Public Prosecutor v Mohammad Al-Ansari bin Basri
[2007] SGHC 187

Case Number : MA 81/2007

Decision Date : 31 October 2007

Tribunal/Court : High Court

Coram : V K Rajah JA

Counsel Name(s) : Janet Wang (Attorney-General's Chambers) for the appellant; James Bahadur Masih (Tang & Tan) for the respondent

Parties : Public Prosecutor — Mohammad Al-Ansari bin Basri

Criminal Procedure and Sentencing – Sentencing – Principles – Young offender committing serious offences – Whether rehabilitation dominant consideration – Whether probation must be ordered – Section 13 Criminal Procedure Code (Cap 68, 1985 Rev Ed) – Section 5(1) Probation of Offenders Act (Cap 252, 1985 Rev Ed)

31 October 2007

V K Rajah JA:

Introduction

1 The courts generally lean in favour of rehabilitating young offenders between 16 and 21 years of age whenever they consider it beneficial to both the offender and society. This, however, does not mean that probation will always be ordered as a matter of course. Indeed, the courts should not abandon the broad overriding consideration of protecting the community's interests in deterring crime, both on a general and specific level. The courts should always try to strike the right balance between the two sentencing principles of rehabilitation and deterrence whenever a young offender is sentenced.

2 Young offenders and their legal advisors should not and cannot expect the courts to invariably place on probation all first-time young offenders simply because they are likely to respond positively to rehabilitation through community-based programmes which commonly find expression in probation orders. The courts would plainly be remiss in discharging their judicial duty to protect the community if they fashion a sentencing policy that may signal to all prospective young offenders that probation will be prescribed as a matter of course, regardless of the nature and circumstances of the offending conduct. This would simply invite, and perhaps even encourage, potential young offenders to engage in criminal behaviour. The ability of a young offender to respond positively to rehabilitative efforts is an important but not necessarily an overriding consideration in all cases.

3 This was an appeal by the Public Prosecutor ("the Prosecution") against the sentence imposed on the respondent by the district judge. The respondent was charged with robbery under s 392 read with s 34 of the Penal Code (Cap 224, 1985 Rev Ed) ("Penal Code"), together with two others. Another charge was taken into consideration for the purposes of sentencing, *viz*, s 352 of the Penal Code for intentionally using criminal force on the victim. The appeal brings into sharp focus the tension between the competing imperatives of the rehabilitation of young offenders on the one hand and the need to protect the community's interests in deterring crime on the other hand. On one view, these two imperatives are but two sides of the same coin, intertwined as they are on the premise that the young offender should be rehabilitated to become a good citizen, such that he (or embryonic

young offenders) will not adversely affect the community at large at a later stage, by engaging in even more serious crimes. Indeed, as the English Court of Appeal in *R v Smith* [1964] Crim LR 70 sagely noted:

> In the case of a young offender there can hardly ever be any conflict between the public interest and that of the offender. The public have no greater interest that he should become a good citizen. *The difficult task of the court is to determine what treatment gives the best chance of realizing that object*. That realization is the first and by far the most important consideration. [emphasis added]

4 In my view, this statement correctly and accurately states the overriding approach which the courts should take when considering the appropriate sentence to be meted out to young offenders. It is plain that the rehabilitation of the young offender should constitute the foremost consideration of the sentencing process, but that should not be the end of the enquiry. There is concurrently the need to ensure that the appropriate message is sent out such that the specific young offender and other prospective young offenders are adequately deterred from committing offences. In balancing these two general imperatives, a myriad of factors is inevitably involved, the most relevant of which in the instant appeal was the seriousness of the offence.

5 At the end of the hearing, I allowed the Prosecution's appeal and sentenced the respondent to reformative training with immediate effect. In these grounds of decision, apart from providing detailed reasons as to why the appeal was allowed, I shall elucidate the relevant factors which the courts should consider as a matter of course in determining the sentencing "treatment" which best reconciles both the young offender's rehabilitative prospects and the interests of the community at large.

The facts

6 The facts are fairly straightforward and can be stated within a brief compass. Part of the reason for this is because the respondent had admitted unreservedly to the Statement of Facts dated 28 February 2007. From this Statement of Facts, it appears that the unhappy episode commenced at about 6.15pm on 11 August 2006, while the respondent was playing sepak takraw with one Mohamed Fadzli bin Abdul Rahim ("Fadzli") at the court near Blk 419 Tampines Street 41. They finished the game at about 9.45pm and after that, Fadzli told the respondent that he would be taking a "joyride" with his cousin, one Norhazri bin Mohd Faudzi ("Norhazri"). The respondent expressed his desire to accompany them.

7 Sometime in the early hours of 12 August 2006 (after 12.00am), the respondent joined Norhazri and Fadzli for the joyride in Norhazri's Malaysian-registered car ("the car"). The trio proceeded to Tampines Street 21 for supper at a coffee shop. Shortly thereafter, Fadzli revealed to the respondent and Norhazri his desire to have sex with a sex worker for free. At that juncture, the respondent realised that both his accomplices, in his own words, "were planning to do something bad to a prostitute".

8 The respondent and his accomplices then proceeded to Geylang where they prowled for sex workers but were unable to persuade any to enter the car. It appears that the number of passengers in the car deterred the sex workers approached from accepting the invitations from the respondent's accomplices. The respondent then alighted somewhere in Geylang so as to enhance the prospects of persuading a sex worker to enter the car. However, when this proved to be equally futile, the respondent was picked up again by his accomplices.

9 As they continued cruising, the respondent and his accomplices chanced upon the victim, a foreign sex worker, at around 3.00am. The victim was walking alone along Lorong 34 Geylang near Geylang Road. Norhazri stopped the car near the victim and asked her whether she was interested in providing sexual services to Fadzli. The victim agreed and informed Fadzli that she would charge a sum of $80. Thereafter, she boarded the car and sat in the rear passenger seat of the vehicle beside the respondent.

10 The victim was transported to an unknown road before Norhazri stopped the vehicle. He and the respondent then alighted and topped up the radiator with water to prevent overheating of the vehicle. As they were doing so, Fadzli moved to the rear passenger seat in the car and sat beside the victim. Subsequently, after they drove off, Fadzli, who was then seated next to the victim in the rear passenger seat, started to grope her breasts. The victim struggled with Fadzli, but he managed to forcefully remove all her clothes save for her panties. During the struggle, the victim's handbag was wrenched from her.

11 The group subsequently stopped the vehicle along Jalan Sam Kongsi. The respondent alighted from the vehicle. Fadzli tried to push the victim out of the car but when the victim struggled, Norhazri and Fadzli started to assault the victim. After the assault, the respondent assisted Fadzli to push the victim out of the vehicle. The victim was then raped by Fadzli. The victim sustained multiple injuries as a result of the robbery and sexual assault.

12 Subsequently, the respondent handed the victim's handbag to Norhazri and threw one of her shoes out of the vehicle. This was done to remove any physical evidence that might later link the respondent and his accomplices to the victim. The respondent and his accomplices then drove off, leaving the undressed and battered victim behind. Then, the respondent helped his accomplices to count the money taken from the victim's handbag. He was later given a packet of cigarettes and some food by Fadzli. These had been purchased with the stolen money. The respondent was 16 years of age at the time of the offence.

13 The respondent was arrested on 24 August 2006. He has since pleaded guilty to one charge under s 392 read with s 34 of the Penal Code for having committed robbery with Norhazri and Fadzli. As I mentioned above (at [3]), another charge was taken into consideration for the purposes of sentencing. This was a charge under s 352 of the Penal Code for intentionally using criminal force on the victim. For completeness, I should state that the punishment prescribed for an offence of robbery committed in furtherance of the common intention of others after 7.00pm and before 7.00am under s 392 read with s 34 of the Penal Code is a *mandatory* minimum imprisonment term of three years and 12 strokes of the cane. On the other hand, an offence of using criminal force under s 352 of the Penal Code is punishable with a maximum imprisonment term of three months, and a maximum fine of $500 may also be imposed.

The district judge's decision

The hearing before the district judge

14 The hearing before the district judge took place over five days in the period between February and May 2007, with the district judge issuing her grounds of decision in *PP v Mohammad Al-Ansari bin Basri* [2007] SGDC 145 ("GD"). In the course of the hearing, the district judge called for probation and reformative training reports. The Prosecution vigorously objected to probation, arguing that in view of the seriousness of the offence and the relevant circumstances, it was not warranted. The Prosecution in turn submitted that the respondent should be sent for reformative training at the Reformative Training Centre ("RTC") if the district judge was not minded to impose the sentence

prescribed by s 392 of the Penal Code.

15 In deciding whether probation could and should be granted, the district judge considered three factors (GD at [36]): (a) the seriousness of the offence; (b) the respondent's prospects of reform and rehabilitation; and (c) whether there were any other reasons militating against granting probation. It would be worthwhile, in my view, to examine the detailed grounds of the district judge's decision.

The district judge's consideration of the appropriate sentence

The seriousness of the offence

16 In considering the seriousness of the offence, the district judge stated that she was aware that "probation is hardly ever considered appropriate for serious offences, especially those involving violence as public policy concerns demand a consistent and general deterrence for such offences". The district judge also acknowledged that the offence before her was "not just serious, it was an aggravated form of a robbery as it involved physical and sexual violence" and was well-aware that the victim "clearly suffered extensive injuries, and was subsequently sexually assaulted" (see GD at [37]).

