expert evidence the CA received and accepted had now shown a dramatic increase in the THC concentration level in herbal cannabis and cannabis resin and it required them to be treated similarly for sentencing purpose. Therefore the *Tuen Shui Ming* sentencing tariff in respect of the offence of unlawful trafficking in cannabis is now revised and expanded as follows (paragraphs 94 to 98):

Under 2,000 grammes – up to 16 months

Over 2,000 grammes – 16 to 24 months

Over 3,000 grammes – 24 to 36 months



- Over 6,000 grammes – 36 – 48 months
- Over 9,000 grammes – 48 – 66 months
- Over 15,000 grammes – 66 to 96 months
- Over 45,000 grammes – 96 to 120 months
- Over 90,000 grammes – 120 months or above

11. As to the offence of cultivation of cannabis plants, the CA considered that cultivation is a continuous course of conduct and therefore an estimate of the annual yield is required and it would include making a pragmatic assessment of the nature and size of the operation, the sophistication and method of cultivation and the number and type of crops in a year. In estimating the annual yield, the sentencing judge will calculate the average weight of the plants, which is multiplied by the number of plants and then by the number of crops in the year. Factors that may be relevant in sentencing are the role of the defendant, the nature and scale of the operation and any noticeable higher or lower levels in THC. The new sentencing tariff, based on the estimated annual yield of cannabis (in grammes), is as follows (paragraphs 100 to 104):

- Below 5,000 – Below 2 years
- 5,000 to 50,000 – 2 to 7 years
- 50,000 to 150,000 – 7 to 10 years
- Over 150,000 – Above 10 years

12. If the revised and new tariffs were applied, and taking into account Nguyen's important role and the scale of operation involved, his sentence, including the 6 months enhancement for the fact that he committed the offences as a Form 8 recognizance holder, was appropriate (paragraphs 107 to 108).
13. If the new tariff was applied, and taking into account Dang's role as a gardener and the scale of the operation involved, his sentence was appropriate (paragraphs 105 to 106).
14. The consolidated appeals were therefore dismissed.