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**Summary of Judicial Decision**

**HKSAR v SK Wasim (the “Appellant”)**

**CACC 77/2019; [2020] HKCA 269**

**Decision** : (1) Appeal allowed  
(2) The Appellant’s prison sentence reduced by 2 months

**Date of Hearing** : 21 April 2020

**Date of Judgment** : 21 April 2020

**Date of Reasons** : 24 April 2020

**Background**

1. At the District Court, the Appellant pleaded guilty to one count of trafficking in a dangerous drug, namely 11.7 kilogrammes of cannabis resin. For the presence of an international element, the District Court had enhanced the Appellant’s sentence by 3 months (i.e. 2 months after a 1/3 discount for the Appellant’s guilty plea).
2. The drugs in this case came in 15 cartons that were shipped to Hong Kong from India. When the deliverymen responsible for the international delivery arrived with the goods, the Appellant and another male were already waiting for the deliverymen in the corridor of the delivery address. They then waited for a third person (Haydar) to arrive, who opened the door and then left. The police intercepted the Appellant when the Appellant and a deliveryman were still moving some of the cartons into a room. Some of the cartons were marked as having been sent from India.
3. Under caution, the Appellant said that he and the other person with him had been asked by Haydar to collect some cartons, but when they reached the location, they could not unlock the door, so the Appellant called Haydar to come and open the door, which Haydar did – Haydar also acknowledged the receipt of the goods.

**Issue in dispute**

4. On appeal, the issue was whether the District Court should have enhanced the Appellant’s sentence for the presence of an international element.



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**Department of Justice’s Summary of the Court’s rulings**

(full text of the Court’s judgment is at [https://legalref.judiciary.hk/lrs/common/search/search\\_result\\_detail\\_frame.jsp?DIS=127559&QS=%2B&TP=JU](https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=127559&QS=%2B&TP=JU))

5. The Court identified two issues: (i) there are varying levels and degrees as to the nature and gravity of an international element and the connection, if any, of a defendant to this aggravating factor; and (ii) it is important that there is a clear understanding as to what is meant by an “international element” in the context of a drug trafficking offence, so as to ensure it is correctly and appropriately applied as an enhancement to a defendant’s sentence (paragraphs 34 & 35).
  
6. For an international element to be an aggravating factor, it must go to the aggravation of the offence as alleged against the defendant. It is not enough that dangerous drugs were imported or to be exported at some time, unless it can be shown that it is a feature of the offence for which the defendant has been charged. It can manifest itself in a variety of ways, such as the importation or exportation of dangerous drugs into and out of Hong Kong or the assisting or facilitating such importation or exportation; or the involvement of foreign drug traffickers or members of an international drug syndicate in furthering the drugs trade in or through or out of Hong Kong (paragraph 38).
  
7. In the context of this case, there is insufficient evidence to show that the Appellant knew or must have known the drugs were sent from India, and hence there is no international element. The Appellant was only hired to move the drugs into a room after their delivery (paragraph 39).
  
8. The Court thus allowed the appeal, and reduced the Appellant’s sentence accordingly.

**Prosecutions Division  
Department of Justice**

**May 2020**