17 However, the district judge was of the opinion that the seriousness of the offence could not be the only criteria in determining the sentence to be imposed. She took the view that it was important to ascertain the exact role played by the respondent in the robbery and that where the degree of involvement was less, greater consideration could be given to the personal circumstances of the respondent, especially since he was a young offender and there was a likelihood of him being reformed into a law-abiding citizen by an appropriate programme of rehabilitation (GD at [38]). In the result, the district judge decided that even though the offence before her was aggravated, the degree of involvement of the respondent was not so serious as to make the granting of probation inappropriate.

18 The district judge regarded the involvement of the respondent to be less serious than his accomplices because the respondent had not gone out on the fateful night specifically to commit an offence. His main failing was that he did not dissociate himself from his accomplices when they informed him of their plan (GD at [41]). The district judge paid particular attention to the fact that the role which the respondent played was "rather small". In her view, other than pushing the victim and throwing out one of her shoes from the car, the respondent did not himself participate in the assault on the victim or in the snatching of the handbag (GD at [41]). Furthermore, the district judge also came to the conclusion that since the respondent's role in the "first attack [on the victim] was minor", it could not be seriously regarded as "being material in setting the stage for the subsequent [sexual] attack" (GD at [44]).

19 Additionally, later in the GD (at [50]), the district judge also considered that any public interest in deterring such serious offences as robbery would not be harmed by imposing a sentence other than the term of imprisonment and caning prescribed by s 392 read with s 34 of the Penal Code. She was of the view that general deterrence would be "well served by appropriate sentences in respect of the [respondent's] accomplices who played a more significant role". Further, in considering specific deterrence, the district judge concluded that this was not required here as she was satisfied that the risk of re-offending by the respondent was low.

20 Ultimately, taking all these factors into consideration, the district judge concluded that the respondent's culpability was not of such a level as to make a sentence based on the rehabilitation principle and, specifically, the granting of probation, inappropriate.

The respondent's prospects of reform and rehabilitation

21 In considering the respondent's prospects of reform and rehabilitation, the district judge decided that the factors in favour of rehabilitation were "fairly strong" (GD at [46]). Taking into account the respondent's good conduct at home and in school as well as his home environment, the district judge assessed that the involvement of the respondent in the present case was "out of his normal character and could be put down to a lack of judgment" (GD at [48]). Furthermore, the district judge opined that the respondent's involvement was "not indicative of either a deep rooted disregard for public order and lawful conduct, or a recalcitrant criminal character".

The district judge's decision

22 After evaluating the submissions and ascertaining the personal circumstances of the respondent, the district judge determined that the sentence prescribed by s 392 of the Penal Code was inappropriate. As between probation and reformative training, the former was found to be more suitable. In the result, the district judge granted supervised probation to the respondent for a period of 18 months with additional conditions. The ultimate basis of the district judge's decision is aptly summarised at [49] and [51] of the GD, which I reproduce below:

> It was clear that a proper balance had to be struck between the needs of this young offender on one hand and the desire to impose a sanction that appropriately expresses public condemnation for the aggravated offence that he had committed. Weighing the offence seriousness, the culpability of the [respondent] as well as his rehabilitative prospects, I was of the view that offence seriousness here did not necessitate the imposition of a term of imprisonment and caning. As noted earlier, the circumstances of the commission of robbery with common intention can be greatly varied and a blanket approach is not always necessary to enforce deterrence. Furthermore, deterrence should not override proportionality, which requires that the sentence imposed should commensurate with the responsibility of the [respondent] ...
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> ...
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> As between probation and Reformative training, I was of the view that it would have been more apt to sentence the [respondent] to the latter if I had found the [respondent] to have a character that was less amenable to rehabilitation through the community based programmes that underlie probation. It would be appropriate and necessary if the [respondent] had displayed some possibility of reform but through the regimentation and discipline of a programme removing him from his home and the larger community, with all its possible temptations and opportunities to re-offend. The [respondent] here, however, did not display such characteristics and therefore, probation was definitely a viable option for him in achieving effective rehabilitation.

23 The Prosecution's appeal against the sentence ordered by the district judge formed the subject of the appeal.

The parties' arguments on appeal

24 The Prosecution's appeal was premised on the overarching contention that the sentence imposed by the district judge was manifestly inadequate. In particular, the Prosecution advanced three grounds of appeal. It was submitted that the district judge had erred in:

(a) failing to place sufficient weight on the aggravating factors in the present case;

(b) placing undue weight on the probation reports and rehabilitative prospects of the respondent; and

(c) failing to take account of the relevant sentencing principles.

25 In response to the first ground of appeal, counsel for the respondent submitted that it could not be said that the district judge had erred in not placing sufficient weight on the aggravating factors in the present case, but rather that she had found the respondent's accomplices to have played a more significant role. It was contended that the Prosecution was in effect relying heavily on the additional offence of rape committed by the respondent's accomplices to reinforce the seriousness of the offending behaviour against the victim. This, according to counsel for the respondent, could not be relevant because the respondent was not involved or charged for the offence of rape.

26 As for the second ground of appeal, counsel for the respondent submitted that the district judge could not be faulted for having considered and then deciding that in this case the respondent was unlikely to repeat his offence and that therefore probation was more appropriate. Finally, in relation to the third ground of appeal, it was submitted that the district judge had exercised her discretion correctly after considering the facts and that she could not be said to have ignored the relevant sentencing principles.

The applicable law in relation to sentencing young offenders

General sentencing principles

27 Before I consider the applicable law in relation to sentencing young offenders, it is apposite to turn first to some general principles that are applicable when a court passes sentence in a criminal case. In determining any sentence, a good starting point is the four classical principles of sentencing stated by Lawton LJ in *R v James Henry Sargeant* (1974) 60 Cr App R 74 ("*Sargeant*"). Lawton LJ in *Sargeant* stated at 77:

> What ought the proper penalty to be? … [The] classical principles are summed up in four words: retribution, deterrence, prevention and rehabilitation. Any judge who comes to sentence ought always to have those four classical principles in mind and to apply them to the facts of the case to see which of them has the greatest importance in the case with which he is dealing.

28 This general proposition has been cited repeatedly by the courts as a valuable guide in the sentencing process: see, for example, *PP v Law Aik Meng* [2007] 2 SLR 814 ("*Law Aik Meng*") at [17]. In deciding which of the four principles applies with the greatest effect, it is axiomatic that the principles that are most relevant and have the greatest importance in a case would affect the type and extent of sentence imposed: see *PP v Tan Fook Sum* [1999] 2 SLR 523 ("*Tan Fook Sum*") at [15]. In every case, the sentencing court strives to achieve a proper balance of the *applicable* principles of these four "pillars of sentencing": see *Chua Tiong Tiong v PP* [2001] 3 SLR 425. The sentence imposed on the offender not only serves to punish him, it also seeks to deter potential offenders, through fear of punishment, and to influence offenders who have been appropriately sentenced not to offend again. In a case such as this, where the respondent is a young offender who has committed a serious offence, the principles of rehabilitation and deterrence must form the prime focus of the court's attention.

Rehabilitation

General principles

29 Professor Andrew Ashworth astutely notes in *Sentencing and Criminal Justice* (Cambridge University Press, 4th Ed, 2005) at p 82 that the rehabilitative rationale for sentencing seeks to justify compulsory rehabilitative measures as a medium for achieving the prevention of crime. In turn, this usually necessitates a range of sentences and facilities designed to offer various programmes of treatment. To that extent, therefore, the crucial questions for the sentencing judge concern the perceived needs of the offender, not the gravity of the offence committed. As was explained by Yong Pung How CJ in *Siauw Yin Hee v PP* [1995] 1 SLR 514 (at 516, [7]):

> Certainly the rehabilitation of offenders constitutes one of the objectives by which a court is guided in passing sentence. It is as a corollary of this that the courts retain the discretion to decide the appropriateness of a rehabilitative sentence (such as probation) in any individual case. In virtually every case in which probation or a conditional discharge is asked for by an accused person, remorse is professed; reformation is promised. Yet, plainly, such assurances by themselves cannot form the sole basis on which a decision as to the suitability of a rehabilitative sentence is made. *The court must take into account various other factors including evidence of the accused's previous response to attempts at rehabilitating him*. Thus, for example, all things being equal, a court will be far more disinclined to order probation in the case of an accused who has in the past flouted with impunity the conditions imposed by a probation order. [emphasis added]

30 Similarly, as Mirko Bagaric notes in *Punishment & Sentencing: A Rational Approach* (Cavendish Publishing Limited, 2001) ("*Punishment and Sentencing*") at p 151, rehabilitation, like specific deterrence, aims to discourage the commission of future offences by the offender. The difference between the two lies in the means used to discourage crime. Rehabilitation seeks to *alter the values of the offender* so that he or she no longer desires to commit criminal acts by way of reducing or eliminating the factors which contributed to the conduct for which the offender is sentenced.

Rehabilitation to be focus in sentencing young offenders generally

Why is rehabilitation the focus for young offenders?

31 The principle of rehabilitation in sentencing generally assumes centre-stage when the offender is young, specifically, when he is below 21 years of age. The local cases which state this to be the position have not always explicitly explored the *reasons* why this is so, but I must acknowledge that the proposition is such a self-evident one that further explanation may not be necessary.

32 Indeed, there have been a catalogue of cases suggesting that the courts will inevitably (although not inexorably) place rehabilitation at the forefront of their sentencing considerations in relation to cases involving young offenders. This was stated to be so by Yong CJ in *PP v Mok Ping Wuen Maurice* [1999] 1 SLR 138 ("*Maurice Mok*") at [21] and [25]. In that case, the accused, 17 years of age, with no previous conviction, pleaded guilty to a charge of robbery in furtherance of a common intention with two others. He also pleaded guilty to a charge of consumption of a controlled drug. A third charge of pushing a police constable with intent to deter him from discharging his duty as a public servant was taken into consideration. The accused was convicted and ordered to undergo reformative training. Both the Public Prosecutor and the accused appealed against sentencing. In dismissing both appeals, Yong CJ said (at [21]) that:

> *Rehabilitation is the dominant consideration where the offender is 21 years and below. Young offenders are in their formative years and chances of reforming them into law-abiding adults are*

better. The corrupt influence of a prison environment and the bad effects of labelling and stigmatisation may not be desirable for young offenders. Compassion is often shown to young offenders on the assumption that the young 'don't know any better' and they may not have had enough experience to realise the full consequences of their actions on themselves and on others. Teens may also be slightly less responsible than older offenders, being more impressionable, more easily led and less controlled in their behaviour. However, there is no doubt that some young people can be calculating in their offences. *Hence the court will need to assess the facts in every case*. [emphasis added]

33 Following Yong CJ's pronouncement in *Maurice Mok* ([32] *supra*), the general principle that rehabilitation is to be the dominant consideration in cases involving young offenders was further elucidated by Tay Yong Kwang J in the High Court decision of *Lim Pei Ni Charissa v PP* [2006] 4 SLR 31 ("*Charissa Lim*"). In that case, the appellant was convicted on seven charges under s 420 read with s 109 of the Penal Code for the abetment of cheating offences relating to the use of stolen credit cards and was sentenced to 33 months' imprisonment by the trial judge. The appellant was between 17 and 18 years of age at the time of the offences. The credit cards had been stolen by the appellant's then boyfriend, who had used the credit cards to make various purchases over two periods in 2003 and 2004. Many of the purchases were made for the appellant's benefit. The appellant appealed against both her conviction and sentence. In dismissing the appellant's appeal against conviction but allowing the appellant's appeal against sentence (and varying the sentence to a probation order), Tay J reaffirmed the principle stated in *Maurice Mok* that rehabilitation was the dominant consideration where the offender was 21 years and below. However, Tay J was quick to stress (at [16]) that there is a need to strike a balance between public interest and the interest of the offender, and that probation may be inappropriate in cases where serious offences such as robbery or other violent crimes have been committed, or where the offender has antecedents. He noted at [17]:

> [W]hile it may be the case that the more egregious the offence or the more recalcitrant the offender, the less likely the offender will be able to convince the court that he or she will reform and respond to rehabilitation, there is nothing in the cases or in the statutes that indicate that the courts must view such circumstances as always ruling out the possibility of probation. In all such cases, the guiding principle is the likely responsiveness of the young offender to rehabilitation. The court must apply its mind to the facts of each case and, in particular, the probation report.

Rehabilitation is not invariably dominant consideration in some cases involving young offenders

34 While I have stated above the general principle that rehabilitation must be the dominant consideration in cases involving young offenders, it does not follow that this is *always* the case. For example, in *PP v Mohamed Noh Hafiz bin Osman* [2003] 4 SLR 281 ("*Mohamed Noh Hafiz bin Osman*"), the accused, a 17-year-old male, pleaded guilty to ten charges. He had followed young girls into lifts of public housing estates as they were heading home alone. When they emerged from the lift, he attacked them from behind, covered their mouths and pulled them to the staircase landings where he molested them. These facts led to four charges of aggravated outrage of modesty. He was also charged for two rape offences and three unnatural sex charges as well as a robbery charge pertaining to a mobile phone he took forcibly from a girl's pocket when he accosted her. The accused also admitted 19 other charges and consented to having them taken into consideration in sentencing. These were nine charges of aggravated outrage of modesty, one charge of unnatural sex, four charges of robbery, three charges of theft and two charges under the Films Act (Cap 107, 1998 Rev Ed). Counsel for the accused asked for reformative training as the accused was young and was willing to change. In mitigation, he submitted that the accused had a difficult childhood and had

suffered emotional scars.

35 Tay J sentenced the accused to 20 years' imprisonment and 24 strokes of the cane. He considered that reformative training was inappropriate in the light of the number of offences and the nature of the offences. The accused had been shockingly audacious in committing most of the attacks in the day, near the homes of his victims. Eleven young girls were subjected to intense emotional trauma and indelible hurt by his despicable acts. This is a clear example of a case where the offence was so serious and the actions of the offender so outrageous that rehabilitation had to be subordinated to some more serious form of corrective punishment.

36 In such cases it is evident that the principle of deterrence has to assume far greater importance than that of rehabilitation. I will discuss the principle of deterrence later in these grounds of decision. For now, sticking closely with the issue of rehabilitation, I will touch on the various rehabilitative sentencing options open to the courts in cases involving young offenders.

The relevant legislative provisions facilitating the rehabilitation of young offenders

Probation orders

NATURE OF PROBATION ORDERS

37 I turn first to probation orders. As the authors of *Sentencing Practice in the Subordinate Courts* (LexisNexis, 2nd Ed, 2003) ("*Sentencing Practice*") helpfully note at p 37, the High Court, the District Courts and the Magistrates' Courts are empowered by the Probation of Offenders Act (Cap 252, 1985 Rev Ed) ("POA") to make probation orders. The aim of a probation order is to secure the rehabilitation of the offender and is legislatively provided for by s 5(1) of the POA, which provides as follows:

> **Probation.**
> **5.**—(1) Where a court by or before which a person is convicted of an offence (not being an offence the sentence for which is fixed by law) is of the opinion that having regard to the circumstances, including the nature of the offence and the character of the offender, it is expedient to do so, the court may, instead of sentencing him, make a probation order, that is to say, an order requiring him to be under the supervision of a probation officer or a volunteer probation officer for a period to be specified in the order of not less than 6 months nor more than 3 years:
>
> Provided that where a person is convicted of an offence for which a specified minimum sentence or mandatory minimum sentence of imprisonment or fine or caning is prescribed by law, the court may make a probation order if the person —
>
> (*a*) has attained the age of 16 years but has not attained the age of 21 years at the time of his conviction; and
>
> (*b*) has not been previously convicted of such offence referred to in this proviso, and for this purpose section 11(1) shall not apply to any such previous conviction.

38 According to an information booklet published by the Probation Services Branch of the Ministry of Community Development, Youth and Sports, "National Standards for the Probation of Offenders and their Rehabilitation in the Community" (at para 3.1.4) (available online at: http://www.mcys.gov.sg/MCDSFiles/Resource/Materials/standards_probation_rehabilitation.pdf (last

accessed: 31 October 2007), where an offender is granted probation, the court will prepare and endorse the probation order and the probationer shall comply with the following basic conditions of the said order:

(a) to be of good behaviour and keep the peace;

(b) to report and receive visits from the Probation Officer or Volunteer Probation Officer;

(c) to not change his or her job or school without the prior approval of the Probation Officer or Volunteer Probation Officer;

(d) to notify the Probation Officer or Volunteer Probation Officer forthwith of any change of his or her residence; and

(e) to carry out such lawful instructions as may from time to time be given by the Probation Officer or Volunteer Probation Officer.

In addition, a probationer shall also comply with any other additional conditions imposed by the court. These may include complying with a time restriction, performing community service, residing in a hostel or the signing of a bond for parents.

39 Upon reaching six months of supervision, the progress of probationers shall be reviewed by the Adult or Juvenile Probation Case Committees respectively. Subsequent reviews of the progress of the adult or juvenile probationers shall be determined by the respective Committees.

40 Finally, the probationer and his or her family have to attend a pre-termination programme conducted by the Probation Service within two months prior to the completion of probation. Where a probationer requires further assistance after the probation period, the Probation Officer can refer him or her to a suitable voluntary welfare organisation. In cases where the probationer, who has served half of his or her probation period, has shown consistently outstanding progress, the court can consider an early discharge from the probation order.

THE REHABILITATIVE PURPOSE OF PROBATION ORDERS

41 It has been observed by Eric Stockdale and Keith Devlin in *The Criminal Law Library, vol 5: Sentencing* (Waterlow Publishers, 1st Ed, 1987) ("*Sentencing*") at p 208 that probation is primarily reformative in the sense that its aim is the reintegration of the offender in the community. It in turn seeks to provide support for the individual so as to assist him in avoiding the commission of further crime. Thus, as probation helps the offender to become more responsible for his own actions, it in turn advances the greater public interest by helping to protect society as a whole.

42 The above observations are similarly true in Singapore. In the local context, close to two decades ago, J K Canagarayar penned a compelling article ("Probation in Singapore" (1988) 30 Mal LR 104) ("Probation in Singapore") in which he painstakingly traced the origins of the POA and deduced that, in the main, the legislative intent behind the Act is to promote the rehabilitation of young first-time offenders. According to Canagarayar (at p 106), it would seem that when probation was introduced to Singapore in 1949, the policy makers' objectives were simple. In view of the social dislocation caused by the Second World War, a "rehabilitative" service was provided for children and young persons who "… having been exposed to various forms of physical, social and emotional deprivation, were on the threshold of delinquency and crime". The debates in the Legislative Council indicated that the policy makers were also hoping to use probation "*to prevent a class of chronic law-*

breakers from springing" (see *Proceedings of the Second Legislative Council, Colony of Singapore*, 1st Session (1951) at p B126).

43 Two years later in 1951, a Probation of Offenders Ordinance (Ordinance No 18 of 1949) was enacted. This Ordinance clarified the scope and role of probation as a judicial disposition and made provision for the extension of probation to adults. The debates in the Legislative Council disclose that probation was extended to adults as an alternative to prison as it would not serve the "interests of the community" to send certain offenders, in view of the "nature of their offence", to prison for short terms. It was instead felt that periods of short term imprisonment would be of little use as "reformatory measures". Therefore, as Canagarayar states at p 106 of "Probation in Singapore" ([42] *supra*), probation was clearly linked to the type of offence that was committed by the offender. Indeed, the learned author points out that the available statistics of adult offenders sent to probation in Singapore since the 1950s reveal that the nature of the offence rather than the characteristics of the offender has played a major role in decisions to place offenders on probation.

Reformative training

THE NATURE OF REFORMATIVE TRAINING

44 Apart from probation orders, the courts are empowered by s 13 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC") to impose reformative training in lieu of any other sentence. For completeness, s 13(1) of the CPC is set out in full:

> **Reformative training**
>
> **13.**—(1) Where a person is convicted by the High Court or a District Court of an offence punishable with imprisonment and that person —
>
> (*a*) is, on the day of his conviction, not less than 16 but under 21 years of age; or
>
> (*b*) is, on the day of his conviction, not less than 14 but under 16 years of age and has, prior to his conviction, been dealt with by a court in connection with another offence and had, in respect of that other offence, been ordered to be sent to an approved school established under section 62 of the Children and Young Persons Act (Cap. 38),
>
> and the High Court or District Court (as the case may be) is satisfied, having regard to his character and previous conduct and to the circumstances of the offence of which he is convicted, that it is expedient with a view to his reformation and the prevention of crime that he should undergo a period of training in a reformative training centre, that Court may, in lieu of any other sentence, pass a sentence of reformative training.

45 An offender sentenced to reformative training is detained in a RTC for a period between 18 months and three years. While there, the offender undergoes a comprehensive rehabilitation programme in a closed and structured environment. The period of detention is determined by the visiting justices (see Schedule D to the CPC).

46 Upon his release, the offender is placed under supervision until the expiration of four years from the date of his sentence. While under supervision, the offender must comply with the requirements as may be so specified. If the offender fails to comply with any of the requirements while under supervision, he may be ordered to be recalled to the RTC for further detention until the end of three years from the date of his sentence or the end of six months from the date he is taken into custody

under the order of recall, whichever is the later. This is provided that such further detention will not extend beyond the end of four years from the date of his sentence.

THE REHABILITATIVE PURPOSE OF REFORMATIVE TRAINING

47 Again, as correctly noted by the authors of *Sentencing Practice* at p 34, reformative training is a *rehabilitative* sentence: see also *Senthil Kumaran s/o Veerappan v PP* [2007] SGDC 221 at [12]. The court must be satisfied, having regard to the offender's character and previous conduct, and to the circumstances of the offence, that it is expedient with a view to his reformation and the prevention of crime that he should undergo a period of training in a RTC. This legislative intent is confirmed by the relevant parliamentary debates. In 1956, the then-Chief Secretary, Mr W A C Goode, at the Second Reading of the Criminal Procedure Code (Amendment) Bill said (*Singapore Parliamentary Debates, Official Report* (5 December 1956) vol 2 at col 1068):

> Sir, this is the first of three Bills standing in my name in the Order Paper all of which are measures to enact the legislation required to establish in Singapore the system of reformative training for young offenders between the ages of 16 and 21, which is commonly known as the Borstal System. We already have provision for children and young persons, that is to say, the age group 7 to 16. They are provided for under the Children and Young Persons Ordinance by means of remand homes, approved schools, approved homes and other special places of detention; and provision has also been made for the reformative treatment of those who are over 21 years of age. The High Court can sentence them to corrective training with a view to their reformation and the prevention of crime, but as yet we have no properly established system for dealing with the age group 16 to 21. As a temporary expedient, we have segregated them from the older and hardened criminals in the prison by setting aside a Young Offenders Section to which those young people over 15 are now sent. But this has only achieved segregation and has not provided adequately for any reformative training, nor have the courts at present power to sentence people to reformative training. It is high time that we did make proper provision for the enlightened treatment of this age group 16 to 21. *This is an age at which <u>the majority</u> are likely to respond to expert efforts to reclaim them from crime and to prevent them from becoming criminals*. [emphasis added]

Similarly, the then-Minister of State for Law and Home Affairs, Prof S Jayakumar said at the Second Reading of the Criminal Procedure Code (Amendment) Bill in 1983 that (*Singapore Parliamentary Debates, Official Report* (24 March 1983) vol 42 at col 1637):

> *Sir, male offenders between 16 and 21 years of age are at present sentenced upon conviction to detention in the Reformative Training Centre, for treatment and rehabilitation*. Such offenders are detained in the Centre for a period of about 18 to 36 months. Subject to good behaviour during their period of reformative training and upon approval by the Board of Visiting Justices, the trainees are released conditionally and placed under the supervision of an Aftercare Officer from the Ministry of Social Affairs, until the expiration of four years from the date of the sentence. [emphasis added]

48 The same can be said about Borstal training in the United Kingdom ("the UK") before it was abolished by the passage of the (UK) Criminal Justice Act 1982. Before 1982, a sentence of Borstal training could be passed on an offender convicted of an offence punishable with imprisonment and aged under 21 on the day of his conviction, if the court is of the opinion, having regard to the circumstances of the offence, and after taking into account the offender's character and previous conduct, that it is expedient that he should be detained for training for not less than six months: s 20(1) of the (UK) Criminal Justice Act 1948 (as amended) and s 1(2) of the (UK) Criminal Justice Act

1961. While there is a deterrent dimension to Borstal training (see [59] below), it was generally regarded as a rehabilitative measure, designed to provide the offender with the social, vocational or educational training he requires: see D A Thomas, *Principles of Sentencing* (Heinemann, 2nd Ed, 1979) ("*Principles of Sentencing*") at p 262.

49 In more recent times, when young adult offenders in the UK, that is, offenders between 18 and 21 years of age, are committed to young offender institutions ("YOIs"), the rehabilitative element is nonetheless retained. Every YOI offers education classes as well as practical training courses that will improve their skills and chances of finding a job once they have been released. Pre-release courses, led by prison officers with the involvement of specialists from outside the prison, help young offenders tackle the issues that might face them when they leave , such as accommodation, benefits, drugs and family: see H M Prison Service website at <http://www.hmprisonservice.gov.uk/adviceand support/prison_life/youngoffenders> (last accessed: 31 October 2007).

Summary of the rehabilitative sentencing options for young offenders

50 The twin options of probation orders and reformative training generally allow the courts the framework to tailor each sentence to fit the needs of the offender, particularly if the offender is one less than 21 years of age, where the need for and chances of rehabilitation are especially acute. Before I leave this review of the rehabilitative options, I should also state that the courts will certainly benefit from the continual exploration of more creative sentencing options by the legislature that might further assist in the rehabilitation of young offenders. As such, I am greatly encouraged by the recent response by the Senior Minister of State for Law, Assoc Prof Ho Peng Kee, when he provided a preview of the possible future options available to the courts (for example, short-term detention to further pave the middle ground between probation and reformative training) in reply to Mr Christopher de Souza's questions regarding the review of the CPC and the POA (see *Singapore Parliamentary Debates, Official Report* (27 August 2007) at vol 83). It bears mention that in some jurisdictions, like the UK, the authorities and/or the courts have a large armoury of options to deal with youth crime. These include, Referral Orders, Action Plan Orders, Reparation Orders and Parenting Orders.

Deterrence

General principles

51 Balanced against the rehabilitative principle is the need for deterrence. My views on the application of deterrence as a sentencing principle have been extensively stated in *Tan Kay Beng v PP* [2006] 4 SLR 10 ("*Tan Kay Beng*") at [29]–[34] and, more recently, in *Law Aik Meng* ([28] *supra*) at [18]–[27]. It thus suffices for me to merely reiterate that there are two aspects to deterrence: specific deterrence which is deterrence of the offender and general deterrence which is deterrence of like-minded offenders.

52 More particularly, general deterrence aims at educating and deterring other like-minded members of the general public by making an example of the particular offender: see *Meeran bin Mydin v PP* [1998] 2 SLR 522. The sentence awarded must not be an insubstantial one, in order to drive home the message to other like-minded persons that such offences will not be tolerated, but not so much as to be unjust in the circumstances of the case: *Xia Qin Lai v PP* [1999] 4 SLR 343.

53 In fact, it may be useful to mention that in *Law Aik Meng* ([28] *supra*, at [24]), I had listed out several examples of offences in which *general* deterrence assumes significance and relevance. These are as follows:

(a) offences against or relating to public institutions, such as the courts, the police and the civil service;

(b) offences against vulnerable victims;

(c) offences involving professional or corporate integrity or abuse of authority;

(d) offences affecting public safety, public health, public services, public or widely used facilities or public security;

(e) offences affecting the delivery of financial services and/or the integrity of the economic infrastructure; and

(f) offences involving community and/or race relations.

In a related vein, examples of particular circumstances of an offence which may attract general deterrence include:

(a) prevalence of the offence;

(b) group/syndicate offences;

(c) public disquiet;

(d) difficulty of detection and/or apprehension; and

(e) offences affecting several victims.

54 Here, I must reiterate my own warning in *Law Aik Meng* ([28] *supra*, at [26]) that "one must always bear in mind that such broadly defined areas of misfeasance attracting general deterrence as a sentencing consideration are by no means mutually exclusive or cumulatively exhaustive". Nonetheless, in the context of the discussion to follow below, these factors would provide a useful backdrop against which the appropriate balance between the principles of rehabilitation and deterrence can be more accurately calibrated.

The deterrent effect of probation orders and reformative training

The limited deterrent effect of probation orders

55 The learned authors of *Sentencing* ([41] *supra*) postulate at p 209 that there is an element of discipline involved in the submission of the offender while at liberty to the supervision of the probation officer. In my view, in so far as it is suggested that such inherent discipline translates into some form of deterrence, more specific than general, and such deterrent effect would be penumbral at best. The key principle at play in probation would primarily be rehabilitation and not deterrence. Indeed, the Morison Committee observed in 1962 that (see *Report of the Department Committee on the Probation Service* (1962) HMSO (Cmnd 1650) at [13]):

> We see probation as epitomising [the principle that society sought to protect itself against crime and show disapproval of the wrongdoer] because while it seeks to protect society through the supervision to which the offender is required to submit, it both minimises the restrictions placed upon him and offers him the help of society in adjusting his conduct to its demands. It seeks to

> strengthen the offender's resources so that he may become a more responsible member of the community, which must also play a part in rehabilitating him. The offender is conditionally entrusted with freedom so that he may learn the social duties it involves ...

56 I would think that the same remarks can be said about probation orders in Singapore. They do exert some form of deterrence, but such deterrence, generally speaking, must be regarded as being relatively modest in nature. In this regard, I note that there are three grades and periods of probation, *viz*, administrative probation (six months to one year), supervised probation (one to two years) and intensive probation (two to three years). For the case of intensive probation, in addition to the conditions which may be imposed for administrative probation and supervised probation, the court may order the offender to reside for a specified period in an approved institution or home or hostel, and to be electronically tagged. I must acknowledge that intensive probation involving such a period of stay may have some level of deterrence for some young offenders. In addition, the recommended hours of community service order which is recommended to be imposed increases with each grade of probation. From about 40 hours recommended for administrative probation, the number of hours recommended for intensive probation is between 120 to 240 hours. This must similarly exert some degree of deterrence on young offenders.

The deterrent dimension of reformative training

THE RELATIVE AND ABSOLUTE DETERRENCE OF REFORMATIVE TRAINING

57 While reformative training, like probation, is a rehabilitative sentence, its deterrent effect, in my view, has not been emphasised sufficiently. While a stint at the RTC is rehabilitative in nature because there will be a structured reformative programme designed to make the offender a law-abiding citizen when he is reintegrated into society, that does not preclude the same stint from having a deterrent effect. Indeed, the numerous cases in which offenders plead for probation orders as opposed to say, reformative training or a term of imprisonment, implicitly echo the deterrent effect of reformative training. If not, why would offenders not (generally speaking) forgo the plea for probation and undergo reformative training voluntarily? In this sense, the deterrence is *relative* as compared to other sentencing options. Thus, a sentencing option is a deterrent because there is something lower in the scale of punishment which can be regarded as being less severe than the present option. The deterrence to the specific offender and the general community is that the sentencing court is sentencing the present offender to an option which is not at the lowest end of the scale, so far as punishment is concerned. Indeed, as the scale of punishment goes, one would be hard pressed to disagree with the proposition that a probation order stands as a less serious alternative to reformative training. That is the entire basis of deterrence in a relative sense.

58 In an absolute sense, however, it is equally true that reformative training has a deterrent effect. Without comparing reformative training to the imposition of various types of probation orders, it is clear that reformative training by itself, with the attendant element of incarceration, implicitly carries with it a significant deterrent effect, both on a specific and general level. As such, it is my view that the sentencing option of reformative training provides the courts with a middle-ground that broadly encapsulates the twin principles of rehabilitation and deterrence in relation to young offenders.

SIMILAR DETERRENT EFFECT IN SIMILAR SCHEMES IN THE UK

59 As I mentioned above (at [48]), there was a similar deterrent effect in Borstal training (before it was abolished) in the UK. According to Thomas in *Principles of Sentencing* ([48] *supra*) at p 262, the sentence of Borstal training was originally intended to provide the courts with a training measure for

offenders in their late adolescence who were developing persistently delinquent tendencies. However, with the passage of the (UK) Criminal Justice Act 1961, which restricted the powers of the sentencing court to impose sentences of imprisonment on offenders under 21, Borstal training was effectively the only intermediate-length custodial sentence available for the majority of young adult offenders before 1982. As a result, the sentence of Borstal training was no longer seen exclusively as a training measure and came to be approved in cases where a *deterrent sentence* was considered necessary.

60 More recently the UK introduced new custodial sentences options for offenders aged ten to 17, including the detention and training order ("DTO"). The underpinning statutory basis for this is to be found in the (UK) Powers of Criminal Courts (Sentencing) Act 2000, as amended by the (UK) Criminal Justice Act 2003. Under a DTO, the young offender serves half the sentence in a YOI and is then released under supervision for the remainder of the sentence. According to the (UK) Detention Centre Rules 1983, Rule 4, which applied to a similar "detention centre order" for males aged 14 to 20 under the then-in-force s 15(11) of the (UK) Criminal Justice Act 1982, the aims of the detention centres are:

> … to provide disciplined daily routine; to provide work, education and other activities of a kind that will assist offenders to acquire or develop personal resources and aptitudes; to encourage offenders to accept responsibility, and to help them with their return to the community in co-operation with the services responsible for their supervision.

However, as is noted in *Sentencing* ([41] *supra*) at p 177, detention centres, presumably representative of the current YOI in the UK, are probably associated in the minds of most people with the need of the individual offender for a short, sharp shock in order to bring him to his senses.

Balancing the rehabilitative aims with the need for deterrence

61 Having discussed the rehabilitative and deterrence principles in general terms, it now remains to embark on the inherently delicate task of seeking a balance between the two often competing imperatives. This of course presupposes that the threshold question of the *dominant* possibility of rehabilitation is reached (see [34]–[36] above). If the offence is so heinous and the young offender so devoid of any realistic prospect of being reformed then deterrence must form the *dominant* consideration, and the statutorily prescribed punishment (probably imprisonment) for the offender would be the obvious choice. I should add that even in such dire situations, the rehabilitation of the offender has not been cast aside; indeed, the present prison environment (assuming imprisonment is ordered) does provide some form of rehabilitation as well. It is, however, not tailor-made for young offenders unlike reformative training that is implemented in a special facility.

62 Assuming that a balance needs to be reached, I reiterate that not all of the four sentencing principles may be relevant in every case (see [28] above). Indeed, as I have said in *Tan Kay Beng* ([51] *supra*, at [29]):

> [T]hese principles are not always complementary and indeed may even engender conflicting consequences when mechanically applied in the process of sentencing. In practice, judges often place emphasis on one or more sentencing considerations in preference to, and sometimes even to the exclusion of all the other remaining considerations.

However, where two principles have been identified as being relevant, the pressing need for a balance between such applicable principles (see [28] above) must mean that one cannot operate to the complete exclusion of the other in any given case. Indeed, even when the rehabilitative principle is *primarily* given effect to, the courts must be slow to disavow their judicial duty in ensuring that the

other *applicable* principles are given some measure of representation in the ultimate sentence they pass. This was most aptly demonstrated in *Charissa Lim* ([33] *supra*), where Tay J made clear that the public interest was being advanced notwithstanding the imposition of a probation order. In other words, the balance which Tay J thought was best struck between the rehabilitative needs of the offender and the public interest (presumably meaning general deterrence, see *Law Aik Meng* ([28] *supra*, at [27]) and *Angliss Singapore Pte Ltd v PP* [2006] 4 SLR 653 at [17]) was by way of the probation order.

Rehabilitation as dominant consideration does not inevitably mean probation orders

63 As a preliminary point in the course of seeking the right balance between rehabilitation and deterrence, I must state that rehabilitation as a dominant consideration does not inevitably mean probation orders. It is important, in my view, to emphasise that while Yong CJ had in *Maurice Mok* ([32] *supra*) stated that rehabilitation is to be the dominant consideration in cases involving young offenders, he had not unequivocally equated rehabilitation with probation.

64 Rehabilitation is a *principle* of sentencing; on the other hand, probation is a *form of sentence* which the court can pass in expression of the *principle* of rehabilitation. While there will be many cases where the principle and the sentence coincide, such that a probation order will adequately give effect to the sentencing principle of rehabilitation (and any attendant consideration of deterrence), it is much more important to bear in mind that this is not inexorably the case. There will be many situations where the principles of rehabilitation and deterrence can be equally promoted by means of another sentencing option other than a probation order. Indeed, Tay J was equally alive to this proposition in *Charissa Lim* ([33] *supra*) when he stated that there will be instances where probation may be inappropriate in cases involving serious offences where the public interest needed to be advanced on a greater basis than the rehabilitation of the offender. As I said in *PP v Fernando Payagala Waduge Malitha Kumar* [2007] 2 SLR 334 at [37], the actual sentence in *Charissa Lim* should however be confined to its exceptional facts and not stand as a general sentencing precedent.

65 Apart from probation orders, reformative training functions equally well to advance the dominant principle of rehabilitation, and may even represent a better balance between the need for rehabilitation and deterrence. Even a term of imprisonment might not be said to completely ignore the rehabilitation of the offender, given that the prisons nowadays, as I briefly alluded to above (at [61]), have a comprehensive set of training and counselling programs designed to give the offender a second chance in life upon his release. However, I readily acknowledge that a term of standard imprisonment cannot be said to place the principle of rehabilitation as a dominant consideration.

66 In all cases, therefore, the key is always to find the most appropriate sentencing *option* to give effect to the dominant *principle* of rehabilitation, which is also balanced against the need for deterrence that might arise for particular offences. In cases involving young offenders, the sentencing options that give dominant consideration to the principle of rehabilitation invariably boil down to either probation orders or reformation training. The presence of more than one sentencing option which equally advances the rehabilitative principle must mean that the courts' hands are not tied when it comes to giving effect to this principle. Any other view cannot be right, and the courts would be remiss in the discharge of their judicial duties by abdicating their function to determine the appropriate sentence in consideration of the unique facts of each case.

Factors in determining treatment to balance rehabilitative aims with need for deterrence

67 In determining the balance to be struck between the dominant consideration of rehabilitation and the need for deterrence, the courts must of course pay utmost attention to the unique facts and

circumstances of each case. Without intending the following to be cast in stone like compulsory statutory factors, I would venture to suggest that some relevant factors include: (a) the seriousness of the offence; (b) the culpability of the offender; (c) the existence of antecedents; (d) the nature of the rehabilitation best suited for the offender; (e) the availability of familial support in the rehabilitative efforts and (f) any other special reasons or need for rehabilitation. These factors would determine the appropriate sentence in each case.

Seriousness of the offence, culpability of the offender and antecedents

68 The seriousness of the offence committed and the culpability of the offender inevitably affect the suitability of probation. In deciding when probation is appropriate, one must have regard to a myriad of factors which escape concrete categorisation because of the varied nature of the circumstances in which offences can take place. In my view, the consideration by the Legislative Council of the *nature of the offence committed* (see [43] above), albeit in the context of why probation might be more suitable for adult offenders, is a manifestation of the broad consideration that, apart from the rehabilitative principle, there are other principles at play in the sentencing process.

69 This was also pointed out implicitly by Parliament more recently, when it reiterated the rehabilitative aims of probation orders, while emphasising that such orders be granted only in *appropriate* circumstances. For example, Mr Yeo Cheow Tong, the then-Minister for Community Development, said at the Second Reading of the Probation of Offenders (Amendment) Bill (*Singapore Parliamentary Debates, Official Report* (10 November 1993) vol 61 at col 931):

> First, my Ministry's experience with young offenders on probation shows that 94% were first offenders. About 84% of those granted probation complete it successfully. What is significant is that for young offenders who had committed offences involving mandatory minimum sentences and who had been granted probation, 81% of them successfully completed their probation.
>
> Second, when an offender is sentenced with a custodial sentence, the sentence stands as a conviction in his or her record. On the other hand, if an offender is placed on probation, it will not be deemed as a conviction for the record. For young offenders, this will greatly facilitate their rehabilitation within the community.
>
> Young offenders are more likely to be in school or higher institutions of learning or at early stages of employment. By placing them on probation, we allow them to continue with their education or employment. Furthermore, they will benefit from the personal care, guidance and supervision of a Probation Officer. It will give them the opportunity to turn over a new leaf, and become a responsible member of society.
>
> This amendment will allow those who are deemed suitable by the courts to be put on probation. Only those with relatively stable family backgrounds, good school or employment records, and no previous delinquent traits are considered for probation. I have no doubt that the courts, which have always been careful and selective when considering offenders for probation, will continue to do so.

70 As such, it can be seen that the legislature has entrusted to the courts the discretion to decide the suitability of such offenders for rehabilitation while weighing also in the balance the wider concerns of society. The judiciary has recognised and put into effect these broad aims of the legislature. For instance, in *Fay v PP* [1994] 2 SLR 154, Yong CJ, with his customary clarity, put across the point in no uncertain terms (at [17]):

> *I do not doubt that the legislative intent behind the amendments to the Probation of Offenders Act was to promote the rehabilitation of young first-time offenders*. However, as demonstrated by the wording of the above proviso, *the legislature has entrusted to the courts the discretion to decide the suitability of such offenders for rehabilitation while weighing also in the balance the wider concerns of society. Indeed the delicate balancing of individual needs and community concerns is a crucial factor which, with respect, was not sufficiently highlighted*. This court agrees that the administration of justice should be tempered with a keen regard for the needs of the individual as far as the ambit of our laws allows. At the same time, our judiciary must remain conscious of its responsibility to safeguard the interests of the law-abiding general public and to uniformly apply the law to all those who violate it. [emphasis added]

71 In a related vein, in *PP v Muhammad Nuzaihan bin Kamal Luddin* [2000] 1 SLR 34 ("*Muhammad Nuzaihan bin Kamal Luddin*"), involving charges under the Computer Misuse Act (Cap 50A, 1994 Rev Ed), Yong CJ expanded upon the notion that the rehabilitative interest of the offender is related to the interests of the community at large by highlighting that probation is never granted as of right, and that the sentencing court would have regard to *all the circumstances* of the case before it decided to make a probation order (at [16]):

> *Probation under the [POA] is intended to be used to avoid the sending of offenders of not very serious offences to jail, where they may associate with hardened criminals, who may lead them further along the path of crime*. The [POA] recognises that many of these crimes are committed through ignorance or inadvertence or due to the bad influence of others. The offenders, but for such lapses, might be expected to be good citizens in which case a term of imprisonment might have the opposite effect to what is intended to be served by the imposition of the sentence. The traditional and broad rationale of probation therefore has always been to wean offenders away from a life time career in crime and to reform and rehabilitate them into self-reliant and useful citizens. In the case of youthful criminals, the chances of effective rehabilitation are greater than in the case of adults, making the possible use of probation more relevant where young offenders are concerned. … [P]robation is never granted as of right, even in the case of juvenile offenders. In deciding whether or not probation is the appropriate sentence in each case, the court still has to take into account all the circumstances of the case, including the nature of the offence and the character of the offender. [emphasis added]

72 The imposition of probation is thus unlikely to be appropriate where there are serious charges *even where* the rehabilitative principle is an important consideration. In such cases, the principle of deterrence requires that a strong deterrent message be sent to others. Indeed, the list which I provided in *Law Aik Meng* ([28] *supra*), reproduced at [53] above, would provide examples of the type of offences which demand that a strong deterrent message be sent, rendering probation inappropriate. Similarly, the authors of *Sentencing Practice* ([37] *supra*) have helpfully listed some examples giving effect to this proposition (at pp 38–39): see *PP v Sim Teck Poh* (Criminal Case No 52 of 1997) (causing grievous hurt under s 325 read with s 149 of the Penal Code where the offenders were members of a secret society); *Ng Huat v PP* [1995] 2 SLR 783 (gross indecency with a male patient in the course of employment); *Maurice Mok* ([32] *supra*) (taxi-robbery); *Muhammad Nuzaihan bin Kamal Luddin* ([71] *supra*) (unauthorised access to computer materials and to a computer service and unauthorised modification of the contents of a computer); or where there is sophisticated or organised criminality; or where the offender has prior antecedents.

73 I should mention that this approach is similarly taken in other jurisdictions. In Hong Kong, for example, which has Training Centres (similar to our RTC) established under s 4 of the (Hong Kong) Training Centres Ordinance, it has been noted by I Grenville Cross QC and Patrick W S Cheung in *Sentencing in Hong Kong* (Butterworths, 2nd Ed, 1996) at p 264 that if a young offender has

committed a serious offence, a conflict may arise between his interests, his rehabilitation, deterrence to him and to others, and the interests of the community. The offence may be so serious that punishment and deterrence are the predominant considerations: *Attorney General v Suen Yuen-ming* [1989] 2 HKLR 403 at 404.

Nature of rehabilitation best suited for the offender

74 It is also important to consider the nature of rehabilitation best suited for the offender. For example, even if the offence committed was not serious and the offender has no previous antecedents, probation may still not be suitable if the offender has demonstrated an inability to be properly disciplined at home. In such cases, reformative training could be more suitable: see, for example, *Muhammad Nuzaihan bin Kamal Luddin* ([71] *supra*).

75 As a rehabilitative sentence, the whole basis of sentencing an offender to reformative training is that the offender is considered to be amenable to reform: *Ng Kwok Fai v PP* [1996] 1 SLR 568. Prof Tan Yock Lin in his seminal work, *Criminal Procedure* (LexisNexis, 2007), vol 2 at XVIII [2554] put this in a different way when he wrote that reformative training offers the courts a middle ground between sending the offender to prison and the need to rehabilitate a young offender. In other words, reformative training allows the courts to sentence the offender to a rehabilitative programme under a structured environment while avoiding the danger of exposing the young offender to the potentially unsettling influence of an adult prison environment. It presupposes that the offender in question is amenable to rehabilitation in a closed and structured environment such as the RTC.

76 Before moving on, I must reiterate that the above considerations are not exhaustive, and must not be taken as such.

General analytical framework

77 Accordingly, in dealing with sentencing young offenders involved in serious offences, I propose the following analytical framework. First, the court must ask itself whether rehabilitation can remain a predominant consideration. If the offence was particularly heinous, or if the offender has a long history of offending, then reform and rehabilitation may not even be possible or relevant, notwithstanding the youth of the offender. In this case, the statutorily prescribed punishment (in most cases a term of imprisonment) will be appropriate.

78 However, if the principle of rehabilitation is considered to be relevant as a dominant consideration, the next question is how to give effect to this. In this respect, with young offenders, the courts may generally choose between probation and reformative training. The courts have to realise that each represents a different fulcrum in the balance between rehabilitation and deterrence. In seeking to achieve the proper balance, the courts could consider the factors I enumerated above, but must, above all, pay heed to the conceptual basis for rehabilitation and deterrence.

79 With these general principles in mind, I now turn to the facts of the present case.

Application to the present case

Can rehabilitation be the dominant consideration here?

80 The first threshold question was whether rehabilitation was a dominant consideration. While I have stated above the general proposition that rehabilitation should be the dominant consideration in cases involving young offenders, it does not follow that this is *always* the case where the factual

matrix demands that the other principles of sentencing take precedence over that of rehabilitation. As an example of such a case I had referred to Tay J's decision in *Mohamed Noh Hafiz bin Osman* ([34] *supra*) (see above at [35]).

81 In my view, the respondent in the present case plainly cannot be compared to the accused in *Mohamed Noh Hafiz bin Osman* ([34] *supra*). The respondent had no antecedents and while the offence he committed was serious, it is not as serious as the catalogue of sexual offences committed by the accused in the case mentioned above. Taking into account the respondent's age, I was convinced that rehabilitation was a valid and vital consideration to be taken into account when tailoring the sentence appropriate to him.

The level of deterrence necessary

82 However, as against the need for rehabilitation, there was the need for deterrence, both specific and general. There were several factors revealed by the facts to be relevant in the consideration of the necessary level of deterrence in the present case which the district judge failed to acknowledge.

Degree of planning and deliberation

83 The degree of premeditation with which the respondent and his accomplices carried out the offences ought, in my view, to be considered an aggravating factor in sentencing. It was an undisputed fact that the respondent was fully aware, at an early stage, of the ill intention of his accomplices and their plan, but consciously chose not to dissociate himself even though ample opportunities existed along the way. Further, there was no evidence to suggest that the respondent had been threatened or pressurised to partake in the criminal offences. Accordingly, the measure of consciousness and deliberation that went into the commission of the offence must be treated as an aggravating factor: see, for example, *Tan Fook Sum* ([28] *supra*).

The seriousness of the offence

84 Similarly, the seriousness of the offence was an important factor which ought to have been given greater emphasis. Even if the respondent did not engineer the plan, it was incontrovertible that the respondent had actively participated in the robbery, namely, by maintaining the car engine, pushing the victim out of the car, throwing one of her shoes out of the car to avoid detection and assisting to count the stolen money. The most damning fact was that the respondent had blithely turned a blind eye to the very apparent distress of the victim. The gravity of the offence was compounded by the indignity of the physical and sexual assault that was brought to bear on the victim, the multiple injuries she suffered and the deprivation of her belongings. The respondent's counsel had obliquely suggested that offences against sex workers should perhaps not be viewed as seriously, given their willingness to participate in a dangerous and unpleasant line of work. This was a preposterous suggestion. Such persons are no less deserving of the protection that the law accords to all other individuals. Indeed, the courts often consider such persons to be vulnerable victims, given their reluctance to come forward when offences are committed against them, for fear of compromising their illegal activities or questionable immigration status. Indeed, this aspect of the offence which the respondent knew about from the outset should, quite ironically, have been viewed as an aggravating feature, see [53(b)] above.

85 On a more general level, the seriousness of the offence, *viz*, robbery, must be taken into account. As I have said (at [72]), there are certain categories of offences in respect of which even young offenders must expect to be visited, almost as a matter of course (though, it must be

stressed, not invariably), with a period of incarceration. Rehabilitative efforts, in such cases, can then be conducted in a more structured environment. This will have a beneficial effect on the particular offender and be also concurrently interpreted as an unequivocal sign that society and the courts will take an uncompromising view in relation to the commission of certain types of offending conduct. Almost invariably included in these categories of offences must be those inherently involving gratuitous violence and/or the preying upon of vulnerable victims. All who participate in such offences must be firmly dealt with, in conjunction with any rehabilitative efforts that have been found to be appropriate. I will not attempt in these grounds of decision to exhaustively list out the offences which I think are serious enough to warrant such treatment; suffice to say, the punishment prescribed for the offence would play an essential role in determining the seriousness of the offence concerned. *A sentencing court should take particular note of the existence of a mandatory custodial sentence that Parliament may have prescribed.* This is, of course, not to say that all instances of robbery involving young offenders will be treated alike.

86 In my view, all these were factors which rendered the need for a higher level of deterrence in the present case. The question must now be whether an order of probation was the most appropriate balance between the need for rehabilitation of a young offender and the need for deterrence. In my view, it was not. However, in reassessing the balance, I was also keenly aware that, as an appellate court, I only had limited power to vary the sentence passed by the district judge. It is thus apposite at this juncture to examine the principles which guided me in my overall assessment of the balance to be struck between rehabilitation and deterrence, and whether the sentence of probation was appropriate and, if not, whether I could vary it.

The appropriate sentence in this case

Application principles in relation to appellate interference in sentencing

Appellate re-appraisal of sentences

87 It is well-settled law that an appellate court has only a limited scope when re-appraising sentences imposed by a court at first instance. This is because sentencing is largely a matter of judicial discretion and requires a fine balancing of myriad considerations: see *Angliss* ([62] *supra*) at [13].

88 Notwithstanding the discretionary nature of the sentencing process, it has also been established in cases such as *Tan Koon Swan v PP* [1986] SLR 126 and *PP v Cheong Hock Lai* [2004] 3 SLR 203 that an appellate court can disturb the sentence passed by the lower court in the following instances:

(a) where the sentencing judge had erred as to the proper factual basis for sentence;

(b) where the sentencing judge had failed to appreciate the material placed before him;

(c) where the sentence imposed was wrong in principle and/or law; and/or

(d) where the sentence imposed was manifestly excessive, or manifestly inadequate, as the case may be.

89 With respect to reason (d) in the preceding paragraph, Yong CJ in *PP v Siew Boon Leong* [2005] 1 SLR 611 clarified what is meant by a sentence that was manifestly excessive or inadequate (at [22]):

> When a sentence is said to be manifestly inadequate, or conversely, manifestly excessive, it means that the sentence is unjustly lenient or severe, as the case may be, and *requires substantial alterations rather than minute corrections* to remedy the injustice … [emphasis added]

Indeed, in *Moey Keng Kong v PP* [2001] 4 SLR 211 ("*Moey Keng Kong*"), it was observed that a sentence is manifestly inadequate when, although it should reflect both the need for deterrence and retribution, it reflects only deterrence or retribution.

90 On this premise, it bears repeating that an appellate court should only intervene where the sentence imposed below was "manifestly" inadequate, and that in itself implies a high threshold before intervention is warranted. Indeed, as I had reiterated in *Angliss* ([62] *supra* at [14]):

> The *mere fact that an appellate court would have awarded a higher or lower sentence than the trial judge is not sufficient* to compel the exercise of its appellate powers unless it is coupled with a failure by the trial judge to appreciate the facts placed before him or where the trial judge's exercise of his sentencing discretion was contrary to principle and/or law. [emphasis added]

Method of re-appraisal

91 Further, in assessing the adequacy of a lower court's sentence, due regard may be given to previous sentencing precedents involving similar facts or offences, for the simple reason that these cases give an indication of the appropriate sentence to be imposed, although such precedents are only guidelines as each case ultimately turns on its own facts: see, for example, *Viswanathan Ramachandran v PP* [2003] 3 SLR 435 at [43]. With these principles in mind, I turn now to consider the appropriate sentence in this case.

The appropriate sentence

Whether the sentence passed was manifestly inadequate

92 Taking my earlier conclusion that the balance between rehabilitation and deterrence was not adequately struck by way of a probation order in tandem with the holding in *Moey Keng Kong* ([88] *supra*) that a sentence would be manifestly incorrect should it fail to reflect the relevant principles from the four principles relevant in sentencing, I came to the firm decision that I was at liberty to vary the probation order passed on the respondent by the district judge.

Sentencing precedents

93 In deciding the appropriate sentence in this case, I found it helpful to refer to sentencing precedents involving cases on similar facts. In *Maurice Mok* ([32] *supra*), the sentence imposed on a 17-year-old offender with no criminal records for a charge of robbery under s 392 read with s 34 of the Penal Code was reformative training. Similarly, in *CS v PP* [2004] SGDC 158, the 16-year-old offender pleaded guilty to an amended charge of using criminal force to commit theft under s 356 read with s 34 of the Penal Code from the original charge of robbery with hurt under s 394 of the Penal Code. The offender, together with three accomplices, had targeted a female victim and stolen her mobile phone in the early hours of the day (12.30am) and the latter also sustained injuries. The respondent was found suitable for both probation and reformative training. In sentencing the offender to reformative training, the district judge took into account the aggravating factors including the seriousness of the offence. Finally, in *Lim Wee Liat v PP* (Magistrate's Appeal No 246 of 1997), a 16-year-old first offender who had robbed the victim with four accomplices sometime past 11.00pm was

sentenced to reformative training.

94 In my view, these cases cited above were important sentencing precedents which could not be airily dismissed. They reiterated the vital balance which must be struck between rehabilitation and deterrence, taking into account the seriousness of the offence.

95 In rounding up this review of relevant sentencing precedents, I must also mention that I was aware that another High Court judge had recently affirmed the decision of the district court in *PP v Khairul Zaman bin Mamon Basir* [2007] SGDC 86 ("*Khairul Zaman bin Mamon Basir*"), where the district judge concerned had sentenced the accused to probation based on largely similar facts. Indeed, this precedent was referred to by the district judge in this matter as, *inter alia*, justifying her decision to place the respondent on probation. As no grounds of decision have been given in that case, it is inappropriate for me to speculate on the reasons for the judge's decision. However, looking at the district judge's decision in *Khairul Zaman bin Mamon Basir* alone, I cannot regard it as falling within the analytical framework I have outlined above (at [76]–[77]). Secondly, I have not been able to find compelling reasons to justify a departure from the earlier sentencing precedents (see [93]) that unequivocally pointed towards a sentence of reformative training on facts similar to those in this case. I am pleased to note, however, that the district judge in *Khairul Zaman bin Mamon Basir* has since in *Alex Tee Kheng Hong v PP* [2007] SGDC 228 ("*Alex Tee*") rendered another decision which, in my view, correctly achieves the appropriate balance between rehabilitation and deterrence.

96 In *Alex Tee* ([94] *supra*), an 18-year-old male was sentenced to reformative training after being convicted of a single charge of rioting while armed with a deadly weapon. The district judge did this after "assess[ing] the situation carefully, considering both the needs of the offender and that of society" (at [13]). After considering all the relevant circumstances the district judge with precise appositeness noted at [18]–[20]:

> But to my mind, in view of the seriousness of the offence, probation would not be appropriate. The charge under s 148 involves aggravating features; not merely was violence involved, but also weapons, namely knives. While one victim had lacerations only, these lacerations were over his limbs, and included a lacerated tendon; the other victim had cut muscle bellies, but fortunately no other damage. The incident also occurred in broad daylight at a public place, a shopping mall, in the heartland. Violent offences are bad enough when they occur, but a blatant incident in the daytime in a public place involves serious disregard, bordering on contempt, for law and public order. While the Appellant did not inflict the injuries himself, that did not lessen the seriousness of the harm caused. And the reduction of culpability would be fairly limited given that he was nonetheless part of the unlawful assembly with the intention to cause harm to the victims, and violence was in fact inflicted. The injuries caused, the fact that the assailants were armed and operated in a group, the threat to public order and the blatant way in which the offence was committed all point to the high level of harm caused by the offence. The culpability of the Appellant was also not low, given that he was himself personally armed with a knife. The victims were also quite young, one was 18 while another was only 14.
>
> At the other end of the scale of sentencing alternatives was imprisonment, with the possibility of caning. While the offence was serious and the other circumstances highlighted above supported this conclusion, I did not conclude that they were such as to wholly override the rehabilitative interest. It may be that there would be instances where rehabilitation must be trumped by punishment or deterrence, such as perhaps drug trafficking by a relatively older youth, but I did not find the present case to be one. The positive factors noted in his probation report did support the conclusion that rehabilitation was viable and had a real prospect of success. Imprisonment was not therefore a necessary response.

> Rather, what best balanced the competing interests was reformative training. While reformative training does potentially have both a punitive and deterrent effect, such qualities are incidental; the aim of the regime is reformative. …

97 While consistency in sentencing practice among appellate judges is desirable, it bears emphasis that if an unexplained departure from an established sentencing practice (particularly if it does not appear to accord with the applicable analytical sentencing framework) is made, then it is of little persuasive value. Lower courts should not speculate as to the plausible reasons behind such decisions and must assume, without any further indication to the contrary, that the appellate judge concerned had applied the applicable analytical sentencing framework and then reached a different conclusion because of the unique facts of the case. *If there has been a considered change in the applicable legal principles, or in general, sentencing policy/philosophy, the lower courts must understand that such a change will only be made by an appellate court explicitly and with reasoned grounds. Above all, lower courts must apply their minds to the facts of each case and apply settled sentencing principles to all matters heard by them.*

The sentence passed

98 The principal offences committed in the appeal before me are nothing short of reprehensible and must be unequivocally deplored through appropriate sentencing. While I am prepared to allow a certain amount of latitude for youthful indiscretion it seems to me that the respondent was fully aware that his adult companions intended to commit alarming offences by preying upon sex workers. Specifically, while the respondent may not have been the prime initiator or mover of the offending conduct, he was nevertheless a willing and conscious participant in these disturbing offences. I simply cannot paper over these offences and lightly dismiss them simply as isolated youthful indiscretions. The offences were, all said and done, not committed on the spur of the moment. They were coldly calculated, carefully schemed and calmly executed.

99 The district judge should have carefully considered and acknowledged that there appears to be a certain category of young offenders who will think nothing of participating in such disturbing offences. Through the sentences, the district judge appeared to be suggesting that the offending conduct could be papered over merely because the offenders are youths who can be rehabilitated by way of community-based programmes without being subjected to some period of incarceration in a strictly structured environment. That cannot be right. The sentences are not adequate to punish the respondent as well as deter other prospective young offenders from committing similar offences.

100 While the district judge had considered that probation was more suitable than reformative training in rehabilitating the respondent, she had nevertheless allowed this concern to override her earlier acknowledgement that the respondent had, in fact, been a participant, however slight, in a serious offence (see [22] above). As such, the pursuit of rehabilitative aims does not necessarily and automatically lead to the exclusion of other penal concerns which the law requires to be considered and assessed in every sentencing determination. Furthermore, as I have emphasised above (at [63]), rehabilitation does not inevitably mean probation. In fact, while the district judge had concluded that probation was a "viable" option for the respondent to be effectively rehabilitated, she, most unfortunately, had not come to the definite view that reformative training would *not* equally achieve the same rehabilitative aims (see [51] of the GD). Above all, it bears emphasising that the importance and necessity of both general and specific deterrence cannot be ignored in matters such as this. In my view, an order of probation ignores this.

101 As such, I concluded that the district judge mistakenly tilted her decision in favour of the respondent in seeking to apply the general principle of sentencing young offenders with a lighter

touch. A lighter touch which takes into account of rehabilitative aims does not and cannot mean that young offenders who commit serious offences are left largely untouched by the customary penal consequences. While I acknowledged the relevance and applicability of rehabilitative efforts to the respondent in the appeal before me, I came to the view that the realisation of such aims cannot preclude the general necessity of deterrence as serious offences had been committed. In the result, I set aside the district judge's decision and sentenced the respondent to reformative training with immediate effect.

Conclusion

102 For the reasons above, I allowed the Prosecution's appeal and sentenced the respondent to reformative training. Most pertinently, as I alluded to at the beginning of these grounds of decision (at [5]), this sentencing "treatment" best reconciles the respondent's rehabilitative prospects (even as a dominant consideration) with the interests of the community at large.

103 The complex problem of youth crime and its causes is one that the courts must take pains to understand. Sentences should never be meted out in a ritualistic manner with the goal of rehabilitation expressed only through the imposition of probation orders. The sentence must always fit the crime and the commission of a serious crime, especially those involving violence, necessarily merits a firm response. This is an area of sentencing that calls for firmness, fairness, sensitivity and an understanding of the various factors and circumstances that have led a young offender to commit the particular crime. It calls for an approach that in suitable cases requires the young offender to be punished with an appropriate sentence that could incorporate the objective of rehabilitation either through reformative training or a probation order. The considerations underpinning the sentencing of every young offender are full of competing tensions and cannot afford to be unduly rigid or orthodox. The legitimate interests of both the offender and the community need to be appropriately assessed and balanced in each and every individual case.

104 Youth crime has become intractable in many countries. Left unchecked, it destroys the young offenders' own futures, damages their families, scars the communities in which they live and threatens the welfare of society as a whole. In Singapore, it presents a nascent challenge and a deft and sensitive response is necessary to contain it. In this increasingly important area of crime control the courts play a vital role to ensure that youth crime does not take root in the community, become rampant and burgeon out of control. This role can be discharged through the judicious application of a formula leaning towards rehabilitation but laced with a strong dose of deterrence in cases where the nature of the offence calls for it. The case before me was one such case.